TESTIMONY OF DOUG BRENT, CHIEF OPERATING OFFICER,

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS (ICANN)

BEFORE THE US HOUSE COMMITTEE

ON THE JUDICIARY

SUBCOMMITTEE ON COURTS AND COMPETITION

HEARING ON EXPANSION OF TOP LEVEL DOMAINS AND ITS EFFECT ON COMPETITION

SEPTEMBER 23, 2009

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Mr. Chairman and members of the Committee, thank you for the opportunity to speak before this Committee. I am Doug Brent, the Chief Operating Officer of the Internet Corporation for Assigned Names and Numbers (ICANN), I have management responsibility for much of ICANN's day-to-day operations.

I. ICANN in 2009

ICANN was created in 1998, born from the United States Government's "White Paper on the Management of Internet Domain Names and Addresses" (White Paper)[1], and with the assistance and support of the United States Government across three presidential administrations. ICANN is the manifestation of a bottom-up, multi-stakeholder entity that coordinates key technical functions of the global Internet, as was envisioned by the United States Government eleven years ago.

ICANN is really two things. First, a public benefit nonprofit, private sector led corporation organized under the laws of the State of California and headquartered there. Second, ICANN is a global organization of stakeholders, including participants from across industry, governments and individual Internet users. ICANN is recognized by the world community as the authoritative body for technical coordination and policy development regarding the stability and interoperability of the Domain Name System, or DNS, which for purposes of this testimony will be used to describe the coordinated system of domain names; Internet protocol addresses and autonomous system numbers; and protocol port and parameter numbers.

While ICANN has many stakeholders and interests, the work of ICANN is for the public benefit, specifically the benefit of domain name registrants and the global community of an estimated one billion Internet users. ICANN accomplishes this work for registrants and Internet users through a bottom-up, consensus-based process. While the focus of many of the discussions at the hearing today will be on how ICANN may further improve in this mission, in just over eleven years of existence, ICANN has achieved much. ICANN has become the place for stakeholder driven policy development on the management of the DNS and issues surrounding it.

ICANN has been a key facilitator of a single, global, interoperable Internet. ICANN has

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[1] United States Department of Commerce, *White Paper on the Management of Internet Domain Names and Addresses*, *at* http://www.ntia.doc.gov/ntiahome/domainname/6_5_98dns.htm (June 6, 1998) ("White Paper").

pursued policies that advantage the domain name registrant through the introduction and fostering of competition, predictably resulting in choice of vendors, differentiation in service offerings, and lower prices. Particularly in the last years, the ICANN community has made several landmark efforts towards enhanced protection for registrants, including the recent adoption of a new set of contractual rules for registrar behavior and enforcement.

Importantly, ICANN is in the implementation planning stage of defining the processes for adding new generic top-level domain names (TLDs) to the domain name system – the names after the dot – in all the languages of the world to expand the benefits of competition, innovation and choice. What is a new generic TLD (gTLD)? It might be a .FINANCE domain where consumers could be certain they were dealing with authentic financial institutions operating under secure conditions. It might be a .APACHE domain, where Native Americans would have a place for their online identity. It might be a .IBM domain, where marketers take charge of their global, online presence at a place on the Internet that customers and business partners could easily identify.

Related to the issues before this Committee, ICANN has a three-fold role in performing its public interest mission on behalf of the registrants of domain names.

1) As directed by its Bylaws, and its multi-stakeholder processes, to act to introduce competition into the TLD space in the worlds' languages through the expansion of TLDs;

2) To appropriately accommodate the varied and disparate set of interest groups that participate in ICANN's processes, including intellectual property interests; and

3) To provide registrant protections throughout the DNS, responding to changes in this dynamic marketplace.

