

Mr. Paul Twomey  
President and CEO  
Internet Corporation for Assigned Names and Numbers  
4676 Admiralty Way, Suite 330  
Marina del Rey, CA 90292-6601  
USA

Re: Demand Media's Comment on Module 6

Dear Mr. Twomey:

This RFP will initiate the first truly open round of TLDs since ICANN was established ten years ago. We believe these TLDs will inject innovation, investment, and new competition to the DNS to the strong benefit of consumers, businesses, Governments and the DNS itself.

Some have asked why we need new TLDs at all, suggesting that consumers are not clamoring for them. We think such arguments display a misunderstanding of the nature of innovation. The most productive and beneficial developments in science and business have rarely been the result of broad public demand for a specific development. Rather, the very concept of innovation means that most people did not think of the idea until after its introduction.

We are reminded of the introduction of FM radio when some questioned the need for change on the grounds '*we already have radio*', since AM already existed. We believe just as FM and its following technologies resulted in higher quality service and choice for consumers, new TLDs will also begin a second phase of innovation and service improvement for DNS users.

We also think it is illogical to argue against TLDs because they might result in consumer confusion. Using this approach we would stop all new services and brands in other industries. No one can predict what improvements will come as a result of new TLDs and the products bundled with them, but history indicates there will be improvements. The process of achieving this innovation will not be a free-for-all. ICANN has balanced innovation with strong contractual and technical safeguards to protect registrants and trademark holders, and to ensure DNS security and stability.

This RFP has been in development a long time. Over the past months and years there has been a huge amount of input, discussion and study resulting in the document we now all see. We believe the document is a very well crafted synthesis of the inputs received. It proposes strong and practical solutions to the many issues raised during the process.

We think the RFP is solid in almost all respects and we encourage ICANN to not let perfection become the enemy of good. We encourage the timely review of comments on this current draft, prompt issue of the final version and swift progress to the bid submission phase. In particular, we recommend the four month 'global communications campaign' start concurrent with issue of the next RFP draft (planned for February 2009). Some argue that this communications campaign should not start until after the RFP is finalized in May 2009. We believe this would unnecessarily delay the process by four months, as well as denying the audience for the campaign an opportunity to meaningfully comment on the RFP.

Failure to stick with a Q2 2009 commencement for application submission will put some of the anticipated competition and innovation benefits to consumers at-risk. Like many others we have investors and business plans that rely on timely implementation of this process.

### Comments on Module 6

The following language should be deleted from the opening paragraph *“(including all parent companies, subsidiaries, affiliates, agents, contractors, employees and any and all others acting on its behalf)”*. Applicants may wish to have a specific corporate entity enter into the application process for tax, liability, or a number of other reasons. While it is understandable that ICANN would like to “capture” each parent of each applicant, the upside to ICANN is outweighed by the downside to the applicant (and all of its “parent companies, subsidiaries, affiliates, agents, contractors, employees and any and all others acting on its behalf”). Retaining this language could act to significantly suppress the number of applications that are submitted, especially those which would have otherwise been submitted by applicants who are affiliated with organizations with the native financial and technical wherewithal that would make them the ideal sort of applicant.

#### **Paragraph 1:**

The following language should be deleted:

*“Applicant warrants that the statements and representations contained in the application (including any documents submitted and oral statements made in connection with the application) are true and accurate and complete in all material respects, and that ICANN may rely on those statements and representations fully in evaluating this application.”*

And should be replaced with mutual language which also excludes references to oral communications<sup>1</sup>, such as: “Both ICANN and Applicant each warrant that the statements and representations that each has made in the application and application materials (including any documents submitted in connection with the application) are true and accurate and complete in all material respects, and that each party may rely on those statements and representations fully in submitting or evaluating this application.”

#### **Paragraph 2:**

This paragraph should be deleted and replaced with sections (a) and (b) as follows:

- (a) Applicant warrants that it has the requisite organizational power and authority to make this application, and is able to make all agreements, representations, waivers, and understandings stated in these terms and conditions and to enter into the form of registry agreement as posted with these terms and conditions.
- (b) ICANN warrants that it has the requisite organizational power and authority to conduct this application process, and is able to make all agreements, representations, waivers, and understandings stated in these terms and conditions and to enter into the form of registry agreement as posted with these terms and conditions.

<sup>1</sup> If ICANN intends to rely on a particular oral statement in making its decision to award a string, they should ensure that the question is in the application such that a written answer is required or that it appears as a representation or warranty in the gTLD agreement.

**Paragraph 4:**

The following language should be deleted as it appears to be redundant with language in Paragraph 3:  
*"ICANN makes no assurances that an application will be approved or will result in the delegation of a gTLD proposed in an application."*

Further, the phrase "Subject to other provisions within this Guidebook," should be added before ". . . Applicant acknowledges that if it fails to pay fees within the designated time period at any stage of the application review and consideration. . ."

**Paragraph 5:**

This paragraph is overbroad and requires the applicant to bear the risk of whether or not ICANN has the requisite authority to engage in the new gTLD application process. This paragraph should be amended as follows:

*"Except for claims arising out of ICANN's willful misconduct or gross negligence, Applicant shall indemnify, defend, and hold harmless ICANN (including its affiliates, subsidiaries, directors, officers, and employees, collectively the ICANN Affiliated Parties) from and against any and all third-party claims, damages, liabilities, costs, and expenses, including legal fees and expenses, arising out of or relating to: (a) any approval or rejection of the application; and/or (b) ICANN's reliance on information provided by Applicant in the application."*

**Paragraph 6:**

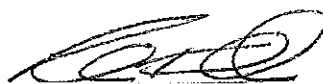
This paragraph is overbroad and essentially requires applicants to check their intellectual property rights at the door. If left intact, this paragraph will significantly suppress the number and quality of applicants and applications that it receives. This paragraph should be amended as follows:

*"Except for claims arising out of ICANN's willful misconduct or gross negligence, Applicant hereby releases ICANN and the ICANN Affiliated Parties<sup>2</sup> from any and all claims by Applicant that arise out of, are based upon, or are directly related to, any reasonable action, or reasonable failure to act, by ICANN or any ICANN Affiliated Party in connection with ICANN's review of this application".*

Regards,



Paul Stahura  
Chief Strategy Officer  
Demand Media, Inc.



Richard Tindal  
Senior Vice President, Registry  
Demand Media, Inc.

<sup>2</sup> "ICANN Affiliated Parties" as amended in comments to Paragraph 5 above.