



April 17, 2009

Mr. Peter Dengate-Thrush
Dr. Paul Twomey
ICANN
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601

RE: Comments of Yahoo! Inc. to the Preliminary Report Regarding Impact of New gTLDs on Consumer Welfare

Dear Mr. Dengate-Thrush and Dr. Twomey:

Yahoo! Inc. ("Yahoo!") is pleased to submit these comments in response to the Preliminary Report of Dennis Carlton Regarding Impact of New gTLDs on Consumer Welfare posted for public comment on March 4, 2009. As we stated in our comments to the second version of the Draft Applicant Guidebook posted on April 13, 2009, we call upon ICANN to abandon this flawed economic study. This study is profoundly inadequate and fails to answer any of the questions put to ICANN staff by the ICANN Board in its resolution of October 18, 2006. In this resolution, the ICANN Board set forth precise considerations to be analyzed in the economic study. Specifically, the resolution states that the ICANN should commission an economic study to review and analyze the following:

- 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 who?¹

Unfortunately, Prof. Carlton's paper fails to address any of these points with any cogent analysis. In contrast, Prof. Carlton simply dismisses the ICANN Board's request as "interesting" and "worthy of analysis"² while making the assumption that more gTLDs will "offer the potential for increased competition, reduced prices and increased output."³ However, this conclusion is reached without any in-depth analysis of the current DNS market.

¹ See, ICANN Board Resolution dated October 18, 2006 posted at <http://www.icann.org/en/minutes/minutes-18oct06.htm>.

² *Id.* at ¶7.

³ *Id.* at ¶12.



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Since 2000, ICANN has entered two completely open gTLDs into the DSN. Collectively, these two registries only have approximately 19 million domain names under administration compared to the approximately 80 million under administration in the .com registry. Despite the availability of hard data on these registries, Prof. Carlton fails to adequately analyze whether the introduction of .biz and .info top level domains had any appreciable effect on consumer welfare. And, despite the fact that the .com registry has over four times as many domain names under administration than the .biz and .info registries combined, Prof. Carlton comes to the amazing conclusion that "to the extent that .com and other TLDs have any market power today, expansion of the number of TLDs would help dissipate it in the future."⁴ Prof. Carlton's conclusion is simply not supported by the facts.

Not only does Prof. Carlton's paper ignore the available data with regard to the .biz and .info registries, but it also ignores the evolving ccTLD market and that market's ability to offer consumers a competitive alternative to the .com registry. In many jurisdictions outside the U.S., the local ccTLD registry is the preferred vehicle for companies seeking to establish a local presence to register domain names.⁵ Accordingly, there is a real potential that maturing ccTLD registries offer a reasonable competitive alternative to the .com registry. If this trend is in fact supported by a true market analysis, the rapid growth in ccTLDs as an alternative domain space may very well obviate any arguable need for additional open gTLDs. In short, any economic analysis must consider this alternative in evaluating the market place.

Yahoo! understands that a thorough critique of the Prof. Carlton's paper and his methodology has been prepared by the firm Analysys Mason. We urge ICANN to seriously consider this critique and we also urge ICANN to conduct a proper economic analysis taking into account the points raised in the Analysys Mason report.

In sum, ICANN's analysis of the public comments received in connection with the first Draft Applicant Guidebook identified TLD demand and Economic Analysis as one of four overarching issues that must be dealt with before any introduction of new gTLDs. Unfortunately, a thorough review of Prof. Carlton's paper clearly demonstrates that it is woefully inadequate as to these two points and furthermore fails to provide any sound economic justification for the introduction of additional open gTLDs into the DNS. Given the importance that demand and an economic analysis should play in influencing any future expansion of the DNS, Yahoo! strongly recommends that ICANN abandon Prof. Carlton's paper and conduct a thorough and complete economic study focused on the considerations put forth by the ICANN Board in its resolution of

⁴ *Id.* at ¶21; It is also interesting to note that Prof. Carlton's paper completely ignores the market power of a first entrant.

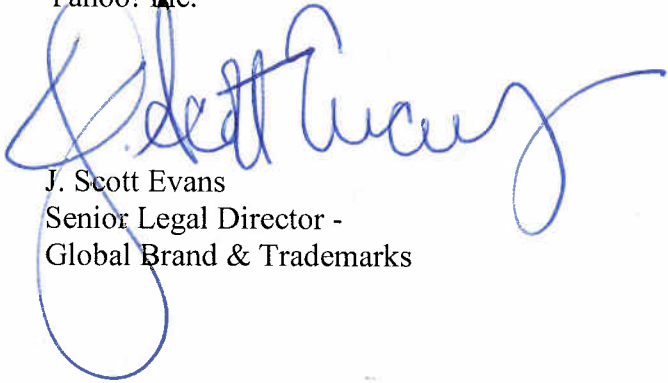
⁵ See, e.g., Doman Name Industry Brief from VeriSign from December 2008 posted at <http://www.verisign.com/static/044349.pdf>

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October 18, 2006 prior to moving forward with the rollout of any new open gTLDs.⁶ Such an analysis is a threshold issue that must be thoroughly explored before ICANN moves forward with any implementation plan. Yahoo! urges ICANN to take a responsible approach to adequately address this issue before taking any further steps in this process.

Kind regards.

Yahoo! Inc.



J. Scott Evans
Senior Legal Director -
Global Brand & Trademarks

⁶ In contrast, Yahoo! is not opposed to the careful introduction of country code specific IDNs; provided, however, that the rollout of any such IDN ccTLDs include the proper rights protection mechanisms to protect brand owners and consumers.