



January 9, 2012

The Honorable Lawrence E. Strickling
Assistant Secretary for Communications and Information
National Telecommunications and Information Administration
United States Department of Commerce
Washington, D.C. 20230

Dear Assistant Secretary Strickling:

On behalf of the Association of National Advertisers (ANA), I write to express our thoughts regarding your important letter of January 3rd to Dr. Stephen Crocker, Chairman of the Board of the Internet Corporation for Assigned Names and Numbers (ICANN). As you know, ANA has been working very closely with the Coalition for Responsible Internet Domain Oversight (CRIDO), a broad coalition of 161 global companies and industry groups which all have a significant and ongoing interest in ICANN's proposed expansion of Top Level Domain Names (TLDs).

We appreciate that your letter recognized that many organizations have very serious concerns regarding this expansion. We also recognize that your letter set forth a number of areas for improvement by ICANN that need to be addressed by ICANN. We strongly believe, however, that additional steps must be taken to ensure that the proposed expansion does not result in harm to consumers, businesses and other users of the global Internet.

In particular, we believe it is critically important for the Department to offer greater specificity about how it will be endeavoring "to be an active member of the GAC [Governmental Advisory Committee] and working with stakeholders to mitigate any unintended consequences of the new TLD program." Rather than simply urging ICANN to "consider" implementing measures to address the concerns expressed in your letter, we believe it is essential that NTIA provide specific timetables and benchmarks for ICANN to meet as well as specific consequences if they fall short. Clearly, if ICANN fails to carry out these proposed modifications and reforms, it should be found not to be in compliance with its Affirmation of Commitments obligations to operate in the "public interest."

In a December 16, 2011 letter to ICANN, for example, the Federal Trade Commission (FTC) expressed a number of specific areas for improvement by ICANN. It stated that these issues should be addressed by ICANN before any new TLD applications

are approved; otherwise, the introduction of new TLDs could pose a significant threat to consumers and undermine consumer confidence in the Internet. In fact, the Chairman of the FTC testified before the Intellectual Property, Competition and the Internet Subcommittee of the House Judiciary Committee that the TLD roll out as presently configured could be a “potential disaster” for consumers and businesses.

In light of these risks, we urge the Department to ensure that ICANN adopts the FTC’s five specific recommendations:

- Implement the new TLD program as a pilot program and substantially reduce the number of TLDs that are introduced in the first application round;
- Strengthen ICANN’s contractual compliance program, and in particular by hiring additional compliance staff;
- Develop a new ongoing program to monitor consumer issues that arise during the first round of implementing the new TLD program;
- Conduct an assessment of each new proposed TLD’s risk of consumer harm as part of the evaluation and approval process; and
- Improve the accuracy of Whois data, including by imposing a domain name registrant verification requirement.

The discussion in the FTC’s letter about problems with the accuracy of the Whois database is particularly disturbing. The letter notes that for several years, the Commission, the GAC and numerous law enforcement agencies from around the world have all urged ICANN to improve the accuracy of that critical database. The FTC concludes that “ICANN has failed to adequately address this problem for over a decade.” Indeed, it notes that last month, the ICANN-commissioned Whois Review Team issued its draft report, acknowledging the “very real truth that the current system is broken and needs to be repaired.” Clearly, this poses a major danger to consumer and business security on the Internet.

Further, the FTC stated that ICANN currently is “ill-equipped” to handle the contract enforcement for the 22 existing TLDs and several hundred accredited registrars. The Commission concluded that: “the unprecedented increase in domain registries only increases the risk of a lawless frontier in which bad actors violate contractual provisions with impunity, resulting in practices that ultimately harm consumers.”

Also, the FTC noted that a wide range of stakeholders have expressed concern about potential conflicts of interest on the ICANN Board and the decision to greatly expand the number of TLDs. The Commission encouraged ICANN to “complete the ongoing reviews of its conflict of interest and ethics practices and implement a revised Board conflict of interest policy before approving any new TLD applications.”

In 2009, a coalition of law enforcement agencies (including the Australian Federal Police; the US Department of Justice; the US Federal Bureau of Investigation; the New Zealand Police; the Royal Canadian Mounted Police; and the United Kingdom’s Serious Organized Crime Agency) issued “Law Enforcement Due Diligence Recommendations for ICANN.” According to the GAC Communiqué at Dakar (dated

October 27, 2011), not one of law enforcement's twelve recommendations was adopted, and only three of the twelve have even been considered. Each of these recommendations must be implemented before any expansion is approved.

On December 13, 2011, the legal counsels of over 30 intergovernmental organizations (IGOs), including the International Monetary Fund, INTERPOL, NATO, and the UN, called on ICANN to implement appropriate policy measures to mitigate the possibility of abusive registration of names and acronyms. The letter notes that such abuse "imposes a serious enforcement burden on IGOs, which should not have to divert their public resources for this purpose." The danger cited in this letter applies beyond just the IGOs that signed the letter, and these concerns must be addressed more broadly if the expansion is not to have severe negative implications.

