

Date: July 20, 2016

To: **Internet Corporation for Assigned Names and Numbers**, a California corporation (hereinafter “ICANN”)

Re: Response to your request for comments re: [Proposed Amendments to Base New gTLD Registry Agreement](#)

1. I adopt and join in the comments already submitted by George Kirikos on May 31, 2016, and June 1, 2016, hereby incorporated by reference as if fully set out herein, posted on your “Comments Forum” page of ICANN at: <https://forum.icann.org/lists/comments-proposed-amend-new-gtld-agreement-31may16/msg00000.html> and <https://forum.icann.org/lists/comments-proposed-amend-new-gtld-agreement-31may16/msg00001.html>, specifically objecting to changes in sections 2.9, 2.10, and 6.7.
2. I also adopt and join in the following portion of the comment submitted by the ICANN GNSO Business Constituency (BC) at <https://forum.icann.org/lists/comments-proposed-amend-new-gtld-agreement-31may16/pdfo1EmXLE48X.pdf>:

6) Non-Transparent, Closed Negotiations

The BC is concerned about the closed, non-transparent nature of the process that yielded these proposed amendments. The following should be publicly posted in conjunction with discussions and negotiations on proposed amendments to the base agreement: the names and affiliations of individuals who developed the proposed contract changes (ICANN staff and members of the RySG Working Group); meeting summaries and minutes of these closed-door negotiations; fulsome explanations and background on the proposed changes; and explanations of proposed changes that were not included, and why. Unfortunately, none of this was posted for the ICANN community’s consideration. The approach to public disclosure used by ICANN staff during negotiations of the 2013 RAA (although incomplete) would have been a more appropriate process to use and it is puzzling why no similar efforts at transparency were made here. This runs counter to numerous ICANN commitments to accountability and transparency and should have been a priority for ICANN, especially considering the pending IANA transition commitments.

It is vital that ICANN operate in an open and transparent manner and involve the multistakeholder community, particularly when contracted parties are involved. As has been stated by the BC previously, changes to registry and registrar template agreements directly affect the broader community and the internet in enumerable ways. Therefore, discussions and negotiations on changing them is the business of the entire ICANN community and as such we all should have access to the information listed above.

Action: The BC again requests transparency and seeks the public posting of negotiation participants’ names and affiliations, meeting documents, and more detailed explanations and background on proposed changes, and proposed changes that were discussed by the Working Group but not included. This should be done for any and all registry or ICANN staff efforts to change the template agreement. Further discussions with the broader community should be conducted regarding changes to these proposed amendments before they are finalized and sent to the ICANN Board for consideration.

In addition, I would note and add to those comments referenced above, the following:

3. September 30, 2016, is fast approaching, and ICANN management and staff, particularly at the “Global Domains Division” (GDD) seem ill-prepared--still engaging in unprofessional, incompetent, inept or opaque practices, as noted above and below, with hostility to the interests of the vast majority of domain name registrants worldwide--excerpt from [News Review \[17Jul\]: ICANN Secretly Colludes With New gTLD Registry Operators](#):

"ICANN has always been and will continue to be subject to antitrust laws" --Larry Strickling, NTIA, July 14, 2016, [ICANN, NTIA, IANA Transition, Fundamental Problems, the Macro View | DomainMondo.com](#)

On July 12, 2016, I emailed ICANN, asking several questions about the [Proposed Amendments to Base New gTLD Registry Agreement](#), public comments to which now **close 20 Jul 2016** at 23:59 UTC (extended from 13 July 2016).

