

December 15, 2008

To: ICANN (gtld-guide@icann.org)

From: National Cable & Telecommunications Association

Re: Comments to the New GTLD Program and Process

Dear Mr. Twomey and Mr. DengateThrush:

The National Cable & Telecommunications Association (“NCTA”) respectfully submits these comments related to the Guidebook and the new top-level domain (TLD) program.

NCTA is the principal trade association representing the cable television industry in the United States. Its members include cable operators serving more than 90% of the nation’s cable television subscribers, as well as more than 200 cable programming networks and services. NCTA’s members also include suppliers of equipment and services to the cable industry. In addition, the cable industry is the nation’s largest provider of high-speed Internet access after investing over \$130 billion since 1996 to build out a two-way interactive network with fiber optic technology. The cable industry’s investment in such broadband networks, in turn, has enabled NCTA’s members to become the leading providers of voice over Internet Protocol (VoIP) service.

By any measure, NCTA’s members have invested literally billions of dollars to establish some of the best-known and most trusted brands in the cable services, programming, equipment, broadband Internet access and VoIP sectors. As such, we hereby express our deep concerns with ICANN’s current plans to implement the new TLD program. In particular, the program raises serious questions and poses risks for both consumers and companies that dwarf the program’s benefits, especially in the short-term. Thus, NCTA urges ICANN to reconsider its proposal and, at a minimum, defer its implementation beyond early 2009, as currently planned.

Preserving Strong Brands on the Internet Benefits Both Consumers and Companies

NCTA acknowledges that one of ICANN’s overarching goals has been to foster competition in the domain-name marketplace. NCTA likewise does not object to ICANN taking measured steps to expand the domain name space commensurate with demand for more innovation and choice in the use of the Internet and its addressing system. NCTA’s members have a strong history of bringing consumers new options in video, Internet and voice services and capabilities, and thus these members understand the need to continue promoting consumer choice and the many benefits that flow from such choice.

In order for consumer choice to be truly meaningful, however, consumers need effective tools for helping them sort out what they value most among rapidly expanding Internet offerings. This need implicates trademark and other branding issues, which overlap significantly with the use and availability of domain names. For consumers and companies engaged in commerce on the Internet, the use and availability of domain names overlaps significantly with questions of

trademark and other branding issues. From a consumer perspective, trademarks and brands distinctively identify a company as the source of a product or service. This distinctive identification, in turn, enables companies to build value and trust in their products and services. The benefits of this system to both consumers and companies are readily apparent. Consumers gain a “shorthand” way of distinguishing the products and services they value most from the myriad other offerings made available over the Internet. Companies gain a method of investing in (and reaping the rewards of) the quality or other distinguishing attributes of their products and services.

The mutual benefit that consumers and brandholders enjoy takes on special significance with respect to the communications services, capabilities and content provided by NCTA’s members. Central to the Internet’s success in expanding innovation, choice, community and freedom of expression is its ability to empower consumers to access the content, applications and services they want, when and how they want them. Consumers who want to access news programming from CNN or educational programming from Discovery Channel should be able to do so without worrying that their choice of information source has been compromised. This is true whether those consumers reside in the United States or in many other countries where access to outside news and information over the Internet may provide an important lifeline to the outside world.

The Proposal Would Exacerbate Consumer Confusion and the Costs of Defending Brands

In order to preserve the benefits that both consumers and NCTA members derive from their brands, steps must be taken to minimize consumer confusion, as well as limit the costs and burdens companies incur defending their trademarks and brands. Without additional study and revision, however, the new TLD program will fail in both respects.

With respect to consumers, the proposal would expand, rather than minimize, confusion largely because it would enable TLDs to use any word or phrase, which could include brand names or organization descriptors. Using the example above, then, consumers who want to access news programming from CNN may find themselves trying to decide whether to look for their desired content by visiting “CNN.com” or “news.CNN.”

But the proposal would exacerbate the consumer confusion problem by overburdening NCTA members and other brandholders. Under the new TLD program, hundreds, if not thousands of new TLDs could be approved. This would dramatically increase the costs companies would be forced to incur defending their brands, lest new TLDs mislead their customers into transactions with entities they do not know or trust. These costs and burdens are most likely to be most onerous for companies that have invested in the most valuable brands, such as those held by NCTA members.

NCTA’s members might be less concerned if ICANN’s proposal coupled this increase in TLDs with more meaningful improvements in the mechanisms to defend against “cybersquatters” and others targeting their brands. Unfortunately, that is not the case. Rather, the proposal would leave brandholders with the same two main options for defending their brands: defensive registrations and filing complaints with approved dispute resolution providers. This approach is no longer reasonable when faced with potentially thousands of new TLDs and the resulting legal

fees companies would incur as they try to hold back this flood. Even worse, under the proposal, companies would not be reimbursed for the costs of defending their brands even when they prevail. In addition, the proposal fails to provide for a free, accurate and publicly available access to records containing registration information about registered domain names. This effectively would complicate efforts to identify registrants of abusive domain names, just when such abuses are likely to skyrocket.

Implementation in Early 2009 Would Further Complicate the Economic Downturn

Perhaps the most troubling aspect of the new TLD program concerns its timing, given ICANN's intention to implement the new program in early 2009. Consumers and companies find themselves in the grip of a worldwide recession, where businesses, government agencies, and consumers are experiencing mass lay-offs, bankruptcies, budget cuts, and strict limits on non-essential spending. Instituting the new TLD program in the near term will do nothing to alleviate these economic pressures and, more likely, will make matters worse.

Given these economic pressures, as well as the reality that the current proposal would do more harm than good, NCTA urges ICANN to reconsider its plans to implement the new TLD program in 2009 and, instead, conduct broader, global studies to confirm its assumptions regarding the economic demand for these new TLDs. NCTA recognizes that ICANN may not be satisfied with delaying expansion of TLDs indefinitely. But further study of this issue may yield approaches that better balance costs and benefits, or at least postpone the disruptions that new TLDs inevitably will create until consumers and companies stand a better chance of weathering such storms.

Respectfully submitted,

/s/ Daniel L. Brenner

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