

## COMMENTS OF TIME WARNER INC.

July 20, 2009

Time Warner Inc. appreciates this opportunity to respond to the request for public comment on “New gTLDs—Final Report on Competition and Pricing.” See <http://www.icann.org/en/public-comment/#compri>.

Last spring, ICANN staff identified four overarching issues that must be resolved before its plan to take applications for new generic Top Level Domains (gTLDs) can be implemented. As we understand it, it was at least this list of four overarching issues to which the ICANN Board Chair was referring when he stated, at the ICANN meeting last month in Sydney, that “meeting legitimate community concerns is more important to both board and staff than meeting an announced deadline.” <http://syd.icann.org/files/meetings/sydney2009/transcript-public-forum-25jun09-en.txt>

Of the four “overarching issues,” three are focused on assessing and reducing or managing the costs that will be imposed by any broad-scale launch of new gTLDs. Time Warner has already offered some comments on the first of these issues – the final report of the Implementation Recommendation Team, which sought to propose solutions to reduce the costs of the launch to brand owners and to the world’s consuming public that relies on clear brand identification in a wide range of online activities. See <http://forum.icann.org/lists/irt-final-report/msg00182.html>. We look forward to the opportunity to provide similar comments on whatever recommendations emerge regarding the risk of malicious behavior in the new gTLDs and on the impact of a broad-scale launch on the technical factors that ensure stability and security of the domain name system. As reflected in the comments by brand owners to the IRT recommendations, the significant costs to brand owners and consumers, both monetary and non-monetary, have already been amply demonstrated.

The fourth issue is qualitatively different, and in many ways the most important. It focuses – or at least it should focus – on how to maximize the benefits, in terms of competition and choice, that could arise from a carefully planned and well-considered launch of new gTLDs. In its simplest terms, it asks this question: for whose benefit is the proposed new gTLD round being launched? Unfortunately, the draft and final papers authored by Dr. Dennis Carlton, on which comments are now sought, contribute almost nothing to answering this question, or even to a sound understanding of it. Even less do they demonstrate that any identified benefits of increased competition outweigh the considerable expense that must be born by brand owners and consumers, the security and stability risks, and the resulting consumer confusion that new gTLDs are likely to create.

Time Warner has a view on the answer to the basic question. If it is truly to be for the benefit of the “next billion” Internet users around the globe, then the launch should focus on TLDs in non-ASCII scripts (IDN TLDs) to serve populations that have historically been excluded from full participation in the Internet in their native tongues. If after the launch of new IDN TLDs ICANN can demonstrate that there remains a strong need for additional gTLDs, only

then should it consider the launch of such extensions. We are unaware of any overwhelming need for new gTLD extensions, as evidenced by the lack of use of the new gTLDs previously recognized by ICANN, such as .INFO and .BIZ. We therefore believe that the benefits of a broad launch of an unlimited number of new gTLDs, especially in the ASCII space, are extremely unlikely to countervail the known costs, even assuming the implementation of the ameliorative mechanisms proposed so far in the context of the other “overarching issues” and the evolving discussion of the Draft Applicant Guidebook generally.

While Time Warner’s view on this question is informed by many years of deep involvement in electronic commerce and in the use of the Internet as a medium to entertain, inform, and educate consumers around the world, we know that our viewpoint is a partial one. We believe it is incumbent on ICANN to base its decision on whether to launch new gTLDs, and if so how and when to launch them, on the best possible empirical data about the domain name marketplace, and on a wide range of informed analyses of that data. Surely the stakes of the venture, with its potential to transform – for good or for ill – how people around the world communicate, work, shop, play and learn, demand nothing less.

To date, however, ICANN seems to be planning to make these critical decisions on the basis of far less – far less data, far less analysis, and far less reflection about how to shape the scope and pace of the new gTLD rollout to maximize the benefits while minimizing the costs. This is not a question that can be resolved through the exchange of papers by distinguished economists repeating generalizations about the impact of barriers to entry on innovation and competition. An outline of the comprehensive economic analysis that would be needed was submitted to ICANN three months ago. See <http://forum.icann.org/lists/competition-pricing-prelim/msg00021.html> (Analyses Mason paper). At that time we called for ICANN “to move promptly to commission such a study [so that] its results [can] be fully considered by the ICANN community.” See <http://forum.icann.org/lists/2gtld-guide/msg00054.html>. Three months later, Dr. Carlton has finalized his paper, and added a brief response to one of his critics, and ICANN has asked for comment on these documents. This does not amount to any real progress toward a resolution of this key “overarching issue.”

Although ICANN has offered, at least in broad outline, a strategy for moving forward on the other three overarching issues, it has barely provided a hint of how it intends to resolve this one. Time Warner believes that three constructive suggestions have been made about the path forward. The first, as noted above, is to commission the type of comprehensive economic study outlined by Analyses Mason. The second, of course, is to carry out the directive made by the ICANN Board nearly three years ago, to commission a study of the economics of the domain name marketplace – a directive which the ICANN staff, for some reason, has chosen not to fulfill. See <http://www.icann.org/en/minutes/minutes-18oct06.htm> A third possible course of action would build upon the method adopted by ICANN to address the other three “overarching issues” – assemble a team of subject matter experts, including people with broad and deep experience in the domain name marketplace, and ask for their recommendations on how to carry out the new gTLD launch in a way that will maximize its benefits to competition and consumer choice. Any of these options would be far superior to the course ICANN now seems to be taking to address this fundamental question.

Of course, any of these options (or, perhaps optimally, a combination of them) will take time (since the results of any study or team recommendation must be subject to discussion and debate in the community). Carrying out these options will also take resources. But there is no alternative to spending this time, and devoting these resources, if ICANN sincerely wishes to fulfill what it has referred to as “one of its foundational principles: to promote competition in the domain name marketplace while ensuring Internet security and stability.” See <http://www.icann.org/en/topics/new-gtld-program.htm>.

Thank you for considering our views.

Respectfully submitted,

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