In [last week's News Review](#) I noted:

"If you are a domain name registrant (particularly a **new gTLD domain name registrant**), read the comments already submitted by George Kirikos [here](#) and [here](#), and submit your own comment by the deadline. All comments submitted may be read on the [comments forum](#). Also note that [ICANN said it would hold a webinar in June on the proposed amendments](#), but that turned out to be just another broken promise by the dysfunctional ICANN, confirming once again, that for [ICANN](#), domain name registrants are just a resource for exploitation in the form of gTLD name registration and renewal fees, as well as exploitation by ICANN's contracted parties (gTLD registry operators and registrars). Always remember that ICANN leadership (former ICANN President & CEO Fadi Chehade, and his crony, ICANN Global Domains Division President Akram Atallah), referred to **new gTLD registry operators** as the true "[customers](#)" and "[partners](#)" of ICANN. **Caveat Emptor.**"

Below are excerpts from the questions I emailed (*italics*) and the responses I received from ICANN's [Cyrus Namazi](#), together with **my note** follow-up comments:

Questions:

On 31 May 2016, Cyrus Namazi, ICANN Vice President, Domain Name Services & Industry Engagement, Global Domains Division, wrote a blog post on the ICANN.org website titled "Amending the New gTLD Registry Agreement" --
<https://www.icann.org/news/blog/amending-the-new-gtld-registry-agreement> --
stating:

"After nearly 18 months of discussions, the revisions proposed by the RySG that ICANN agreed to have been made available to the community for comment today ... ICANN

plans to hold a webinar in June 2016 **to review the proposed changes in detail** and **provide an opportunity for community members to ask questions**. Stay tuned for an announcement with more information."

1. When and where was the ICANN webinar in "June 2016" held to "review the proposed changes in detail and provide an opportunity for community members to ask questions"?

2. What is the URL of the webpage where notice of the webinar, including its date and time and means of attending, was given to the ICANN community, or the global internet community of domain name registrants (who are directly and detrimentally impacted and affected by the proposal), which Mr. Namazi indicates was negotiated in secret ("discussions") over a period of eighteen (18) months, between ICANN and ICANN's Registries Stakeholder Group (RySG), representing ICANN's contracted parties which are each granted exclusive worldwide monopolies by ICANN (itself a soon-to-be "unregulated global monopoly")?

ICANN response: ICANN hosted a [webinar using Adobe Connect](#) titled, "Amending the New gTLD Registry Agreement" on 14 June 2016 at 16:00 UTC. The webinar was publicized via **direct email**, sent 9 June 2016, to **new gTLD applicants and gTLD registries** subject to the amendment process.

My note: In other words, **domain name registrants** are not part of the "ICANN community" and were not invited, received no notice, and were not allowed to attend **ICANN's webinar** to "review the proposed changes in detail" nor given an opportunity "to ask questions."

Question:

9. Is it the policy or customary practice of ICANN that domain name registrants, and their interests, are to have no representation in "negotiations" or "discussions" concerning material changes to Registry Agreements which directly and detrimentally impact or affect domain name registrants worldwide?

ICANN response: "Regarding your questions about the negotiations, ICANN was represented by its lawyers and a cross-functional team of staff members from its Global Domains Division, Contractual Compliance department, and Office of the Chief Technology Officer. Registries were represented by a working group appointed by the Registries Stakeholder Group, as specified in the base New gTLD Registry Agreement. Meetings took place about once per month and were conducted both telephonically and in-person at ICANN meetings."

My note: In other words, ICANN, the California corporation, had representation, as did new gTLD Registry Operators. **Domain name registrants** were not represented,

although they are directly and **detrimentally** affected and impacted by the **proposed amendments**, and suffer from the *continuing incompetence and hostility* of ICANN management and staff towards domain name registrants. As noted last week, for ICANN, **domain name registrants** are just a resource to be exploited, financially and otherwise. For registrants, here is a [resource for private antitrust actions](http://www.antitrustinstitute.org/content/private-enforcement-antitrust-law-united-states-handbook) -- <http://www.antitrustinstitute.org/content/private-enforcement-antitrust-law-united-states-handbook>-- (yes, in the USA, unlike most of the world, **private antitrust actions** are allowed and encouraged). Also check out this introduction to "[cartels and collusion](#)." At this rate, some plaintiff antitrust law firms are going to get rich off arrogant ICANN and its new gTLD "*partners*," after September 30, 2016. And I'm sure **Jones Day** will gladly defend ICANN, to its last dollar!

