

March 5, 2013

By email and courier

Dr. Steve Crocker, Chairman of the Board
Mr. Fadi Chehadé, President & CEO
Mr. Cherine Chalaby, Chair of the New gTLD Committee
Ms. Karen Lentz, Manager, Business, Research & Content
Internet Corporation for Assigned Names and Numbers (ICANN)
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

Dear Dr. Crocker, Mr. Chehadé, Mr. Chalaby and Ms. Lentz:

Re: Closed gTLD applications for important industry terms, such as .book, .read and .author, should be refused

Kobo Inc. ("Kobo") offers eReading services and provides top-ranked applications and devices to customers in more than 170 countries around the world. Founded in 2009, Kobo features extensive eReading catalogues with over 2.5 million eBook, newspaper and magazine titles. Kobo is owned by the Tokyo-based Rakuten Inc., a major Japanese eCommerce operator.

Kobo recently became aware that applications have been filed for generic top-level domains (gTLDs) that comprise important terms for the book industry, and that are intended for use on a restricted or closed basis by the applicant. Like many companies, Kobo was generally aware of the proposed launch of new gTLDs, but was unaware and caught by surprise by the fact that applications could apparently be filed for closed gTLDs covering commonly used and purely descriptive industry terms. Prior to learning about these applications, it was our understanding that only gTLDs covering brand names could be operated on a closed basis.

We are writing to express our concern about, in particular, Amazon's applications for the closed gTLD strings .book, .author and .read. The use of these descriptive terms is of obvious and paramount importance to all stakeholders in the book industry in all English-speaking countries. Amazon also has filed for the closed gTLD string 書籍, which means book in Japanese, as well as closed gTLD strings that are important to the entire retail industry (e.g. .buy, .shop, .save, .deal and .coupon). All of these gTLD strings should be open and unrestricted since such generic words used in a generic way belong to everyone.

To Kobo's direct knowledge, Amazon is a key competitor and a dominant online retailer of books and eReading devices. Kobo strongly believes that competition will suffer if Amazon is granted the right to operate closed gTLDs for important industry terms such as .book, .read and



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.author. In fact, it is difficult to conceive of terms that more clearly describe books and eReading devices, and how they would be marketed, than the words “book”, “read” and “author”.

Further, such gTLD strings that are common industry terms are by definition memorable in a marketing sense, and are likely to draw consumers to a website. Amazon’s extensive publishing and distribution rights, combined with its marketing strengths, empower it to make .book, .read, and other gTLDs the key Internet destinations for the purchase of books and eReading devices. Kobo and other competitors would be at a clear disadvantage. This is the precise reason why such generic words used in generic ways cannot be monopolized at law, and should not be allowed to be monopolized over the Internet. All competitors should be given equal access to such generic gTLDs, so that they can compete on a level playing field.

Once closed gTLDs are delegated, it would likely be very difficult, if not impossible to reverse such grants in the future. Further, the registry operator would be able to control gTLDs delegated to it perpetually and thereby be able to prevent others from operating a similar gTLD in the future (based on string confusion). For instance, if Amazon is delegated .book, it could likely object to .books, based on string confusion. It is anti-competitive for Amazon, as the dominant online book retailer, to be given the right to permanently pre-empt opportunities for other competitors to link with online consumers using such generic gTLDs.

If these gTLDs are delegated to Amazon on a closed basis, Amazon will effectively gain exclusive rights to be associated with the kind of products or services it offers in perpetuity, which is something that it could not achieve through trade mark laws in Canada or, we suspect, most industrial countries. In fact, the delegation of closed gTLDs for generic words used in generic ways circumvents international legal norms regarding the grant of exclusive intellectual property rights. For example, Kobo expects that Amazon could not obtain a trade mark registration for the word BOOK, or READ or AUTHOR in association with books and eReading devices, or the sale of books and eReading devices. ICANN should not permit Amazon to use what may be a “loophole” in the Applicant Guidebook to circumvent international laws.

In short, Kobo considers the delegation of closed gTLDs for generic industry terms (such as .book, .read and .author) to be a threat to the openness and freedom of the Internet. Consumers will not benefit from the delegation of such gTLDs, since they will be presented with limited choice (namely, offerings controlled by only one competitor). Consumers also may be confused, since most gTLDs will be open, and therefore be accessible to and used by a range of competing suppliers. We also understand that ICANN’s core values include promoting competition in the registration of domain names.

If an independent party holds the rights over such gTLDs, and provides non-exclusive access through licensing or other arrangements, there is little reason for concern. Such an alternative would encourage competition by allowing a wide range of parties to access gTLDs that are based on common, descriptive terms, rather than allowing one dominant retailer to exclusively control such gTLDs. Domain names would be registered on a first-come, first-served basis, subject to a sunrise period for trade mark holders.

We are also concerned that the delegation of such closed gTLDs for generic industry terms may offend ICANN’s governing documents. To avoid this potential conflict, we encourage ICANN to clarify the interpretation of Section 6 of Specification 1 (“Registry Operator Code of Conduct”) in Module 5 (“Based New gTLD Agreement”) of the Applicant Guidebook. In particular, we encourage ICANN to clarify that the application of the Registry Operator Code of Conduct is necessary to protect the public interest in all cases of closed gTLDs for such generic industry

terms (that are not brands). This interpretation is consistent with ICANN's mission and core values and the purpose of the new gTLD program, would lend certainty to the new gTLD application process, and result in the refusal of the applications of concern. ICANN could permit applicants to amend applications to make them open, or withdraw applications that do not meet the requirements set out in Section 6 of the Registry Code of Conduct.

We urge ICANN to intervene to prevent the delegation of such closed gTLDs for common industry terms.

Yours truly,



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