As the Subcommittee is aware, the Joint Project Agreement (JPA) between the National Telecommunications and Information Agency (NTIA) of the United States Department of Commerce (DoC) and ICANN is due to conclude on 30 September 2009. That conclusion is the culmination of almost eleven years of organization building between ICANN and the DoC. Members of Congress have expressed important principles regarding the ongoing relationship between the United States Government and ICANN. Some of these include that ICANN should remain a nonprofit corporation based in the United States, in a lasting relationship with the U.S. Government, and with a particular focus on ongoing transparency and accountability. While these discussions are continuing between ICANN's CEO and the NTIA, my understanding is that all parties are striving for a relationship that is long standing and that accommodates these important principles, that will call for continuous improvement and periodic reviews of ICANN's accountability and transparency, and security and stability, among other things.

The remainder of my testimony will address some of the important considerations

associated with the introduction of new gTLDs and actions by ICANN to protect the interests of domain name registrants.

II. New generic Top Level Domains

Since it was founded in 1998, one of ICANN's key mandates has been to create competition in the domain name market: "The new corporation ultimately should … oversee policy for determining the circumstances under which new TLDs are added to the root system."[2] The secure introduction of new gTLDs, as specified in the White Paper, remains an essential element of fostering competition and choice for Internet users in the provision of domain registration services.

The introduction of New gTLDs are identified as a core objective in each of MoUs (1998 – present) and the JPA, which state, "Define and implement a predictable strategy for selecting new TLDs."[3] The study and planning stages, extending back several years, include two trial rounds of top-level domain applications held in 2000 and 2003. Those rounds were used to shape the current process.

The policy recommendations to guide the introduction of new gTLDs were created by the Generic Names Supporting Organization (GNSO) over a two-year effort through its bottom-up, multi-stakeholder policy development process. The GNSO approved its Final Report on the Introduction of New Top Level Domains[4] in August 2007 by a 19-1-3 vote, a clear supermajority under the ICANN Bylaws.[5]

Principles guiding the policy development process included that:

- new gTLDs will benefit registrant choice and competition;

- the implementation plan should also allow for IDNs at the top level;

- the introduction of new gTLDs should not cause security or stability issues; and

- and protection of various appropriate interests requires objection and dispute resolution processes.

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[2] *Id*.

[3] *See, e.g.,* Amendment 6 to Memorandum of Understanding Between the U.S. Department of Commerce and The Internet Corporation For Assigned Names And Numbers, *at* http://www.ntia.doc.gov/ntiahome/domainname/agreements/amendment6_09162003 .htm (Sept. 16, 2003).

[4] GNSO Final Report on the Introduction of New Top Level Domains, *at* http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm (Aug. 8, 2007) ("Final Report").

[5] *See* Annex A to the ICANN Bylaws, http://www.icann.org/en/general/bylaws.htm#AnnexA.

To date, ICANN has demonstrated that it is proceeding with deliberation in launching the New gTLD Program, and will continue on that path.

A.   *New gTLDs will enhance competition and benefit registrants*

Several different economic reports, third-party observers, and ICANN stakeholders have recognized that the fundamental benefits of competition that apply in almost all markets will also benefit Internet users through enhanced service offerings, competition, innovation and choice in the domain name market. Still, others, including some here today, believe questions regarding possible costs to registrants and overall economic modeling need further analysis. I would like to first review some of the background on work done to date, and then look forward to possible actions to accommodate concerns that still exist.

Since the drafting of the White Paper it has been a fundamental assumption that increasing the number of gTLDs will increase competition.[6] This fundamental assumption was relied upon by the House Committee on Energy and Commerce when, in 2001, it initiated a hearing regarding potential detrimental effects to competition for ICANN's selection of only seven new TLDs out of 44 applicants for over 200 different TLDs in its early Proof of Concept round.[7]

ICANN has commissioned three separate reports during the implementation phase of the New gTLD Program.[8] ICANN is now on the cusp of finalizing many of the implementation details of the New gTLD Program, and as the documentation has

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[6] "The U.S. Government is of the view, however, that competitive systems generally result in greater innovation, consumer choice, and satisfaction in the long run. Moreover, the pressure of competition is likely to be the most effective means of discouraging registries from acting monopolistically." White Paper, *supra* note 1.