4. Any waiver of registry operator fees in the arbitrary and sole discretion of ICANN management and staff is an open invitation to graft, corruption, and kick-back schemes reminiscent of the FIFA scandals. ICANN lacks a comprehensive and effective conflicts of interest and code of conduct applicable to every ICANN employee, and ICANN may have already engaged in questionable, if not illegal, behavior. See, e.g., [How ICANN and ICANN CEO Fadi Chehadé Evade Accountability | DomainMondo.com](#).

5. Most new gTLDs are failing and this has already been acknowledged by many in the new gTLDs industry—see, e.g., "*Over 50% of [new gTLDs] will be operating at a loss for the next year*"--[New Top Level Domain Industry First Half 2016 Analysis & Insights \(Infographic\) | circleid.com](#). ICANN President & CEO Rod Beckstrom said, at the time the *ill-conceived, misbegotten* **new gTLDs program** was approved by ICANN, that there would be “winners and losers” among the new gTLDs, but that it was up to consumers, not ICANN, to pick the winners. See [New gTLDs, Winners, Losers, Rod Beckstrom, Kurt Pritz, ICANN \(video\)](#) and [Back to the Future: ICANN CEO Rod Beckstrom, CSIS Keynote, 2012 video](#). A free market, over time, can clear the chaos, market damage, and economic losses, inherent in ICANN’s ill-advised program to launch hundreds of “*unwanted, unneeded*” **new gTLDs**—which have also been called the “*garbage extensions*” by one major investor in a new gTLD registry operator—ICANN should not start trying to “save” select registry operators by reducing fees or dreaming up other subsidies or kick-back schemes. After the destruction and damage in the domain name marketplace caused by ICANN flooding the DNS with hundreds of new gTLDs, the marketplace and domain name industry both desperately need consolidation and rationalization. If a registry operator cannot afford the modest fees charged by ICANN, they should go out of business. If anything, ICANN should first eliminate (or reduce), all of the **registrant** domain name registration and renewal fees, before it even begins to think about “waiving” registry operator fees. There are plenty of fools in the world with \$185,000 to throw away, ICANN’s new gTLDs program is living proof of that. Next time they may learn to conduct a little “*due diligence*” before “*drinking the kool-aid*.”

6. ICANN has been weakened, and perhaps corrupted, by creating a separate Global Domains Division (GDD) during the tenure of former ICANN President & CEO Fadi Chehade. While it allowed Chehade, who admittedly [didn't understand the domain name industry](#), to appoint his crony, Akram Atallah, to the second-highest paid position at ICANN, thereby allowing Chehade to travel and dabble in geo-politics with the Brazilians and Chinese (and others), and also allowed him plenty of time to hang out and party in Davos, Switzerland, at meetings of the World Economic Forum (on ICANN's dime), the global internet community has not been well-served by the GDD:

- GDD's "Contract Compliance," staffed with Chehade's cronies, has been called an ["unmitigated disaster;"](#)
- The GDD's crowning achievement to date has been the ["dot SUCKS" fiasco](#);
- Indicative of the ICANN community's lack of trust and confidence in the GDD is the fact that the only major change to ICANN structure, in the IANA transition plan, is separating the IANA Department from the GDD, into a new separate corporation.

Hopefully the ICANN Board and new ICANN President & CEO, in the near future, will reorganize ICANN's corporate and operational structure, and staffing, abolish the GDD completely (a GDD President is one too many "Presidents" for ICANN), and move "Contract Compliance" into a separate division or department that includes consumer trust and protection, as well as domain name registrants' remedies and advocacy, reporting directly to the ICANN President & CEO, and the ICANN Board.

Respectfully submitted,

John Poole

Domain name registrant, and Editor of [Domain Mondo](#), [<http://www.domainmondo.com>]