



April 13, 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 Second Draft DAG – gTLD Program and Process

Dear Mr. Dengate-Thrush and Dr. Twomey:

Yahoo! Inc. (“Yahoo!”) is pleased to submit these comments in response to the second version of the Draft Applicant Guidebook (DAG) released on February 18, 2009 and the new generic Top Level Domain (“gTLD”) program. Yahoo! is a leading global Internet brand and one of the most trafficked Internet destinations worldwide. With more than 500 million users around the globe, Yahoo! is focused on powering its communities of users, advertisers, publishers and developers by creating indispensable experiences built on trust. Our company is headquartered in Sunnyvale, California and has a presence in more than 20 markets and regions worldwide. In addition, Yahoo! has actively participated within the ICANN process for many years.

We appreciate the opportunity to participate in this public discourse along with ICANN and the larger stakeholder community. While we were initially disappointed in ICANN’s treatment of the vast number of comments received on intellectual property issues during the first round of public comments, we were very pleased by the ICANN Board’s resolution passed in Mexico City that led to establishment of the Implementation Recommendation Team (“IRT”), which is charged with developing intellectual property rights-protection mechanisms for the new gTLD roll-out. Yahoo! is committed to the IRT process and is actively participating in the IRT in the hope of providing ICANN and the community with workable solutions to protect both trademark owners and consumers in any rollout of new gTLDs. We are hopeful that the IRT recommendations will be given full and thoughtful consideration by the ICANN Board and community. Accordingly, we would like to reserve our option to comment on the intellectual property protections until such time as ICANN has incorporated any additional protection mechanisms into the DAG. At the same time, however, we want to take this opportunity to reiterate some of our additional concerns with this process.¹

First, we call upon ICANN to abandon the economic study released in March 2009.² This study is profoundly flawed and fails to answer any of the questions put to ICANN staff by the ICANN Board in its resolution of October 18, 2006.³ Yahoo! will submit more detailed comments with

¹ Yahoo! did not individually provide comments during the public comment period of the initial DAG, but did sign on to comments expressing concerns submitted by trade associations.

² Posted at <http://www.icann.org/en/topics/new-gtlds/prelim-report-consumer-welfare-04mar09-en.pdf>

³ See, <http://www.icann.org/en/minutes/minutes-18oct06.htm>



Mr. Peter Dengate-Thrush
Dr. Paul Twomey
ICANN
April 13, 2009
Page 2 of 3

regard to the economic study released in March 2009 in its comments submitted specifically with regard to that topic.

Second, Yahoo! believes it is essential for ICANN to revise the proposed Registry Agreement for new gTLDs to specifically include a provision for all new registry providers to provide “Thick WHOIS.” For clarification, Yahoo! believes that the centralized, registry-level provision of a WHOIS database containing WHOIS information germane to the second level domain names registered within a particular gTLD is a far superior model to the “Thin WHOIS” model historically used in the .com registry. Yahoo! believes that such a requirement is completely reasonable and technically feasible, given that the Thick WHOIS model is currently used in both the .biz and .info registries. In addition, Yahoo! notes that both the Green Paper and the White Paper published by the National Telecommunications and Information Administration (“NTIA”) in 1998 clearly called for a fully public, searchable and robust WHOIS database in order to provide brand owners adequate information to effectively and efficiently enforce their rights. In the Green Paper, NTIA called for specific information to be provided in registry databases, including, among other things, up-to-date ownership and contact information, along with chain of title information and address for service of process.⁴

Again, in the White Paper published on June 5, 1998, NTIA stated, “. . . we believe that a database should be maintained that permits trademark owners to obtain the contact information necessary to protect their trademarks.”⁵ Yahoo! believes that the Thin WHOIS model has proved to be very difficult for ICANN to police and, consequently, has led to many registrars completely ignoring their contractual obligations with regard to the provision of accurate WHOIS information. This, in turn, has led to certain registrars under the Thin WHOIS model becoming havens for brand abuse and consumer fraud. By adopting the Thick WHOIS model, Yahoo! believes that ICANN will have a much smaller pool of entities to police, and consumers, law enforcement and brand owners will have a more centralized location to obtain accurate WHOIS information.⁶

Finally, Yahoo! believes that any expansion of the DNS must be in a controlled fashion and for specific reasons, such as the careful introduction of country specific IDNs in order to meet the Internet demand in non-ASCII characters, especially for emerging markets, or the expansion of the DNS to include gTLDs that are specific to certain groups or communities; provided that any such gTLDs have up-front verification mechanisms to ensure that registrants meet all enunciated registration criteria and have rights in the second level domain they wish to register. For example, Yahoo! believes that gTLDs such as .museum, .aero, .coop and .cat have met specific

⁴ 63 Fed. Reg. 8830 (Feb. 20, 1998), found at <http://www.ntia.doc.gov/ntiahome/domainname/022098fedreg.txt>

⁵ Statement of Policy on Management of Internet Names and Addresses, http://www.ntia.doc.gov/ntiahome/domainname/6_5_98dns.htm

⁶ It is also noted that as part of the .net redelegation, ICANN requested the commitment of time and resources to explore a universal WHOIS platform. That is, the exploration of a centrally maintained database that would contain all WHOIS information for all registries. Yahoo! is unaware of any activities in this regard and requests that ICANN recommit to this project as soon as possible.

Mr. Peter Dengate-Thrush
Dr. Paul Twomey
ICANN
April 13, 2009
Page 3 of 3

needs and yielded few, if any, trademark abuse or consumer fraud issues. In contrast, Yahoo! does not believe there is any need to expand the pool of open TLDs beyond those entered into the root in previous rounds of expansion.

In summary, Yahoo! is very committed to working with the ICANN community through the IRT to develop workable solutions to protect consumers from continued exploitation due to the lack of effective rights protection mechanisms for brand owners. Yahoo! believes ICANN has yet to make a cogent and defensible case about the economic effect of expansion of the DNS as proposed in the DAG, and we believe that ICANN must do so before moving forward in this process. Yahoo! also strongly encourages ICANN to amend the proposed new Registry Agreement found in the DAG to require all new registries to provide WHOIS information under the Thick WHOIS model utilized by the .biz and .info registries. Most importantly, Yahoo! cautions ICANN to be extremely judicious in expanding the DNS to ensure that any expansion is done in a slow and controlled fashion and only where the clear benefits of expansion far outweigh the attendant costs to Internet users. And, finally, Yahoo! believes that any expansion of the DNS must include mechanisms for brand owners to effectively and efficiently police their trademarks.

It is clear that much work is yet to be done on many of the overarching issues related to the expansion of the DNS, and Yahoo! urges ICANN to fully explore and resolve these issues before moving forward with its planned implementation.

Kind regards.

Yahoo! Inc.

/s/

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