

COALITION FOR ONLINE ACCOUNTABILITY

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C/O MITCHELL SILBERBERG & KNUPP LLP • 1818 N STREET N.W., 8TH FLOOR • WASHINGTON, D.C. 20036-2406
TEL: (202) 355-7900 • FAX: (202) 355-7899 • E-MAIL: INFO@ONLINEACCOUNTABILITY.NET

Comments of the Coalition for Online Accountability (COA)

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COA appreciates this opportunity to comment on the “Phase I Assessment of the Competitive Effects Associated with the New gTLD Program” (see <http://newgtlds.icann.org/en/reviews/cct/competitive-effects-phase-one-assessment-28sep15-en.pdf>).

COA consists of nine leading copyright industry companies, trade associations and member organizations of copyright owners. They are the American Society of Composers, Authors and Publishers (ASCAP); Broadcast Music, Inc. (BMI); the Entertainment Software Association (ESA); the Motion Picture Association of America (MPAA); NBCUniversal, the Recording Industry Association of America (RIAA); the Software and Information Industry Association (SIIA); Time Warner Inc.; and the Walt Disney Company. COA and its predecessor organization, the Copyright Coalition on Domain Names, have participated actively in ICANN since 1999, including through the Intellectual Property Constituency of the GNSO.

ICANN is now embarking on the ambitious but essential task of evaluating the massive new gTLD rollout that is still underway, in order ultimately to decide whether to repeat the exercise, and if so with what changes. Our review of the Phase I Assessment indicates that its contribution to the task will be quite minimal.

The assessment states that its job is to “evaluate the extent to which the New gTLD Program resulted in increased competition in the marketplace for domain names.” (p.3) But it focuses almost exclusively on one aspect of measuring the impact of the new gTLD rollout on competition: the price of registering domain names. It emphasizes that “fully analyzing the market effects of the New gTLD Program would require examining a variety of factors beyond price and registration levels,” (p.1-2) but those factors are evidently outside its remit. It also recognizes that, for registrants seeking to make productive uses of domain names, such as by associating them with a website, “the cost of registering a domain name is a relatively small part of the total cost.” (p. 1). A comparison of Tables 9 and 11 in the assessment amply document this point. In short, not only does the phase I assessment focus almost exclusively on only one aspect of measuring competition (price), it focuses on a price that is of relatively little importance to the larger questions of the value of the new gTLD rollout. Retail price of a domain name registration might be important, or even determinative, for someone seeking to amass a large portfolio of domain names for investment or speculation; it is of very little importance to an individual or company whose main goal is to offer innovative products or services, reach new

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Software & Information Industry Association (SIIA)

Time Warner Inc.

The Walt Disney Company

Counsel: Steven J. Metalitz (met@msk.com)

markets, better serve communities, establish safer and more secure online spaces, globalize its operations, personalize his or her online presence, or any other such productive use.

COA is aware that this Phase I assessment is only one of several studies and reviews ICANN is undertaking or commissioning as part of the new gTLD evaluation process. Some of these other areas of inquiry, far outside the ken of the Phase I assessment, are likely to be of far more weight and relevance to ICANN's task. In this regard, COA urges ICANN to review the economic studies it commissioned five or six years ago, near the end of the development process for the new gTLD launch, which identified critical questions that ICANN should have addressed far earlier in the process. These questions remain at least as critical today, as ICANN begins to look back on what the new gTLD launch did or did not accomplish.

For ready reference, we excerpt here COA's comments submitted more than five years ago — July 21, 2010 — on one of those earlier economic studies: the "Economic Framework for the Analysis of the Expansion of Generic Top-Level Domains." See <http://www.icann.org/en/topics/new-gtlds/economic-analysis-of-new-gtlds-16jun10-en.pdf>. We submit that the issues identified in this 2010 comment should take a much higher priority in the new gTLD review process than slicing and dicing data to measure the ups or downs of pricing of domain name registration, a vanishingly insignificant factor for measuring whether the current launch did — and whether any future rounds will — advance the public interest:

Excerpt from COA comment of 7/21/10 (see full text at http://www.onlineaccountability.net/assets/2010_Jul21_COA_Comments_DAGv4.pdf, pp. 8-9)

The first challenge is found on the very first page of the document: "An open-entry process may not lead to the socially-optimal number of new gTLDs." An "open-entry" process precisely describes the ICANN new gTLD framework: every application that meets baseline technical and financial criteria, subject only to very limited objections and to a method of resolving incompatible proposals through auctions, will be approved, without regard to whether the application offers any chance of benefit to the public interest, or any near-certainty of harm to it. In essence, ICANN has spent three years building a machine that will spit out new gTLDs at the end. This is an abdication, not a vindication, of ICANN's public interest obligations.

Second, on page 3, the authors of the Economic Framework study identify the likely "largest sources of potential benefits from the creation of new gTLDs." There are three such sources: community applications; IDN TLDs that "offer new benefits to specific user communities"; and "innovative new business models that are very different from those of existing TLD's registry operators." In other words, ICANN can best carry out its responsibilities by giving preference to certain categories of applications. The third category listed above surely needs more definition; but the clear message of the Economic Framework paper is that ICANN's top priority right now should be to refine and sharpen the boundaries of this category, rather than to tinker with its new gTLD machine, so that it can churn out more smoothly or quickly a host of socially useless, or even detrimental, new gTLDs.

Third, the Economic Framework study calls for ICANN to exercise judgment. It can shape its "application and evaluation processes [so that they] are most likely to lead to the

introduction of gTLDs that promote social welfare and economic efficiency” (page 2). To this end, the authors take the initial steps toward identifying studies that “ would lead to recommendations on how ICANN could craft its application process and ongoing rules 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.” (page 62)

Fourth, the paper provides insights on two key aspects of the studies that are needed to achieve these goals. It singles out “the potential for consumer confusion” as a crucial factor for “deciding how quickly to proceed with the introduction of new gTLDs.” (page 61) Moreover, it calls for research that aimed at “enumerating and quantifying the external costs of a gTLD, i.e., the costs that are imposed on parties other than the gTLD owner.” Prominent among these external costs is the burden imposed on rights owners with regard to “costs of increased registration, monitoring and enforcement of trademarks across multiple gTLDs.” (page 55-56)

.... COA hopes that ICANN will take this perspective to heart and look to the “Economic Framework” as the main roadmap for the path ahead. That map calls for giving top priority to analyzing “the expected costs and benefits of various types of new gTLDs,” (p. 61) and then focusing on those “types” that offer the greatest promise. This is, no doubt, a change in course from the path ICANN has chosen to follow over the past few years; but it could lead to a much better result from the standpoint of the public interest.

It will no doubt be pointed out that it would have been much better to have had an “economic framework” to navigate by at the beginning of the process. While true, that should not provide an excuse for failing to take up the roadmap now.

Respectfully submitted,

Steven J. Metalitz, counsel to COA
c/o Mitchell Silberberg & Knupp LLP
1818 N Street, NW, 8th Floor
Washington, DC 20036 USA
Email: met@msk.com