

**COMMENTS OF THE  
SOFTWARE & INFORMATION INDUSTRY ASSOCIATION (SIIA)  
on the  
New gTLD Applicant Guidebook Version 4  
Submitted July 21, 2010**

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The Software & Information Industry Association (SIIA) submits these comments on the above referenced subject, the updated “New gTLD Applicant Guidebook Version 4” (“DAGv4”).

SIIA submitted comments on versions 1, 2, and 3 of the Draft Applicant Guidebook, as well as the report of the Implementation Recommendation Team. Taking into account all of these developments, SIIA continues to strongly believe that:

- The five overarching issues remain key thresholds that must all be fully addressed, through meaningful processes, before a full roll out of new gTLDs is undertaken. Remarkably, little progress has been made on the key issues, despite tremendous time and effort expended by ICANN staff and the ICANN community.
- SIIA reviewed DAGv4 in light of the previous iterations and concerns. Our prior assessment, last Fall, led us to conclude that ICANN should assume, at minimum, that at least another 18-24 months will be needed to meet the thresholds required on this significant initiative, if it is to be determined that such a rollout is in the public interest. Even under the best of estimates, that time frame remains essentially in place.
- It is far from clear whether the public interest will be served, in light of the results of the economic work produced by ICANN this summer, by rolling out gTLD’s as currently envisioned. On the contrary, in light of the demonstrated abusive practices currently taking place, the introduction of potentially hundreds, if not thousands, of new gTLDs will geometrically increase the instances of abuse, increase the security risks to commercial and individual users and result in catastrophic confusion that will materially confidence and stability in the Domain Name System (DNS). This is especially true as, evidenced by the economic

analysis, that there has been no demonstrated demand for new gTLDs or that a flood new gTLDs will result in constructive, new competition.

As the principal trade association of the software and digital information industry, the more than 500 members of SIIA develop and market software and electronic content for business, education, consumers and the Internet.<sup>1</sup> SIIA's members are software companies, ebusinesses, and information service companies, as well as many electronic commerce companies. Our membership consists of some of the largest and oldest technology enterprises in the world, as well as many smaller and newer companies.

Our members are leaders in building the global online marketplace and promoting the digital economy, providing content and infrastructure that users around the world depend on. They rely on a robust, secure and predictable environment, which includes a reliable Domain Name System (DNS) and associated tools that permit the DNS to operate with confidence.

SIIA, its member companies, and its staff have been involved in ICANN since its inception in 1998. SIIA has strongly supported the role of ICANN over those years, and we have continuously worked to enhance the capacity of ICANN to carry out its responsibilities.<sup>2</sup> SIIA welcomed the renewed partnership between ICANN and the U.S. Department of Commerce announced at the end of September 2009 (See "SIIA Welcomes Renewed ICANN-Commerce Partnership", [http://siiia.net/index.php?option=com\\_docman&task=doc\\_download&gid=2240&Itemid=318](http://siiia.net/index.php?option=com_docman&task=doc_download&gid=2240&Itemid=318)) which acknowledged the widespread frustration with ICANN's process to rollout new TLD's.

**Malicious Conduct.** SIIA has consistently identified this key issue as one that must be examined carefully and evaluated before a full rollout of new gTLD's can be undertaken. Indeed, at this stage of consideration of new gTLDs, it is essential that comprehensive meaningful, concrete measures be considered to address this pernicious threat. Malicious behavior using false or misleading domain names costs our industry, as well as our society and individual consumers, billions of dollars trying to prevent phishing, false domain resolutions, fictitious identifies and other malicious

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<sup>1</sup> Our website can be found at [www.siiia.net](http://www.siiia.net).

<sup>2</sup> Those responsibilities are outlined in the Joint Project Agreement (JPA) and, just as significantly, are identified in the "DNS White Paper", the statement of policy on the privatization of the Internet Domain Name System (DNS) issued in June 1998.

behavior. Consumer protection authorities have, during previous rollouts, had to engage in significant alerts regarding scams.<sup>3</sup>

SIIA provided its views on the “Explanatory Memorandum on Malicious Conduct” which accompanied the DAGv3.

With DAGv4, there has been essentially no change in the approach ICANN is taking on this overarching issue. On this issue alone, the rollout of new gTLDs is far from ready to go.

**Trademark Protection.** SIIA has, from the outset of this process, identified this as a key fundamental overarching issue. SIIA has actively participated at all stages of the process, submitting our comments as part of the process. We note that, at the request of the ICANN Board, the IPC – which SIIA participates in via a leadership function -- convened the Implementation Recommendation Team (IRT) to address these issues. Unfortunately, DAGv4 does not adequately address this essential overarching issue. DAGv4 contains watered down Rights Protection Mechanisms (RPMs) which are deficient in a number of respects:

- A proposed “rapid” suspension mechanism that in some cases will take longer than UDRP proceedings and will likely only be two days faster.
- The potential exclusion from Sunrise processes of all trademark rights which originate in the European Union, depending on how the undefined term “substantive review” is later defined by a party who is not required to take and act on public comment on the definition

No protection for brands that are deemed globally protected by virtue of their documented worldwide protection.

In this regard, it should be noted that ICANN’s own economic study (see below) recognizes the tremendous costs imposed by new gTLD on brand owners, consumers, and ultimately on civil society. The proposed RPMs simply will not be effective in substantially reducing the pitfalls identified in ICANN’s own economic analysis.

**Demand/Economic Analysis.** At long last, ICANN appears to have produced – after years of hedging – a work that comes closest to responding to the Board call for

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<sup>3</sup> See, e.g., FTC Consumer Alert, “What’s Dot and What’s Not: Domain Name Registration Scams”, December 2000. See, also, “Email Scam Uses U.S. Stimulus Bill as Bait”, *Wall Street Journal*, march 25, 2009, available at: <http://online.wsj.com/article/SB123803264428843907.html>.

for an independent study of the “economic questions relating to the domain registration market,” including such basic issues as whether this constitutes one or many markets and whether registrations in different TLDs are substitutable.<sup>4</sup>

The conclusions of the analysis suggest that far from responding to an economic demand for new gTLDs, the approach taken by ICANN could have devastating consequences for the stability of the DNS. Further work needs to be done – especially in the area of identifying the risks and impacts on existing markets for gTLDs. For example the analysis concludes:

- “An open-entry process may not lead to the socially-optimal number of new gTLDs.” (page 1)
- Further economic case studies are needed to determine “which application and evaluation processes are most likely to lead to the introduction of gTLDs that promote social welfare and economic efficiency.” (page 2)
- ICANN should “consider the potential for consumer confusion in deciding how quickly to proceed with the introduction of gTLDs.” (page 61)
- Additional studies and process should be undertaken to “lessen the likelihood of delegating gTLDs that will have negative net social benefits and to enhance the net social benefits from gTLDs that are designated.” (pages 61-62)
- ICANN should not introduce new gTLDs all at once, rather “It may be wise to continue ICANN’s practice of introducing new gTLDs in discrete, limited rounds.” (page 64)

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<sup>4</sup> See ICANN Board Resolution, available at: <http://www.icann.org/en/minutes/minutes-18oct06.htm>