



The Internet Corporation for Assigned Names and Numbers

10 January 2012

Chairman Jon Leibowitz
Commissioner J. Thomas Rosch
Commissioner Edith Ramirez
Commissioner Julie Brill
Federal Trade Commission
Washington, D.C. 20580

Re: ICANN's New gTLD Program

Dear Chairman Leibowitz and Commissioners Rosch, Ramirez and Brill:

Thank you for your letter of 16 December 2011 regarding ICANN's new generic top-level domain name program (New gTLD Program or Program). We appreciate the perspective that you provide to ICANN in your letter and note the important contributions that the FTC brings to ICANN's base of information and processes. That perspective has been and will continue to be important to us in performing ICANN's technical coordination role – especially in providing protections to consumers and users of the Internet.

The New gTLD Program is the product of ICANN's mandate to: act in the global public interest, coordinate the global Internet's systems of unique identifiers, and in particular, ensure the stable and secure operation of the Internet's unique identifier systems. ICANN has addressed the overarching issues identified for the rollout of new TLDs through careful operational planning and the six-year long, multistakeholder process to design the New gTLD Program.

The program has been designed to benefit the billions of Internet users around the globe through increased competition, choice and innovation. It is also designed to provide a safer, stable marketplace through the implementation of rights protection mechanisms, malicious conduct mitigation measures and other registrant protections.

New gTLDs Include Protections that Are Not Required in the 300 TLDs Already in the Domain Name System

The domain name system (DNS) today includes over 300 TLDs: 249 ccTLDs, 30 IDN ccTLDs, and 21 gTLDs. None of those 300 existing TLDs are required to include the standard protections that new TLDs must offer.

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The FTC's concerns about the expansion of the DNS and worldwide accessibility to the Internet¹ are actually mitigated through the launch of these new TLDs – rather than magnified as suggested in your letter.

ICANN strongly expects that TLDs approved through the New gTLD Program will bring about increased competition while resulting in more secure environments for consumers. New measures to mitigate malicious conduct and increase security and stability include:

- Background reviews of TLD applicants, including reviews for criminal history (including the use of telecommunications or the Internet to facilitate crimes, illegal sale of drugs, and others);
- Rejection of applications where the applicant has a pattern of adverse decisions under the UDRP (Uniform Domain Name Dispute Resolution Policy), or has been found to act in bad faith or reckless disregard under cybersquatting legislation;
- The requirement to have a plan to implement domain name system security extensions (DNSSEC), reducing the risk of “man-in-the-middle” attacks and spoofed DNS records;
- A requirement to maintain enhanced, or “thick”, WHOIS records at the registry level to allow more rapid search capabilities, facilitating efficient resolution of malicious conduct activities;
- A centralized zone file access system to allow for more accurate and rapid identification of key points of contact within each gTLD. This reduces the time necessary to take corrective action within TLDs experiencing malicious activity;

¹ To the extent that the FTC's concerns about the expansion of the DNS are in relation to phishing attacks, phishing attacks are predominately made through email. The number of attacks will not go up because there are more TLDs. Phishing attacks also require a domain name registration, but new, smaller TLDs incorporating the heightened protections are not the place for those making attacks to “hide.” Phishing attacks are proportional to the number of wrongdoers and registrants, not the number of TLDs.



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- A requirement to establish a single point of contact responsible for the handling of abuse complaints (as requested by law enforcement authorities);
- Requirements that New gTLD Registry Operators must:
 - Maintain a Continued Operations Instrument sufficient to fund basic registry operations for a period of three years in case of business failure, to protect consumers and registrants within that gTLD in the event of registry failure.
 - Maintain continuity and transition plans, including regular failover testing.
 - Cooperate with ICANN In the event transition to a new registry operator is necessary. ICANN will identify an Emergency Back-End Registry Operator to assist in the registry transition process and provide emergency registry services as needed.