Similar concerns have been expressed by the Not for Profit community as well. See Testimony of Angela F. Williams of the YMCA before the Senate Commerce Committee (December 8, 2011) available at: http://commerce.senate.gov/public/?a=Files.Serve&File_id=56a49ede-865f-4bbe-9635-58d0b59add7b. See Testimony of Anjali K. Hansen of the Council of Better Business Bureaus (CBBB) before the House Energy and Commerce Committee, Subcommittee on Communications and Technology (December 14, 2011) available at: <http://republicans.energycommerce.house.gov/Media/file/Hearings/Telecom/121411/Hansen.pdf>. See National Consumers League Press Release, "ICANN's Domain Name Expansion Plan a Boon for Scam Artists" (January 6, 2012) available at: <http://www.nclnet.org/newsroom/press-releases/607-ncl-icanns-domain-name-expansion-plan-a-boon-for-scam-artists->.

Moreover, within the last several weeks, numerous elected officials have communicated their widespread, bipartisan concern regarding the expansion. Specifically:

- Senator Jay Rockefeller (D-WV), the Chairman of the Senate Commerce Committee, urged implementation of the TLD expansion in a limited manner.
- Representative Robert Goodlatte (R-VA), the Chairman of the Intellectual Property Subcommittee of the House Judiciary Committee, and Representative Howard Berman (D-CA), also a member of that Subcommittee, expressed the need to delay the TLD program or limit it to a pilot project to study the potential costs and benefits.
- Senator Dianne Feinstein (D-CA), a senior member of the Senate Judiciary Committee, directed questions to FBI Director Mueller regarding the potential for Internet fraud involving ICANN's proposal.
- Representative Fred Upton (R-MI), the Chairman of the House Energy and Commerce Committee and 16 other members of that Committee, including several subcommittee chairmen, urged a delay in the expansion, and expressed concerns regarding the lack of transparency in ICANN procedures.
- Senators Amy Klobuchar (D-MN), a former state prosecutor and Kelly Ayotte (R-NH), a former state Attorney General, both now members of the Senate Commerce

Committee, urged ICANN to address public safety concerns prior to any TLD expansion.

- Senators Patrick Leahy (D-VT) and Charles Grassley (R-IA), the Chairman and Ranking Member of the Senate Judiciary Committee and Representatives Lamar Smith (R-TX) and John Conyers (D-MI), the Chairman and Ranking Member of the House Judiciary Committee, suggested that ICANN strengthen consumer and trademark holder protections in the new TLD program.

These are just some of the areas of concern and possibilities for improvement in ICANN's proposal. It now appears that, despite the nearly unanimous series of warnings that have been expressed by a broad cross-section of the entire Internet global community, ICANN unwisely appears committed to proceeding with its application launch on January 12. We do not believe that action is presently warranted or appropriate. We continue to believe that the launch could have disastrous consequences. Nonetheless, if ICANN is determined to move forward, ANA forcefully urges that, before any TLD application is approved, ICANN, at the very least, must:

- implement all of the law enforcement community's recommendations;
- address the potential for consumer harms cited by the FTC, non-profit organizations and others;
- improve procedures to protect intellectual property, as the proposed procedures are woefully inadequate;
- adopt real and meaningful methods to avoid the need for expensive and unnecessary defensive registrations; and
- implement steps to deal with "root scaling" and other technical concerns expressed by the Internet community.

These are just the most basic improvements that ICANN must implement to avoid serious harm and the "disaster" about which FTC Chairman Leibowitz warned. We urge the Department to conduct a vigorous analysis of whether ICANN should proceed with a limited phase-in of new TLDs, including an analysis of the sufficiency of protections at the second level.

We also agree with your letter that identified other issues that ICANN must resolve, and believe it is imperative that the Congress and the Internet public receive specific clarification of how the Department intends to ensure that these other issues – including improved registrar accreditations, deficiencies in Whois policies (including registrant authentication), and the sufficiency of ICANN compliance staffing levels – will be satisfied. The potential costs to Internet consumers and business of the TLD roll out could clearly be in the multi-billions of dollars, and therefore the greatest amount of clarity and specificity in this area is essential.

Unfortunately, the response of Dr. Crocker, the Chairman of ICANN, to your January 3rd letter demonstrates that ICANN remains in a state of denial about the concerns you raised. According to a January 4 article in *Bloomberg* Media, Dr. Crocker stated: ICANN appreciates that Strickling "recognizes that many of the recent concerns

expressed about the new top-level domain program are more about ‘perceived’ problems than actual deficiencies.” So are we to believe that the specific problems expressed by the Federal Trade Commission, the OECD, the IGOs and other groups are simply “perceived” problems?

