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December 15, 2008

Mr. Paul Twomey
President and Chief Executive Officer
Internet Corporation for Assigned
Names and Numbers
International Square
1875 I Street, Northwest
Suite 501
Washington, DC 20006

RE: Draft Applicant Guidebook for New Generic Top-level Domains

Dear Mr. Twomey:

I write on behalf of the Retail Industry Leaders Association (RILA) to respectfully submit comments regarding the Draft Guidebook for New Generic Top-Level Domains (gTLDs). We retailers are both proud and protective of our brands and we fear that a dramatic expansion of the number of domain names will force our companies to collectively spend millions of dollars to purchase additional, unnecessary domains and to fend off greater numbers of abuses than exist today. A proliferation of domain names exacerbates issues consumers and businesses have with the practice of “phishing.” Specifically, last year, phishing attacks cost American consumers and business an estimated \$3.2 billion, according to a report by the Gartner Group.

We respectfully request that ICANN slow the adoption of this new application process to allow for the consideration and implementation of additional measures to safeguard the rights of brand owners, an issue that affects not just those in the retail industry but most organizations with a strong internet presence. These concerns and possible solutions are conveyed below.

By way of introduction, the Retail Industry Leaders Association is a trade association which promotes consumer choice and economic freedom through public policy and industry operational excellence. Our members include the largest and fastest growing companies in the retail industry – retailers, product manufacturers, and service suppliers—which together account for more than \$1.5 trillion in annual sales. RILA members provide millions of jobs and operate more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

As brand owners, retailers are concerned with the rampant brand abuse on the Internet today. Staying abreast of the proliferation of brand infringement in the current space is a constant battle, and with limited viable remedies available, it is one that brand owners find themselves fighting alone. “Viable remedies” such as filing UDRPs and defensively registering domains are already

impractical solutions to the brand enforcement problem in the current domain name space, given the time and monetary commitment required to execute these reactionary measures and the speed with which infringements crop up. Given the extraordinary brand abuse problem that already exists, retailers are concerned with the decision to expand the domain name space without the implementation of provisions to curb current or future abuse.

ICANN has not properly demonstrated a market demand for new TLDs and has not provided any research that demonstrates the economic impact that such an expansion would have on the Internet community. Given the current economy, this seems irresponsible- there is a very real financial element to expanding the space. There is also a risk of brand dilution and a risk of damage to the integrity of the Internet.

ICANN should slow this launch of a potentially unlimited number of TLDs in order to consider all of the above issues and to provide the Internet community with a detailed plan of action that addresses these issues. There is an overall lack of specificity in the current Guidebook; in order for the community to properly ascertain the fairness and potential success of the launch process, ICANN needs to provide the community with a more detailed outline of the steps involved in that process.

In addition to the above high-level comments on the proposed launch, RILA has the following comments to offer on the Guidebook:

The Application Process-

- o In order to ensure that the process is transparent and has a reasonable objection period, information regarding the applicant and the intended use of the string should be made readily available. This way, brands can prepare relevant objections where appropriate.

- o There is little information provided on the timeframe of the objection filing periods- the current language only mentions that the objection filing period will begin after the completeness check ends. Potential objectors should be made aware of how much time they will be given to review these completed applications and file their objections.

- o The Applicant Guidebook needs to further define the process that will be used to determine whether there is confusing similarity between extensions. Without this clarification, neither an applicant nor an objector can ascertain his potential success. There also needs to be a better definition of what constitutes “probable” confusion of a string- this way, applicants can know whether their applications will succeed. Properly defining what constitutes “probable” confusion over “possible” confusion will enable informed discussion of whether ICANN is meeting “the demand for more innovation, choice” that the organization cited as the reason for expanding the domain space.

- o An objection to the application can be filed if the string infringes upon the existing legal rights of the objector, but it is unclear what guidelines apply if both entities can claim legal rights to the same string. The Guidebook should provide clearer guidelines on how a dispute of this kind would be resolved.

- o There are currently only four grounds for objection: string confusion objection, legal rights objection, morality and public order objection and community objection. There should be a provision that allows for objections to applicants who have a history of abuse in the domain name space.
- o The Guidebook mentions an “efficient mechanism for contention resolution” that has yet to be developed; the Guidebook currently only states a) that the first efficient means of resolution that will be employed is an attempt at a settlement between the two parties, and b) that auctions will be a last resort. ICANN should develop this mechanism so that contention sets are not frequently pushed to auction.
- o The Guidebook currently holds a provision that an “applicant agrees not to challenge, in Court or in any other judicial entity, any final decision made by ICANN with respect to the application, and irrevocably waives any right to sue or proceed on the basis of any other legal claim against ICANN and ICANN affiliated parties with respect to the application.” ICANN should be held accountable for the decisions that are made throughout this process, and should not be given such broad immunity.

Thank you for your consideration of this important matter. Should you or any member of your team have additional questions, please do not hesitate to make me aware.

Sincerely,

Casey Chroust
Senior Vice President, Retail Operations