**AT&T Comments on New gTLD Final Reports on Competition and Pricing
July 20, 2009**

AT&T is pleased to submit its response to the "Report of Dennis Carlton regarding ICANN's Proposed Mechanism for Introducing new gTLDs" and "Comments on Michael Kende's Assessment of ICANN's Preliminary Reports on Competition and Pricing", which are dated July 5, 2009 ("Final Carlton Reports"). Nothing in these reports changes the fact that a thorough economic analysis of how the Domain Name System ("DNS") is being used and mis-used is needed so that ICANN can make fully informed decisions about policy and implementation issues related to the introduction of new gTLDs, including the four over-arching issues that ICANN has identified. Moreover, Professor Carlton's analysis demonstrates the importance of establishing proactive safeguards to protect potential registrants and end users from the harms that could proliferate with the introduction of large numbers of new gTLDs. Thus, AT&T reiterates its call for an economic analysis that will give ICANN the necessary empirical information to support decisions related to the introduction of new gTLDs.

1. A Thorough Economic Study is needed to Support ICANN's Policy and Implementation Decisions Related to the Introduction of New gTLDs.

The Final Carlton Reports continue to take a narrow theoretical approach to assessing the introduction of new gTLDs. Professor Carlton acknowledges that the evaluation of the proposed introduction of new gTLDs requires an evaluation of both costs and benefits. He concludes, however, that a fact-based analysis is not needed to make the fundamental determination of whether to introduce new gTLDs because market entry is not the most efficient way to protect trademark holders. Professor Carlton also continues to assume problems such as large numbers of defensive registrations and cybersquatting can and will be fully addressed by ICANN in its implementation of new gTLDs. Based on this assumption, he concludes that any competitive market entry will produce consumer benefits, even the new gTLDs do not compete with .com and other existing TLDs.

Professor Carlton's analysis is not responsive to AT&T's comments or the Economic Assessment prepared by economist Michael Kende. AT&T has not suggested that there should be a prohibition on new gTLDs and thus Professor Carlton's analogy to banning cars as a solution to car accidents is misplaced. Rather, we have consistently advocated that a thorough economic study is essential to making sound policy and implementation decisions about the introduction of new gTLDs. Numerous other comments have advocated a similar position and the ICANN Board itself directed that an economic study be completed as part of the process of designing the process for introducing new gTLDs. By limiting the discussion to restricting entry, Professor Carlton avoids addressing the various design and implementation issues that would benefit from a fact-based decision-making process.

As Dr. Kende explained, the economic study will help to identify where the consumer benefits will be the greatest and the costs of new gTLDs will be the lowest. For example, the evidence of market growth and innovation to date may point toward a focus on prioritizing the introduction of Internationalized Domain Names. Likewise, sponsored TLDs with controlled eligibility requirements are likely to serve an identified market need while minimizing the potential for broader confusion and brand abuse problems. The unrestricted introduction of new gTLDs, however, is likely to lead to the proliferation of consumer confusion and trademark abuse problems. The economic study will help to identify the necessary design and implementation components of the new gTLD process, which should include proactive safeguards designed to keep problem gTLDs out of the system in the first place.

Indeed, the Final Carlton Reports support the need for additional mechanisms that address concerns about consumer confusion and defensive registrations as part of the implementation of new gTLDs. Professor Carlton mentions that implementation of mechanisms such as "user pays" rules would help to deter trademark infringements. In addition, he cites some of new mechanisms proposed by the Implementation Recommendation Team ("IRT") and cites these alternative mechanisms as preferable to restricting entry.

The problem, of course, is that no alternative mechanisms have yet been adopted or fully developed as part of ICANN's plans for introducing new gTLDs. Also, the high-level Carlton Final Reports do not provide any guidance for ICANN about how to design and implement the new gTLD process to reflect real-world DNS environment. The apt analogy is that information about the causes and effects of car accidents is routinely collected because it helps to identify the types of safety mechanisms (e.g., airbags, anti-lock brakes) that should be developed for and deployed in new cars before they are sold to consumers. That is why a fact-based economic study, not an analysis of economic theory, is needed to guide ICANN's decision-making about new gTLDs.

2.   **ICANN Should Undertake a Well-Designed and Comprehensive Economic Study that Analyzes How the DNS is Currently Being Used and Mi-Used.**

ICANN's core mission is to manage the DNS in a responsible and accountable manner that preserves the Internet ecosystem as a stable and secure environment. In order to move forward with the kinds of major changes that are being proposed for the Internet (e.g., new gTLDs, IDNs, IPV6 and DNSSEC) ICANN should thoroughly understand the implications of these changes and how they will affect end users and other stakeholders in the Internet community. The economic study that AT&T and others are proposing should be designed to provide ICANN with an in-depth understanding of how the DNS is being used and mis-used so that it can carry out its core mission and make fully informed decisions. Indeed, the term "economic study" should not be used in any way to limit its applicability and relevance to ICANN because the empirical data required

to be collected in order to support the study also would inform decisions on other issues, such as consumer confusion, malicious conduct and the security and stability of the DNS.

The Final Carlton Reports do not address these broader issues and justifications for completing the economic study. Professor Carlton does, however, question some of the data submitted in the Kende Economic Assessment. In particular, he argues that the data fails to distinguish between productive registrations and registrations that are intended only to protect trademarks. From this assertion, Professor Carlton seems to dismiss any concerns about large numbers of defensive registrations.

In fact, Dr. Kende did not make his own judgment about the underlying purpose of registrations. He merely presented the findings that represent the *companies' own assessment* of the value of the registration as being core or defensive. The data submitted by the sample companies shows that the overwhelming majority of registrations – well above 90% – are defensive in nature. Moreover, it is important to note that these data were provided as an indication of the problems that exist today and not as a statistical representation of all registrants. AT&T's intent was to provide some evidence to support its concerns about current DNS issues, such as defensive registrations and cybersquatting, and to illustrate the type of data that is readily available.

AT&T is proposing that ICANN itself should design and conduct a thorough fact-based economic study of the DNS with input from the community. As Dr. Kende discussed, the study should include:

- whether the domain registration market is one market or whether each TLD functions as a separate market; whether registrations in different TLDs are substitutable;
- what are the effects on consumer and pricing behavior of the switching costs involved in moving from one TLD to another;
- what is the effect of the market structure and pricing on new TLD entrants; and
- whether there are other markets with similar issues and, if so, how are these issues addressed and by whom?

An initial data set could be collected and analyzed over the next few months, using existing data that can be collected from a variety of sources.

The collection of this information should be immediately used by ICANN to make decisions about the design and implementation of the process for new gTLDs, including the four over-arching issues it is in the process of addressing. Longer term, this kind of data gather and analysis also will serve an important purpose in guiding ICANN's policymaking and ensuring that its decisions are fully informed. The introduction of new gTLDs is fundamental to the future of ICANN and the policymaking process used to

design and implement the process should be a model of careful, fact-based decision-making.