If ICANN is to maintain the trust in its ability to act for the public benefit that is critical to its continued success as a private, not-for-profit Internet governance body, there must be a mechanism to hold ICANN accountable. NTIA and fellow members of the GAC must occupy that role. Otherwise, we fear that businesses, non-profits, consumers and members of law enforcement globally will bear the heavy burden of the unintended consequences of ICANN’s TLD expansion program and ICANN’s very existence will be put at risk.

In your January 3rd letter to ICANN, you stated, “We think, and I am sure ICANN and its stakeholders would agree, that it would not be healthy for the expansion program if a large number of companies file defensive top-level applications when they have no interest in operating a registry. I suggest that ICANN consider taking some measures well before the application window closes to provide against this possibility.”

It is in this environment and in the interests of moving forward constructively that ANA has made the following proposal to ICANN: that while it proceeds with its plan to begin accepting applications for new TLDs on January 12, that all NGOs, IGOs and commercial stakeholders concerned about protecting their brands will concurrently be given the opportunity to have those brands registered, without cost, on a temporary “Do Not Sell” list to be maintained by ICANN during the first application round. Any interested party that does not want to have their brands on the “Do Not Sell” list and would rather apply for a new TLD would be free to do so.

A copy of our letter to ICANN is attached. With the January 12th date for opening the application window rapidly approaching, we would very much appreciate a prompt statement of public support from NTIA for our proposal and a letter to ICANN indicating support from the NTIA for this “Do Not Sell” approach.

All of us involved in the Internet community have a very high investment in ensuring that the Internet continues to be a viable and useful tool for the exchange of communications, information, and the advancement of commerce. Please be assured that ANA intends to continue our efforts to ensure that any new TLD expansion furthers that objective.

Should you have any questions about the matters raised in this letter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "R Liodice". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Robert Liodice
President and CEO

About the ANA

Founded in 1910, the ANA (Association of National Advertisers) leads the marketing community by providing its members with insights, collaboration, and advocacy. ANA's membership includes 400 companies with 10,000 brands that collectively spend over \$250 billion in marketing communications and advertising. The ANA strives to communicate marketing best practices, lead industry initiatives, influence industry practices, manage industry affairs, and advance, promote, and protect all advertisers and marketers. For more information, visit <http://www.ana.net>

cc: Bruce Andrews, Chief of Staff, U.S. Department of Commerce

Fiona Alexander, Associate Administrator, National Telecommunications and Information Administration, U.S. Department of Commerce

Vernita Harris, Deputy Associate Administrator of the Office of International Affairs, National Telecommunications and Information Administration, U.S. Department of Commerce

Suzanne Murray Radell, Senior Policy Advisor, National Telecommunications and Information Administration, U.S. Department of Commerce

Elizabeth Bacon, Telecommunications Policy Specialist, National Telecommunications and Information Administration, U.S. Department of Commerce

Cameron F. Kerry, General Counsel, U.S. Department of Commerce

Daniel K. Inouye, Chairman, Committee on Appropriations, U.S. Senate

John D. Rockefeller, Chairman, Committee on Commerce, Science and Transportation, U.S. Senate

Patrick J. Leahy, Chairman, Committee on the Judiciary, U.S. Senate

Thad Cochran, Ranking Member, Committee on Appropriations, U.S. Senate

Kay Bailey Hutchison, Ranking Member, Committee on Commerce, Science and Transportation, U.S. Senate

Charles E. Grassley, Ranking Member, Committee on the Judiciary, U.S. Senate

Barbara Mikulski, Chair, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, U.S. Senate

Al Franken, Chairman, Subcommittee on Privacy, Technology and the Law, Committee on the Judiciary, U.S. Senate

Tom Coburn, Ranking Member, Subcommittee on Privacy, Technology and the Law, Committee on the Judiciary, U.S. Senate

Ron Wyden, Chairman, Subcommittee on International Trade, Customs, and Global Competitiveness, Committee on Finance, U.S. Senate

Harold Rogers, Chairman, Committee on Appropriations, U.S. House of Representatives

Fred Upton, Chairman, Committee on Energy and Commerce, U.S. House of Representatives

Lamar Smith, Chairman, Committee on the Judiciary, U.S. House of Representatives

Norm Dicks, Ranking Member, Committee on Appropriations, U.S. House of Representatives

Henry A. Waxman, Ranking Member, Committee on Energy and Commerce, U.S. House of Representatives

John Conyers, Ranking Member, Committee on the Judiciary, U.S. House of Representatives

Bob Goodlatte, Chairman, Subcommittee on Intellectual Property, Competition and the Internet, Committee on the Judiciary, U.S. House of Representatives

Frank Wolf, Chairman, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, U.S. House of Representatives

Mel Watt, Ranking Member, Subcommittee on Intellectual Property, Competition and the Internet, Committee on the Judiciary, U.S. House of Representatives

Chaka Fattah, Ranking Member, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, U.S. House of Representatives