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December 15, 2008

Submitted Electronically

Mr. Peter Dengate Thrush
Chairman of the Board
Internet Corporation for Assigned
Names and Numbers
1875 I Street, NW, Suite 501
Washington DC, 20006

Re: Request for Public Comment on expansion of generic top-level domains

Dear Mr. Thrush:

The American Bankers Association (ABA)¹ appreciates the opportunity to comment on the Internet Corporation for Assigned Names and Numbers (ICANN) request for public comment on the Draft Applicant Guidebook for new generic top-level domains (gTLDs). ABA has serious reservations regarding the initiative, especially as it applies to the financial services industry.

The ABA respectfully requests that no unsponsored gTLD be issued, that in any manner could be construed as the domain of a financial institution. Proposed generic domains such as “.bank” and those which could be construed by consumers as officially representing financial institutions present a potential public policy as well as global concern since these domains need to be managed within an appropriate financial sector or regulatory framework.

ABA has a history of managing programs similar to the one envisioned by ICANN for gTLDs. For instance, ABA developed the routing number (ABA number or routing transit number) in 1910, which serves to identify the specific financial institution responsible for the payment of a negotiable instrument. Originally designed to identify only check processing endpoints, the number has evolved to designate participants in automated clearinghouses, electronic funds transfer, and on-line banking.

¹ The American Bankers Association brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than \$125 million in assets – represent over 95 percent of the industry's \$13.6 trillion in assets and employ over 2 million men and women.

In July 1964, the ABA worked with the New York Clearing House on the creation of ABA's Committee on Uniform Security Identification Procedures, or CUSIP charged with the responsibility of developing, enhancing, and maintaining the system and policies necessary for uniform securities identification. By providing a unique common language for identifying financial instruments across institutions, exchanges and nations, financial services firms benefit from improved operating efficiencies and substantially reduced administrative costs.

Our experience with such programs confirm ABA's commitment to the financial services industry and belief that a global policy and process for the issuing of financial institution related TLDs with proven effective security measures is essential before such domains are issued. ABA requests that ICANN continue to work with our industry to either craft an international effort to secure sponsored financial services oriented gTLDs or agree to organize all potential banking or financial institution related gTLDs into a well defined community. As proposed in the Guidebook, these community based gTLDs would be available "only to those applicants connected with an identifiable pre-existing group." Under this scenario, a set of rules governing sponsorship could be developed and maintained by ABA and other industry representatives and more importantly, all such gTLDs would be safely outside of the grasp of entities unable to appropriately demonstrate a clear nexus with our industry.

ABA is eager to work with ICANN to resolve the significant issues that this initiative represents, in order to preserve our industry and our customer's trust in online transactions and other financial services.

Financial Services Sector Concerns

ABA believes that there may be potential long-term value in the development of differentiated gTLDs, including gTLDs devoted to and managed by the financial sector. At the same time, ABA has significant concerns about launching a series of financial services domains until the underlying security and branding concerns are addressed.

ICANN has proposed, through its applicant guidebook pending board approval, a process for applying for either unsponsored or sponsored gTLDs as early as late 2009. While many of the new generic domains will pose no threat to trusted transactions over the Internet, any domain name associated with financial services should be restricted to financial services companies, with substantial guidelines and proof of eligibility. The current group of gTLDs includes edu, .gov, .int, and .mil, each of which is sponsored by an appropriate agency or organization. Financial services domains should also be sponsored in a similar manner, through a process administered by our industry.

We recognize that ICANN's decision to offer additional gTLDs presents an opportunity to create a gTLD for the entire financial services industry or to create multiple gTLDs by sector (e.g., banking, insurance and securities). We believe the primary advantage to this opportunity is that within a trusted gTLD, the financial services industry has the opportunity to create and manage a more secure Internet environment, which in turn could assist the industry to more effectively combat phishing and malware attacks.

From our perspective, additional potential benefits include reduced fraud losses, reduced security expenses and increased usage of online channels. Conversely, the implementation of a financial services gTLD comes with significant potential costs both at the industry and individual institution levels. At the company level, there would be direct costs and the disruptive effects of migrating from “.com”. At the industry level, costs include planning and application fees, costs for an awareness campaign to educate the public, ongoing security costs, and operational expenses.

