



January 30, 2013

Mr. Fadi Chehadé
President & CEO
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

Dear Fadi:

I recently read a report in the press regarding remarks that you were quoted as having made at a meeting of registries and registrars in Amsterdam on January 25. We are concerned about the impact of these apparent policy positions.

Here is what the press report stated:

"I made one big mistake in the last few months," he (Mr. Chehadé) said. "I didn't quite fully understand... this concept of 'trying to take a second bite at the apple,' when I engaged with the Trademark Clearinghouse discussions....I frankly didn't fully understand until I went through the process, and appreciated what people were actually trying to do," Chehadé said. "So, okay, big learning experience for me... I take it, I move on and hopefully I won't make that mistake again." (Domain Incite, January 25, 2013).

When I first saw the report, I was (to say the least) perplexed, as you have appeared consistently open and welcoming to receiving detailed proposals for much-needed additional protections for trademarks. After the meeting you held in Brussels in response to requests from the Intellectual Property Constituency and Business Constituency (IPC/BC), the "Strawman" Proposal was developed, and ICANN is now soliciting comments on that proposal. ANA – along with many members of the Coalition for Responsible Internet Domain Oversight (CRIDO), the IPC/BC, and others – believe that some aspects of this new proposal will add some useful protections for trademark holders and protect consumers. All of these groups, however, felt that these protections would be totally insufficient without the Limited Preventative Registration (LPR) proposal on which ICANN is also soliciting comments. The LPR, in our view, provides the most significant real trademark protections.

Of course, other interests that stand to benefit financially from the current situation – including registries, registrars and some gTLD applicants – have discounted it, but that in no way mitigates the need for additional protections or the legitimacy of some elements in the Strawman Proposal and the LPR proposal.

That proposal was the product of countless hours of discussion within the IPC/BC working group, participation by members of the group that met with you in Brussels, and further discussion at a meeting on the topic held in Los Angeles. Commendably, you instigated all of these initiatives.

These discussions were entirely appropriate, and were responsive to very real concerns about ICANN's inadequate Rights Protection Mechanisms (RPMs).

As you know, the IPC/BC proposed "eight points" for key RPMs, including a LPR element that the IPC/BC identified as **its number one priority**, and which ANA and a broad range of the trademark community supports. I am sure you have seen the numerous filings in support of the proposal by extremely varied interests, such as auto and toy manufacturers, transportation and telecommunications providers, insurance, and many other interests concerned about the potential for brand infringement and consumer confusion that will arise in the absence of additional protections. Significant and widespread concerns remain, and ICANN must engage in a thorough, robust discussion about the very real dangers for trademarks that exist in the current gTLD process, and how to avoid those harms.

We are facing extraordinarily changed circumstances. What is being proposed by ICANN is an unprecedented growth in Top Level Domains and Second Level Domains that requires a complete review. This is not a "second bite at the apple," but an attempt to respond to the new marketplace realities that ICANN has fostered.

I know that I need not remind you that section 9.3 of the Affirmation of Commitments requires that ICANN, prior to implementation of the new gTLDs, adequately address "competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns and rights protections." Without added protections, it is inevitable that the interests of consumers and trademark holders will be severely undermined.

If accurately reported, your remarks in Amsterdam – made even before the deadline for replies to the initial comments on the Strawman and LPR proposals – raise serious questions as to whether ICANN intends to accord serious consideration to these critical proposals and any comments that you receive regarding it. This is a very serious matter of fairness, and it also raises questions about ICANN's credibility in regard to the development of adequate Rights Protection Mechanisms. Surely, you do not want to convey the impression that you have prejudged the concerns expressed by various interests that have participated (as you have encouraged), at great cost in time and expense, in ICANN's deliberative processes, or that the only real "mistake" is made by participating because participants' views will be dismissed without a thoughtful and adequate analysis. Entities like the IPC/BC, ANA, CRIDO, and others with legitimate issues must be heard.