The protections now in place are a result of substantive consultations across ICANN's stakeholders. The Governmental Advisory Committee (GAC), made up of over 110 of the world's governments, has been deeply involved in the development of the New gTLD Program. As noted by Assistant Secretary of Commerce Lawrence Strickling, ICANN worked with the GAC to be sure that government concerns were addressed in the program.²

ICANN's Work Does Not Stop With the January 12, 2012 Opening of The Application Window

ICANN's multistakeholder community will continue to work on issues identified by the FTC and others to enhance the security and stability of the DNS. Some examples of this work include:

² Remarks of Assistant Secretary Strickling at the Practising Law Institute's 29th Annual Telecommunications Policy & Regulation Conference, December 8, 2011, available at <http://www.ntia.doc.gov/speechtestimony/2011/remarks-assistant-secretary-strickling-practising-law-institutes-29th-annual-te>.



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- ICANN is currently in negotiations with its accredited registrars on amending the Registrar Accreditation Agreement (RAA) to meet the recommendations raised by law enforcement authorities. Amendments are expected to be in force prior to the entry of the first new TLD in 2013. The negotiation includes substantial and unprecedented steps to improve the accuracy of Whois data.
- The issue of improvements to Whois and Whois accuracy are under discussion in many areas of ICANN. As you know, there is tension in this area between those seeking access to data and privacy advocates.³ In addition to the work of the Whois Review Team arising out of the Affirmation of Commitments, there are five separate Whois-related studies underway, including issues on misuse, registrant identification and privacy/proxy services.⁴ There are also two active GNSO Working Groups on Whois-related issues.⁵
- The Contractual Compliance team is growing, and the ramp up in activities will meet the demands of the rollout of new gTLDs in 2013. ICANN's commitment in this area cannot be overstated.
- ICANN has committed to review the impacts of the rollout of the New gTLD Program in accordance with the Affirmation of Commitments, as well as undertaking a post-delegation economic study on the results of the first set of new gTLDs, and a post-launch study on the effectiveness of the new trademark protections and any effects on root zone operations.

Improvement of Whois Services and Data Is An Ongoing Focus

To reiterate, ICANN shares the FTC's concerns regarding Whois data. ICANN takes this very seriously. It is important to recall that the Whois system that exists today has been

³ A comprehensive listing of the past work regarding Whois is available at <http://gns0.icann.org/issues/whois/policies>. Substantial Whois work has been ongoing over the past ten years.

⁴ The Whois studies are identified at <http://gns0.icann.org/issues/whois/studies>.

⁵ Information on the work of Whois Service Requirements – Survey Drafting Group and the Internationalized Registration Data Working Group is available at <http://gns0.icann.org/issues/whois/policies>.



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hampered by an old prototype and little consensus on policy changes.⁶ 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.

As part of ICANN's negotiation with its 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 its accredited registrars to take action to meet the demands of FTC and law enforcement worldwide. 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 has dedicated substantial resources to the study of Whois data-related issues. As discussed above, there are five separate studies currently underway regarding Whois services. These studies including issues on misuse, registrant identification and privacy/proxy services.⁷ 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. The Review Team's draft recommendations are now the subject of a public comment proceeding.

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.

⁶ A comprehensive listing of the past work regarding Whois is available at <http://gns0.icann.org/issues/whois/policies>.

⁷ The Whois studies are identified at <http://gns0.icann.org/issues/whois/studies>.



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In response to enforcement efforts, ICANN's accredited registrars are now at nearly 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 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.

These examples above demonstrate that ICANN is responding to the calls from the FTC and law enforcement agencies around the world regarding Whois data, and ICANN will continue working with the community to implement additional enhancements as borne out through work, studies and further recommendations.