While potential increased company and industry costs are a major concern, our greatest concerns surround actual vs. perceived improved security. The financial services sector continues to face an onslaught of threats and well organized attacks by hackers and organized crime against their institutions and their customers. Recently, CheckFree, a significant provider of financial electronic commerce services including electronic billing and payment, was the target of an attack that caused their customers to be redirected to a malicious web site. This event illustrates the importance of strong financial institution gTLD sponsorship, and strong security measures and policies to prevent insider abuse or breach of credentials. Launching a series of financial services related gTLDs before such increased security is implemented, through DNS Security Extensions or other means, would provide a false sense of security to financial services customers. Banking Web site users would assume that somehow “.bank”, “.bnk,” “.sav” or sites with other like extensions were safer than sites with .com or other gTLDs, when in fact they were not. While such a potential for a false sense of security has detrimental implications for all gTLDs, we strongly believe that online financial services demand and our regulators require the highest level of security. To open financial services oriented gTLDs without implementing improved security would be detrimental to good public order.

We also believe that there is also the potential for substantial consumer confusion and the greater possibility of fraud, if non-bank businesses that lend money or sell investment products, are able to use domains containing “.bank” and similar extensions. It is for this reason that all U. S. states prohibit the use of the name “bank”, “trust” or similar words if a business engages primarily in the business of lending money, underwriting or sale of securities, acting as a financial planner, financial service provider, investment or trust adviser, or acting as a loan broker ***unless such entity is affiliated with a federally insured financial institution.*** Clearly there are a variety of gTLDs that should be restricted purely on the basis of the fact that they would violate state law.

ABA does not believe that the existing application process envisioned by ICANN for gTLDs adequately protects financial institution intellectual property. The application process lacks sufficient due diligence or screening to ensure that gTLD applicants will not encroach on brand owner rights. The guidebook states that applicants will have to provide information regarding financial, technical and operations capability. However, there are no requirements that a nexus between the applicant and the proposed gTLD string be presented or examined. In fact, there is absolutely no guidance on determining which application would prevail should there be two or more applications for identical or confusingly similar gTLDs.

Although ICANN is currently investigating auctions as a way to resolve this dilemma, this “pay to play” formula that is consistent throughout the Guidebook should not be looked at as a mechanism to determine appropriate gTLD sponsors. These flaws are further compounded by the fact that the applicant pool, as defined, is too broad and needs to be narrowed. ICANN states on its website that, “Any public or private sector organization or institution in good standing may apply for a new gTLD.” The consistent failure of ICANN to put in place a standard mechanism to protect legally registered brands and brand owners will lead to substantial abuses and infringement.

ICANN in essence shifts its responsibility to brand owners and substantially increases their current burden. At every turn, the Guidebook creates a scenario where additional substantial costs will be necessary to protect and maintain the brand. In addition to the application and maintenance fees stated in the Guidebook, there are many “hidden” costs. Internal resources will need to be vigilant to ensure that the brand is not diluted or infringed in the marketplace. Although a dispute resolution process is mentioned in the Guidebook, it is neither well defined nor robust enough to assuage any concerns held by brand owners or the financial services community. The failure of ICANN to create a set of standard requirements or regulations governing the dispute resolution process will result in discord, not innovation, and the costs associated with the defense of intellectual property could become prohibitive.

Conclusion

As we have indicated, ABA’s greatest concerns surround the need to further secure the overall DNS environment before financial services gTLDs are issued. ABA requests that the financial services industry be given time to craft an international effort to secure a sponsored or community based financial services gTLD structure, and that no such gTLDs be issued until this is achieved. ABA, along with other financial industry associations, including the Financial Services Roundtable, BITS, the Financial Services Technology Consortium (FSTC) and the Securities Industry and Financial Markets Association (SIFMA), have established a process to address these issues on a sector-wide and global basis. We appreciate ICANN’s willingness to work with the industry toward a resolution that achieves ICANN’s goal to provide diversity, choice and innovation in gTLD distribution while at the same time maintaining confidence in online financial transactions.

Sincerely,

A handwritten signature in black ink that reads "Diane Casey-Landry". The signature is written in a cursive, flowing style.

Diane Casey-Landry