I and others in the community would appreciate some clarification as to whether you intend to engage in a full, fair and open consideration of the comments filed regarding the Strawman Proposal, the LPR, and other RPMs that are so essential to trademark protection.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Jaffe". The signature is fluid and cursive, with the first name "Dan" and last name "Jaffe" clearly distinguishable.

Dan Jaffe
Group Executive Vice President
Association of National Advertisers

C:

- Steve Crocker, Chairman of the Board of Directors, Internet Corporation for Assigned Names and Numbers
- Fadi Chehadé, President & CEO, Internet Corporation for Assigned Names and Numbers
- Ms. Victoria Espinel, U.S. Intellectual Property Rights Enforcement Coordinator, The White House
- The Honorable Rebecca Blank, Acting Secretary and Deputy Secretary, U.S. Department of Commerce
- The Honorable Jon Leibowitz, Chairman of the Federal Trade Commission
- The Honorable Julie Brill, Commissioner of the Federal Trade Commission
- Shaundra Watson, Counsel for International Consumer Protection, Office of International Affairs, Federal Trade Commission
- The Honorable Robert S. Mueller, III, Director of the Federal Bureau of Investigation
- Cameron F. Kerry, General Counsel, U.S. Department of Commerce
- Ms. Fiona M. Alexander, Associate Administrator, Office of International Affairs, National Telecommunications and Information Administration
- Ms. Suzanne Radell, Senior Policy Adviser, NTIA, U.S. Department of Commerce
- The Honorable John D. Rockefeller, Chairman, Committee on Commerce, Science and Transportation, U.S. Senate
- The Honorable Patrick J. Leahy, Chairman, Committee on the Judiciary, U.S. Senate
- The Honorable Thad Cochran, Ranking Member, Committee on Appropriations, U.S. Senate
- The Honorable John Thune, Ranking Member, Committee on Commerce, Science and Transportation, U.S. Senate
- The Honorable Charles E. Grassley, Ranking Member, Committee on the Judiciary, U.S. Senate
- The Honorable Amy Klobuchar, Member, Committee on Commerce, Science and Transportation, U.S. Senate
- The Honorable Al Franken, Chairman, Subcommittee on Privacy, Technology and the Law, Committee on the Judiciary, U.S. Senate
- The Honorable Tom Coburn, Ranking Member, Subcommittee on Privacy, Technology and the Law, Committee on the Judiciary, U.S. Senate
- The Honorable Ron Wyden, Chairman, Subcommittee on International Trade, Customs, and Global Competitiveness, Committee on Finance, U.S. Senate
- The Honorable Hal Rogers, Chairman, Committee on Appropriations, U.S. House of Representatives
- The Honorable Fred Upton, Chairman, Committee on Energy and Commerce, U.S. House of Representatives
- The Honorable Bob Goodlatte, Chairman, Committee on the Judiciary, U.S. House of Representatives
- The Honorable Nita M. Lowey, Ranking Member, Committee on Appropriations, U.S. House of Representatives
- The Honorable Henry A. Waxman, Ranking Member, Committee on Energy and Commerce, U.S. House of Representatives
- The Honorable John Conyers, Ranking Member, Committee on the Judiciary, U.S. House of Representatives
- The Honorable Howard Coble, Chairman, Subcommittee on Intellectual Property, Competition and the Internet, Committee on the Judiciary, U.S. House of Representatives
- The Honorable Eliot L. Engel, Ranking Member, House Committee on Foreign Affairs
- The Honorable Frank Wolf, Chairman, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, U.S. House of Representatives
- The Honorable Mel Watt, Ranking Member, Subcommittee on Intellectual Property, Competition and the Internet, Committee on the Judiciary, U.S. House of Representatives
- The Honorable Chaka Fattah, Ranking Member, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, U.S. House of Representatives

- The Honorable Gregory P. Walden, Chairman of the House Energy and Commerce Subcommittee on Communications and Technology
- The Honorable Anna G. Eshoo, Ranking Member, House Energy and Commerce Subcommittee on Communications and Technology