

November 9, 2010

Via Email

Mr. Rod Beckstrom
CEO and President

Mr. Peter Dengate Thrush
Chairman of the Board

Ms. Heather Dryden
Interim Chair – Government Advisory Committee

Internet Corporation for
Assigned Names and Numbers
4674 Admiralty Way, Suite 330
Marina Del Ray, CA 90292

Dear Mr. Beckstrom, Mr. Thrush and Ms. Dryden:

The American Intellectual Property Law Association (AIPLA) wishes to express its continued strong concerns with ICANN's intention to introduce new generic top level domains (gTLDs) before it has commissioned a meaningful economic study to determine whether new gTLDs will have a positive commercial impact on the Internet, and before it has adequately addressed concerns over consumer protection and the costs of defensive registrations.

AIPLA is a national bar association whose approximately 16,000 members are primarily lawyers in private and corporate practice, in government service, and in the academic community. AIPLA represents a wide and diverse spectrum of individuals, companies, and institutions involved directly or indirectly in the practice of trademark, copyright, patent, and unfair competition law, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property.

AIPLA does not believe that the business or public interest case for any decision by ICANN to move forward with the roll-out of new gTLDs has yet been made. There is no way of objectively judging whether they are worth the harm that we believe will result to consumers and trademark owners. Credible, scientifically acceptable economic studies to justify new gTLDs, based on a cost-benefit analysis, were called for by the U.S. Department of Commerce in December 2008 (and echoed by others), and ICANN adopted this as one of its "overarching issues" to be satisfied prior to introducing new gTLDs. Yet, to date, such studies have not been performed nor considered.

AIPLA has previously commented on several occasions on the specifics of the new gTLD Applicant Guidebook, and its members have actively participated within the ICANN community in working to address their concerns. We are, therefore, aware that ICANN has taken steps to study these concerns. Nevertheless, the proposed procedures remain flawed and untested, and are unlikely to meet the needs of consumers and business to avoid the consumer fraud and unwarranted expense that will almost certainly result from a dramatic expansion of new gTLDs.

ICANN formally acknowledged these concerns and committed itself to addressing them in the *Affirmation of Commitments* signed in September 2009:

ICANN will ensure that as it contemplates expanding the top-level domain space, the various issues that are involved (including competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection) will be adequately addressed prior to implementation.

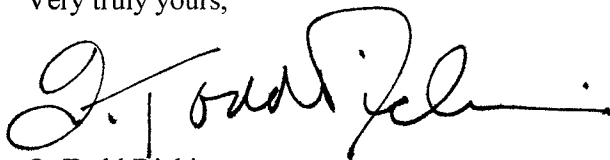
Affirmation of Commitments, paragraph 9.3

AIPLA believes that ICANN's current plan does not meet this commitment. The current plan still requires businesses to pay for defensive registrations in perhaps hundreds of new gTLDs, at prices that are unconstrained by ICANN or other regulatory bodies. These defensive registrations will be necessary to prevent consumer fraud and confusion on the part of users who are rightfully concerned about deceptive websites and online scams. Moreover, the legal expenses and domain acquisition costs of defensive registrations will not be offset by potential economic or informational value to either registrants or Internet users.

ICANN should not proceed with a wide-open gTLD program until the mechanisms to address these concerns are fully developed and adequately tested. If ICANN believes that further delays are unacceptable, then it should follow the GAC's most recent advice to conduct "a small pilot programme" for a strictly limited number of gTLDs designed to serve linguistic, geographical, and cultural communities. As the GAC suggests, such a pilot could provide actual data that could be used "to refine and improve the application rules for subsequent rounds."

We believe that the need to study and respond to these concerns should not end with the publication of a final applicant guidebook. Thank you for your consideration of this important matter, and we look forward to working with ICANN on ways to minimize defensive registrations and consumer fraud. These issues have been highlighted consistently and need to be addressed before the business and intellectual property community can support ICANN's gTLD plan.

Very truly yours,



Q. Todd Dickinson
Executive Director
American Intellectual Property Law Association