



March 6, 2013

Dr. Steve Crocker, Chairman of the Board  
Mr. Faidi Chehadé, President & CEO  
Internet Corporation of Assigned Names and Numbers (ICANN)  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094

RE: Closed Generic Top Level Domains

Dear Mr. Crocker and Mr. Chehadé:

Yahoo! Inc. ("Yahoo!") is pleased to submit these comments in response to the Public Comment Announcement posted on the ICANN website on February 5, 2013 seeking the views of stakeholders on the topic of "closed generic" gTLD applications. We write to express concerns similar to those raised by the governments of Australia and Germany; companies such as Microsoft Corporation, Ikea and Barnes & Noble, Inc.; associations such as the Retail Counsel of Canada; Internet oversight organizations such Internet New Zealand, Inc.; and academics such as Prof. David J. Franklyn and Prof. J. Thomas McCarthy from the McCarthy Institute for Intellectual Property and Technology Law. Specifically, we agree that top-level domains (TLDs) that consist solely of an industry generic term like .app, .cloud, .mobile, .insurance or .news should not be run as a closed registry. We believe that such TLDs must be open to all parties in order to achieve true competition and consumer choice.

The very origins of ICANN are based on its commitment to the principle that "... market mechanisms that support competition and consumer choice should drive the management of the Internet because they will lower costs, promote innovation, encourage diversity, and enhance user choice and satisfaction."<sup>1</sup> In fact, ICANN specifically lists enhanced competition and consumer choice as two of the goals behind its plan to expand the domain names system.<sup>2</sup> A "closed generic" TLD supports neither of these tenets.

### **"Closed Generic" TLDs Will Harm Consumers**

The Internet thrives today because entrepreneurs have a very low barrier to entry and consumers have access to innovative products and services without the cumbersome barriers and geographic boundaries of the brick and mortar world. In today's domain name system, Internet stakeholders (both individuals and companies) have the

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<sup>1</sup> See, *Statement of Policy on the Management of Internet Names and Addresses*, June 5, 1998, found at <http://www.ntia.doc.gov/federal-register-notice/1998/statement-policy-management-internet-names-and-addresses>

<sup>2</sup> See, <http://newgtlds.icann.org/en/about/program>





freedom to register in TLDs of their choice in order to reach consumers. Accordingly, consumers are accustomed to receiving a wide variety of choices from various sources when they are confronted with domain names all sharing the same TLD. Should ICANN allow “closed generic” TLDs, that will no longer be the case. Instead, a substantial risk exists that consumers will believe that information from numerous websites with the .cloud TLD extension, for example, originate from a variety of competitors in the market as opposed to products and/or services from a single entity. Not only could “closed generic” TLDs confuse consumers, but this type of TLD flies directly in the face of ICANN’s stated goal of enhancing consumer. As Internet New Zealand, Inc. correctly stated in its public comment on the .music application by Amazon:

Allowing private, closed registrations conflicts with goals of the New gTLD program as explained in Principle C in the GNSO’s New gTLDs Summary – Principles, Recommendations & Implementation Guidelines. Principle C states that one of the reasons for the New gTLDs was “to add to consumer choice.” However, allowing one entity to retain power over a “truly generic” gTLD works against expanding consumer choice.<sup>3</sup>

Since 2008, Yahoo! has engaged in policy discussions surrounding the introduction of new gTLDs. During that time, and leading up to the actual reveal of applications in June 2012, the concept of a “closed” TLD registry was only considered in the .brand context. However, unlike a generic term, a brand enjoys exclusive rights outside the domain name system. Accordingly, a closed .brand registry merely extends a recognized legal exclusive right. This is very different from creating an exclusive TLD for one entity in a generic term. As correctly pointed out by Profs. Franklyn and McCarthy in their comment, it is a fundamental principal of trademark law throughout the world that no one party can have exclusive rights in terms that serve as the generic name of a product or service because private ownership of such terms is inconsistent with free enterprise and fair competition.<sup>4</sup>

### **“Closed Generic” TLDs Are Anticompetitive**

We also share the concerns expressed by the government of Australia and Germany in their early warning notices that “closed generic” TLDs will have a “negative impact on competition.”<sup>5</sup> The introduction of thousands of new top-level domains will fundamentally change the organization and navigation of the worldwide web. By

<sup>3</sup> See, comment dated 24 September 2012 posted at <https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/7815>

<sup>4</sup> See, comment posted at <http://forum.icann.org/lists/comments-closed-generic-05feb13/>

<sup>5</sup> See, e.g., Early warning notice from Australia for .cloud by Amazon posted at <https://gacweb.icann.org/download/attachments/22938690/Cloud-AU-79670.pdf?version=1&modificationDate=1353424865000> and early warning notice from Germany for .hotels by priceline.com posted at <https://gacweb.icann.org/download/attachments/22938690/Hotels-DE-75842.pdf?version=1&modificationDate=1353453313000>



# YAHOO!

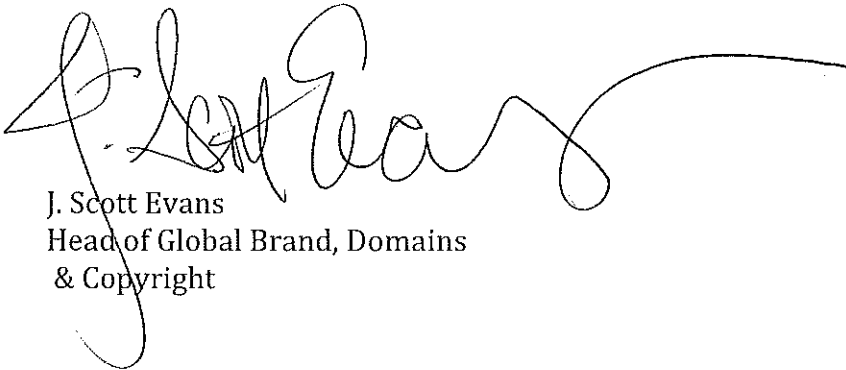
granting a single entity sole dominion over a TLD consisting wholly of a generic term, ICANN will place these entities in a position to gain an unprecedented and unfair advantage in direct navigation and online search. Also, given that the current registry agreement allows for an unlimited amount of automatic renewals, the entities that choose to run "closed generics" can control these TLDs in perpetuity. Equally important, under current ICANN guidelines, these entities will be in a prime position to prevent any similar TLDs from entering the root in the future, thereby further reducing competition. Such advantages harm competitors in the marketplace and hurt consumers by further limiting consumer choice.

## Conclusion

In closing, we ask ICANN to remember its fundamental commitment to manage the domain name system with "market mechanisms that support competition and consumer choice" by requiring that all TLDs that consist solely of an industry generic be run as open TLDs.

Respectfully submitted,

**Yahoo! Inc.**



J. Scott Evans  
Head of Global Brand, Domains  
& Copyright