[7] *See* Transcript of February 8, 2001 Hearing before the Subcommittee on Telecommunications and the Internet of the Committee on Energy and Commerce, House of Representatives, On Hundred Seventh Congress, First Session,*available at* http://archives.energycommerce.house.gov/reparchives/107/hearings/02082001Hearing37/print.htm ("some view ICANN's
approval of only a limited number of names as thwarting
competition").

[8] Dr. Dennis Carlton, Report Regarding ICANN's Proposed Mechanism for Introducing New gTLDs, *at* http://www.icann.org/en/topics/new-gtlds/carlton-re-proposed-mechanism-05jun09-en.pdf ("Carlton I");
Dr. Dennis Carlton, Preliminary Analysis Regarding Price Caps for New gTLD Internet Registries,*at* http://www.icann.org/en/topics/new-gtlds/prelim-report-registry-price-caps-04mar09-en.pdf ("Carlton II"); and
CRA International, Revisiting Vertical Separation of Registries and Registrars, *at* http://www.icann.org/en/topics/new-gtld-crai-report-24oct08-en.pdf ("CRA").

become more specific, so have the criticisms attacking both the collective assumption that increasing the number of TLDs will increase competition, as well as the findings within the economic reports.

But what remains clear, as stated by Dr. Dennis Carlton, a noted economics professor and former Deputy Assistant Attorney General for Economic Analysis, Antitrust Division, U.S. Department of Justice from October 2006 through January 2008, is that any resultant delay of the launch of the New gTLD Program will inhibit competition in the use of generic, non-trademarked terms, and runs counter to the generally accepted view that market entry benefits consumers by expanding output and lowering price. The potential innovations and uses for the new gTLD namespace will be stifled if limitations to entry are imposed.[9]

While the New gTLD Program already included several protections for intellectual property concerns, and even more protections are under consideration right now, those requesting additional economic studies to take into account the costs to trademark holders fail to provide any specific evidence to support why entry into an entire market should be delayed. In the end, calling for a delay in the entry of new gTLDs only serves to perpetuate existing market conditions: concentration within some existing registries, most short generic strings unavailable, and those that trade on the value of the current marketplace, holding portfolios based upon the value of current .COM names.[10]

Similarly, delaying the introduction of new gTLDs for unsubstantiated fears of price gouging by way of forcing defensive registrations – based upon the omission of price caps in registry contracts – is not a sufficient reason to delay the benefits of introducing competition into the DNS. GTLDs without price caps exist today, yet the registry operators of those gTLDs have not been the subjects of complaints of opportunistic behavior.[11] Further, in a growing marketplace, it would not be rational for gTLD registries to be opportunistic in pricing. Finally, registrants are likely to benefit from new and innovative services and pricing models in the new gTLDs – models that we cannot even imagine today in the static marketplace.

Even with what appears to be the compelling benefits of competition, ICANN's commitment to open and transparent processes requires further action on ICANN's part to address the questions that have been raised surrounding the sufficiency of the economic studies under taken to date. Accordingly, ICANN will retain economists to review and summarize work to date regarding the costs and benefits of new gTLDs, putting that work into the context of the questions some have said remain open, and then evaluate whether additional study is required.

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[9] Carlton I, *supra* note 8, *passim*.

[10] *Id*. at paragraphs 75-76.

[11] *Id*. at paragraph 74.

B. *ICANN's Policy Processes take into account its varied and disparate constituents and stakeholders*

ICANN's bottom-up stakeholder driven model requires a thorough policy development process. The steps leading towards ICANN's decision to introduce new gTLDs followed this thorough process; ICANN followed a detailed and lengthy consultation process with all constituencies of the global Internet community represented by a wide variety of stakeholders – governments, individuals, civil society, business and intellectual property constituencies, and the technology community. This work was conducted in the GNSO, the supporting organization that has responsibility to set policy for the generic names area, and effectively acts as the representative of the Internet community for generic names. Also contributing to this policy work were ICANN's Governmental Advisory Committee (GAC), At-Large Advisory Committee (ALAC), Country Code Names Supporting Organization (ccNSO), and Security and Stability Advisory Committee (SSAC).

