



The Internet Corporation for Assigned Names and Numbers

ICANN

11 January 2012

Lawrence E. Strickling
Assistant Secretary for Communications and Information
United States Department of Commerce
Washington, D.C. 20230

RE: ICANN's New gTLD Program

Dear Assistant Secretary Strickling:

Thank you for your letter of 3 January 2012 regarding the new generic top-level domain program. We appreciate the NTIA's continued contributions and involvement in ICANN, and particularly your commitment to preserve the multi-stakeholder model and the outcomes of this six-year multi-stakeholder process that has led to the opportunity for new generic top-level domains.

We will continue to review possible improvements to the program. We appreciate your concerns regarding the perceived need for defensive registrations at the top-level by trademark holders. Accordingly, we will again solicit information as expeditiously as possible from the intellectual property community, and submit any new proposals or recommendations for evaluation and comment from the ICANN stakeholder community.

We will also continue in our efforts to implement ICANN's commitments to law enforcement and enhancing consumer protection, particularly in the areas of strengthening the Registrar Accreditation Agreement, improving WHOIS accuracy, and establishing strong contractual compliance capability in the new, expanded environment.

The Perceived Need for Defensive Registrations and the Education of Stakeholders

We are very interested in ensuring that trademark owners are fully aware of the options and mechanisms available to them. When top-level protections were developed, the team of intellectual property experts that were engaged carefully balanced the effects of different options and then crafted the existing set of protections.

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Over the past four months, ICANN has delivered on a global communications strategy that has generated thousands of media articles around the world. In more than 50 events in 38 countries, ICANN's CEO, Board and staff have given many presentations that included detailed descriptions of trademark and consumer protections.

As you know, full details of the new gTLD program can be found on ICANN's dedicated microsite, in many published materials available in the six UN languages, and in posted recordings of past meetings.

In response to your comments suggesting the need for further U.S.-based outreach, we have undertaken an intensified communications effort in Washington and New York that has produced informative stories in the *Associated Press*, *Wall Street Journal*, *Ad Week*, *Wired*, *AFP*, *Nightly Business Report*, *CNN*, *Reuters*, *Politico*, *USA Today* and *National Journal*, among others. In each case, detailed descriptions of the program's protections have been emphasized, and many of the articles feature these points. This effort is ongoing.

We understand the importance of continuing this education campaign and will continue to reach out to stakeholders in the U.S. and internationally. For example, on 11 January, ICANN is hosting a panel discussion in Washington that will address trademark and rights protection issues. As the application window is opened and trademark holders are determining their strategy for taking advantage of this new opportunity, we are committed to increasing the education effort and will develop plans to directly contact as many trademark owners as possible, including through informational events. We do not see this as a significant change in our communications strategy.

We believe that our recent efforts have made significant progress in addressing the concerns raised in your letter regarding the need for filing "defensive" applications for new gTLDs. As you know, the New gTLD Program allows for objections to be brought against applications for strings that infringe on the legal rights of others. Many program features combine to discourage applications that might seek to gain through rights infringement: the relatively high fee, the rigorous background checks and evaluation process, stringent technical and business requirements for new registries, the availability of objection processes, and trademark protections in second-level registrations. All applied-for TLDs will be published to allow rights-holders to avail themselves of the objection and other protection mechanisms. With these protections, the ICANN community has crafted a program to encourage applications only from those that are interested in running a new gTLD registry. ICANN will continue to take steps to make sure these protections are fully communicated as, and after, the application window opens.

Second-level protections: Much of the work regarding the New gTLD Program anticipates a range of potential ideas and innovation. We do not know all of the TLD names that will be applied for in this first round, nor the additional protections that applicants themselves may offer. As you state, upon the close of the application window and the public posting of the strings, we will all have a better understanding of what this expanded gTLD landscape will look like. We will understand the size, and whether there has to be a staged rollout of new gTLDs based on commitments made regarding the rate of entry into the root zone and the batching of applications. We thank the NTIA for its additional commitment to coordinate with stakeholders and the other members of the Governmental Advisory Committee (GAC) as the application window closes regarding the scope of the applied-for strings. ICANN commits to working with the GAC and the community in order to respond as appropriate to address unintended effects of the introduction of New gTLDs.

Law Enforcement Recommendations & Consumer Protections

Your letter addresses three important areas of work for ICANN to undertake that will enhance the consumer protections available as new gTLDs roll out: (1) strengthening the Registrar Accreditation Agreement to meet the recommendations of law enforcement; (2) WHOIS accuracy; and (3) continued growth of ICANN's Contractual Compliance Team. ICANN takes each of these three items very seriously, and has work underway in each of these three areas.

RAA Negotiations

Active negotiations are underway with the accredited registrars with which ICANN currently has a contractual relationship. The negotiations are focused on amendments to the Registrar Accreditation Agreement (RAA), and the form of agreement that governs the relationship with all newly-accredited registrars. ICANN has committed to releasing a series of amendments addressing the recommendations of law enforcement, including provisions related to WHOIS verification, requiring registrars to maintain points of contact for reporting abuse, reseller obligations, heightened obligations relating to privacy/proxy service, increased compliance mechanisms, and others. The proposed changes will be posted prior to ICANN's Meeting in March 2012 for feedback from ICANN's multi-stakeholder community.