FTC's Proposed Improvements to the New gTLD Program

Along with the general call for improved Whois accuracy, the FTC identified four additional items for ICANN consideration prior to approving new gTLD applications. ICANN responds to the four items below.⁸

⁸ ICANN notes that the FTC calls for the implementation of a revised Board Conflicts of Interest Policy prior to approving any New gTLD Applications. ICANN is committed to completing its reviews of its Conflicts of Interest and ethical practices as expeditiously as possible. The Board Member Rules on Conflicts of Interest for New gTLDs, approved on 8 December 2011



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The FTC’s recommended changes are largely based upon proposals that are not new. They have been made and considered through the six-year multistakeholder process. Many of the recommendations by law enforcement, consumer protection groups and intellectual property representatives were adopted and are part of the process. To the extent that the proposals were not incorporated into the Applicant Guidebook, that is a reflection of the multistakeholder process. That some protections were not adopted in full does not mean that ICANN “failed to respond effectively” to those concerns or warrant delay of the approval of new TLDs. As Assistant Secretary Strickling cautioned:

[W]e are now seeing parties that did not like the outcome of that multistakeholder process trying to collaterally attack the outcome and seek unilateral action by the U.S. government to overturn or delay the product of a six-year multistakeholder process that engaged folks from all over the world. **The multistakeholder process does not guarantee that everyone will be satisfied with the outcome. But it is critical to preserving the model of Internet governance that has been so successful to date that all parties respect and work through the process and accept the outcome once a decision is reached.** When parties ask us to overturn the outcomes of these processes, no matter how well intentioned the request, they are providing “ammunition” to other countries who attempt to justify their unilateral actions to deny their citizens the free flow of information on the Internet. This we will not do. There is too much at stake here. [Emphasis added.]

1. Pilot Programs Have Been Conducted On the Introduction of New TLDs

ICANN has demonstrated high competency in overseeing the coordination of today’s DNS comprised of 300 TLDs.

(<http://www.icann.org/en/minutes/resolutions-08dec11-en.htm#4>) represents part of the gold standard that ICANN is working to establish in this area.



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ICANN has operated three pilot programs on the introduction of new TLDs into the DNS. In 2000, ICANN launched a “Proof of Concept” round, through which seven new TLDs were selected out of 44 applicants (proposing over 200 different potential TLDs). In 2004, ICANN accepted applications for Sponsored Top-Level Domains (sTLDs), specialized TLDs that are tied to defined sponsor communities (such as .CAT for the Catalan-speaking community). Finally, ICANN launched the IDN ccTLD Fast Track process in 2009 that, to date had resulted in the delegation of 30 IDN TLDs.

Through these pilot rounds, important lessons were learned. First, new TLDs can safely be added to the DNS. Second, the imposition of artificial restrictions on the rounds, such as the numerical restriction imposed in 2000 and the type-restriction imposed in 2004 place ICANN in the position of picking winners and losers, as opposed to fulfilling its mission of facilitating competition in the DNS. Artificial restrictions also create incentives for applicants to work to fit their TLD ideas into categories that may not be a true fit. The outcomes of the pilot rounds also helped inform the heightened protections in place for the New gTLD Program. The pilot programs informed the creation of independent dispute resolution programs that anticipate points of contention and provide paths for addressing potential abuses, controversies and sensitivities. The Fast Track program (and the IDN test bed before that) demonstrates that IDNs can be safely delegated into the root zone. These lessons learned will enable the realization of anticipated benefit in a safer environment.

The New gTLD Program will be implemented in a measured, limited manner. There is a 90-day application window, followed by a stringent evaluation process through which ICANN’s expert evaluation panels will evaluate registry abilities to meet the high technical and operational requirements. The rollout of new gTLDs will be distributed over time – no TLDs are expected to be operational prior to early 2013; delegations of additional TLDs will be distributed after that, as the applications pass through the evaluation and dispute resolution processes. The imposition of otherwise artificial limitations on today’s New gTLD Program would only create incentives for the bad-acting applicants to seek advantages in a subjective evaluation process. The Program in place today allows applicants to be evaluated against objective standards.



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2. ICANN's Contractual Compliance Function Is On Plan For Expansion

ICANN is 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.⁹ Active recruitment for three new positions is currently underway and the positions are posted on ICANN's career page.¹⁰ 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.

