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VIA EMAIL ONLY (draft-eoi-model@icann.org)

Internet Corporation for Assigned Names and Numbers

**Re: Comments on Draft Model Expressions of Interest and Pre-Registration  
Model on Behalf of Ford, Volvo, Honda, Volkswagen, Audi, and Hertz**

To Whom It May Concern:

On behalf of the above-listed automobile manufacturers and other prominent trademark holders, we submit the comments below, opposing adoption of the proposed, draft model for Expressions of Interest and Pre-Registration for new gTLDs (“EOI”) published for comment on December 18, 2009. By way of background, the undersigned counsel has been involved in online trademark enforcement since the earliest stages, having filed some of the very first domain name lawsuits and having participated in drafting and lobbying in support of legislation enacted as the Anticybersquatting Consumer Protection Act (ACPA).

Adoption of the EOI would violate fundamental commitments made by the United States Department of Commerce and ICANN in the Affirmation of Commitments (“Affirmation”) (i) to “ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent,” (ii) to “perform and publish analyses of the positive and negative effects” of any decision to implement new generic top level domain names (gTLDs), including “any financial impact on the public, and the positive or negative impact (if any) on the systemic security, stability and resiliency of the DNS,” and (iii) to consult with ICANN’s Governmental Advisory Committee (GAC). *See* Affirmation ¶¶ 3-6; *see also* Draft Applicant Guidebook version 3, letter of Rod Beckstrom.

Adoption of the EOI would violate these commitments by implementing a process that materially and substantively impacts stakeholders without complying with the procedural steps outlined above. If adopted, participation in the EOI would be mandatory for eligibility to submit a gTLD application in the first round and would require a deposit of \$55,000 USD, refundable under very limited circumstances. Thus, participation in the EOI would constitute a material, substantive step in the applicant’s acquisition of a gTLD; concomitantly, failure to participate would result in substantive negative consequences, discussed further below.

ICANN, through adoption of the Affirmation and through its Board, committed to the introduction of new gTLDs only after first performing and publishing an independent economic analysis of the positive and negative effects of such action, addressing threshold questions such as whether introduction of new gTLDs is needed and whether the cost to trademark holders will offset any benefit that may be achieved. Such analysis has never been performed. Nor has ICANN consulted with the GAC. Implementation of substantive procedures in the new gTLD process without undertaking such analysis and consultation violates the spirit of the Affirmation, if not the letter.

Moreover, exclusion of an applicant who does not participate in the EOI process from eligibility to submit a gTLD application in the first round is a material and significant disadvantage and will likely compel trademark holders to participate in the EOI merely to avoid the risk that a desired gTLD will be acquired in the first round by another. In this way, the EOI creates a false sense of urgency. It may also lead applicants to believe that (a) ICANN will approve their new gTLD; (b) give priority to their new gTLD over other later filers; (c) eliminate the rigorous scrutiny that ICANN must conduct into the applicant, the application, and the ability of such applicant to operate as a new gTLD registry; or (d) incent the EOI applicant to seek venture capital and other funding based on a promise from ICANN. In sum, the EOI is an unwise maneuver, which circumvents the existing ICANN processes and has the effect of moving new gTLDs toward completion without addressing the fundamental issues surrounding trademark protection and the security and stability of the Internet.

Finally, the introduction and rapid advancement of the EOI by a financially self-interested “group of participants that engage in ICANN’s processes to a greater extent than Internet users generally” is troubling and calls into question the sincerity of ICANN’s commitment to ensure that its decisions serve the public interest and are accountable and transparent. *See* Affirmation ¶ 3. The process to establish the EOI does not appear to respect the historical and mandated ICANN bottoms-up and consensus-driven process, but appears to be driven by the interests of a narrow group of stakeholders who have concluded that the EOI will effectively advance their financial interests in securing the prompt introduction of additional gTLDs. While the effects that acceptance of advance deposits and other aspects of the EOI will have on whether new gTLDs are eventually introduced may be difficult or even impossible to measure, they are no less likely to be real and, to the extent they occur, no less improper.

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In conclusion, and as set forth in our prior comments, until the overarching and fundamental question of whether the introduction of new gTLDs is needed or in the public interest has been assessed, any steps that hasten the introduction of new gTLDs is unwise and unwarranted.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory D. Phillips". The signature is written in a cursive style with a large, stylized initial "G".

Gregory D. Phillips