As part of ICANN's negotiation with the accredited registrars on RAA amendments to meet law enforcement requests, ICANN is taking a strong stand in regard to issues relating to the verification of WHOIS data, and expects the accredited registrars to take action to address the demands of law enforcement worldwide.

ICANN cannot currently require verification or authentication at the time of registration by an accredited registrar of a new second-level domain name applicant. ICANN expects that the RAA will incorporate – for the first time – Registrar commitments to verify WHOIS data. ICANN is actively considering incentives for Registrars to adopt the anticipated amendments to the RAA prior to the rollout of the first TLD in 2013.

ICANN is focused on WHOIS improvements as a cornerstone of the new agreements. As one outcome of the negotiations, ICANN and the accredited gTLD registrar community are planning an upcoming public forum to discuss available tools for WHOIS verification and authentication. The NTIA's participation in this forum, and the participation of other interested parties throughout the world, will be welcomed and encouraged.

WHOIS Improvements

ICANN shares the NTIA's concerns regarding WHOIS data. ICANN takes this very seriously. The current WHOIS system is hampered by an old prototype and little consensus on policy changes.¹ The history of ICANN's work on this issue shows that WHOIS has been a constant challenge for the ICANN community. ICANN is actively working to enhance WHOIS. Improving the environment for law enforcement and consumers requires improving WHOIS accuracy and access to data.

In addition to the RAA-related work described above, additional work within ICANN on WHOIS issues includes:

ICANN has dedicated substantial resources to the study of WHOIS data-related issues. There are five separate studies currently underway regarding WHOIS services. These studies including issues on misuse, registrant identification and privacy/proxy services.² Most of these studies are expected to conclude within 2012. This work is intended to inform, facilitate and expedite ongoing policy work within the GNSO on WHOIS data issues.

ICANN is committed to take action on the final recommendations of the WHOIS Review Team convened under the Affirmation of Commitments (AoC). The Review

¹ A comprehensive listing of the past work regarding WHOISWHOIS is

² The WHOISWHOIS studies are identified at <http://gns0.icann.org/issues/WHOISWHOIS/studies>.



Team's draft recommendations are now the subject of a public comment proceeding, and the Board is committed act on the recommendations as agreed under the AoC.

ICANN's WHOIS Data Problem Reporting System has been significantly improved twice in recent years to 1) assist registrars in carrying out their responsibility to investigate WHOIS data inaccuracy claims and 2) provide a better mechanism for tracking investigation and response.

In response to enforcement efforts, ICANN's accredited registrars are now at 100% compliance with their obligation to send out WHOIS Data Reminders to their customers.

ICANN staff members have developed and recommended a solution for internationalized registration data (to ensure clarity of WHOIS information using characters other than English). That proposal is being considered for adoption as a standard by the Internet Engineering Task Force (IETF).

Finally, the new gTLD program facilitates access to WHOIS related data. First the program requires maintenance of a "thick" WHOIS database for all new TLD registries. In addition, there is a strong incentive for applicants to implement "searchable" WHOIS. Both of these measures are recommended by intellectual property rights and domain name security experts to make more information about registrants more easily available - making it easier to combat malicious conduct where it occurs. In addition, the new Program provides centralized access to registry data, creating for the first time a one-stop shop for accredited parties to view data in all registries. Internet security experts also recommended this improvement.

ICANN will continue working with the community to implement additional enhancements as borne out through work, studies and further recommendations.

Enhancement of Contractual Compliance

ICANN has committed to expanding its Contractual Compliance team in anticipation of the 2013 rollout of the first new TLDs, and has continued its expansion of the department to meet that commitment. ICANN has also grown the related functions and departments that support the contractual compliance function. In 2011, a new



Senior Director was hired, as well as three full-time staff members.³ Active recruitment for three new positions is currently underway and the positions are posted on ICANN's career page.⁴ The Contractual Compliance team now has members staffed in multiple ICANN offices, with fluency in multiple languages. ICANN will continue to expand this function in the coming ICANN fiscal budget year. ICANN is actively engaged in enhancing the "culture of compliance" around ICANN's key contractual relationships.

ICANN's Management is committed to vigorous enforcement of both registry and registrar contracts. The team is working on the development of better and more automated systems, as well as enhancing internal tracking and reporting. Steps are already underway regarding the centralization and automation of the complaint process. As seen with the team's work on the WHOIS Data Problem Reporting Service, ICANN has the demonstrated ability to improve and automate its compliance systems.

This larger, more proactive approach by ICANN, combined with the uniform provisions of the proposed new gTLD registry contracts and the stronger enforcement tools that will be available under the improved RAA, will all assist in holding all contracted parties to their commitments.

³ Today's Contractual Compliance team has four additional members than it did a year ago – nearly doubling in size.

⁴ See ICANN's Career listing page, at www.ICANN.jobs



Conclusion

Thank you for the NTIA's continued dedication and support for the multi-stakeholder model and the unified, global Internet. ICANN is committed to meeting the demands of the multi-stakeholder model through its responsible stewardship of the New gTLD Program, just one part of ICANN's role as the steward of the globally-interoperable DNS. The concerns raised in your letter are shared by ICANN, and we look forward to working with the NTIA and all interested stakeholders around the globe further on these issues.

Sincerely,

A handwritten signature in black ink that reads "Rod Beckstrom". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Rod Beckstrom
President and Chief Executive Officer