As noted above, active negotiations are underway with ICANN's accredited registrars regarding amendments to the Registrar Accreditation Agreement (RAA). By ICANN's meeting in March 2012, 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, and others. The amendments are also expected to include increased compliance mechanisms. As discussed, ICANN is taking a strong stand in the negotiations, particularly in regard to issues relating to the verification and accuracy of Whois data. These strengthened provisions are expected to be in place prior to the roll out of the first new TLD, and ICANN is considering mechanisms for encouraging adoption of the improved RAA.

As we recently indicated to Chairman Leibowitz and his staff, we look forward to the FTC's participation in an upcoming forum being planned by ICANN and the accredited

⁹ The citation to budgeted staffing numbers within ICANN's FY12 Operating Plan and Budget Fiscal Year Ending 30 June 2012 does not tell the full story, as it does not reflect the actual staffing level of the Department. Today's Contractual Compliance team has four additional members than it did a year ago – nearly doubling in size.

¹⁰ See ICANN's Career listing page, at https://icann-openhire.silkroad.com/epostings/index.cfm?fuseaction=app.allpositions&company_id=16025&version=1.



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gTLD registrar community to look at available tools for WHOIS verification and authentication.

ICANN's Management is committed to vigorous enforcement of both registry and registrar contracts. A 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. ICANN is Committed to a Monitoring of Consumer Issues

ICANN welcomes and thanks the FTC for its commitment to participate in the reviews of how the introduction of new gTLDs promoted competition, consumer trust and consumer choice as required under the Affirmation of Commitments. As noted in your letter, there is a cross-community working group formed to do preliminary work towards this review, and involvement of the FTC can have at this stage would also be welcomed. In addition, ICANN would welcome any specific proposals regarding how ICANN could supplement the work it does regarding consumer complaints.

Of course, the monitoring of consumer issues related to the expansion of new TLDs may give rise to the need to create new mechanisms to deal with these issues – this is a longstanding practice within ICANN. For example, the need for the Inter-Registrar Transfer Policy was brought about by consumer complaints regarding barriers to transfer. ICANN is committed to working with the community – including the FTC – to identify new areas of concern and to be proactive in addressing how to address new consumer – and other – issues as they arise.

4. Evaluation of Proposed New gTLDs Allows For Consideration of Potential For Consumer Harm

The New gTLD Program contains significant safeguards for the assessment of all proposed new gTLDs. Security experts in the ICANN community worked together to fashion ten specific consumer protection measures that are included in this Program, and some are described in this letter. As rightly noted in the Commission's letter, the GAC Early Warning and GAC Advice provisions are not the only opportunities for evaluation of the potential for consumer harm associated with any individual application. Upon the



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close of the application window, all of the applied-for strings will be made public, and multiple objection processes are available to stakeholders in general, as well as governments. In addition, there will be an “Independent Objector” function that will act in the best interests of the public and file an objection to an application as deemed appropriate. Through these well-defined objection processes, risks of user confusion are mitigated, as well as the risk of the introduction of a string that infringes on the legal rights of another.

In addition, the stringent background checks for applicants and the breadth of information collected on officers and directors of the applicant registries reduce the likelihood that persons that already have a history of malfeasance would pass through the application process.

Conclusion

The ICANN community has worked tirelessly to create a New gTLD Program that will introduce competition and innovation at the top level of the DNS in a way that preserves security and stability, and enhances protections when compared with existing TLDs. Governments have provided advice; professionals have weighed in. The new gTLD implementation program represents opportunities for innovation and enhanced competition, with a future of stronger rights protections, stronger consumer protections, and measured paths forward to future rounds. ICANN also has significant work underway to address calls for improvements to Whois data within all gTLDs.

ICANN looks forward to the FTC’s continued engagement on all of the important issues raised within your letter.

Best regards,

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

Rod Beckstrom
President & CEO