1. **GNSO and Community Involvement in the New gTLD Program, including Policy Development**

On 29 October 2003, the GNSO initiated the policy development process (PDP) for the creation and implementation of a regularly scheduled procedure and objective selection criteria for new gTLD registries.[12]

The GNSO Issues Report was released on 5 December 2005, and public comments were sought on the terms of reference.[13] Thirty-eight comments were received from 21 commenters, including comments specifically relating to trademark protection concerns. The GNSO followed its regular PDP on the introduction of new gTLDs. The end result of this policy work, the Final Report – Introduction of New Generic Top-Level Domains (Final Report) was issued on 8 August 2007.[14]

The GNSO considered and addressed trademark issues throughout the PDP on new gTLDs, well before implementation work had begun and the first Draft Applicant Guidebook (DAG) was issued. First, the GNSO, in February 2007, convened a working group and released an issues report on protecting the rights of others in new gTLDs. In June 2007, that working group produced a final report.[15] The working group was tasked with "determin[ing] whether to recommend to [the GNSO] Council a best practices approach to providing any additional protections beyond the current registration agreement and UDRP policy for the legal rights of others during the domain name

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[12] GNSO Minutes, http://gnso.icann.org/meetings/minutes-gnso-29oct03.html (Oct. 29, 2003).

[13] Annoucement of Release of GNSO Issues Report, http://www.icann.org/en/announcements/announcement-06dec05.htm (Dec. 6, 2005).

[14] Final Report, *supra* note 4.

[15] Report of Working Group on Protecting Rights of Others, http://gnso.icann.org/files/gnso/drafts/GNSO-PRO-WG-final-01Jun07.pdf (Jun. 1, 2007).

registration process, particularly during the initial start of a new gTLD. . . . A best practices document could be incorporated into the material for the application process for new gTLD applicants." The working group was not able to provide a list of rights protection mechanisms that could be universally applicable to all new gTLDs, in part, because of the expected diversity in new types of registry businesses. However the report set forth six recommendations to be used as principles for new gTLD operators to consider in their implementation plans. The report, including the recommendations, was provided to the larger group developing the Final Report. The working group report was authored in part by members of the Intellectual Property Constituency, which has been actively engaged in various stages of this process for years.

The 8 August 2007 Final Report makes a policy statement on the introduction of new gTLDs, stating: "Recommendation 3 – Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law." This includes trademark rights. This policy from the GNSO has been stated, in each iteration of the DAG, and ICANN has been working hard to create the details of the implementation of the policy presented on trademark issues. The New gTLD Program has, since the first DAG, included many protections for rights holders in the TLDs, such as a robust objection process for the use of trademarks in requested TLD strings. Further enhancements are being considered.

2.   **ICANN Board Decision on GNSO Policy Recommendation**

On 26 June 2008, the ICANN Board, by resolution, adopted the GNSO policy recommendations for the introduction of new gTLDs and directed staff to develop and complete a detailed implementation plan and continue communication with the community on the implementation work.[16]

The DAG was first posted on 24 October 2008.[17] In addition to posting the DAG, ICANN posted several Explanatory Memoranda, including a Memorandum on Protecting the Rights of Others. This specific memorandum explains the rights protection mechanisms included for protection at the top level and in second level domain name registrations.[18]

The first DAG was posted for public comment for 76 days. ICANN received over 300 documents of commentary comments from participants in 24 different countries. In response to those comments, on 18 February 2009, ICANN released a second version of

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[16] ICANN Board resolution, http://www.icann.org/en/minutes/resolutions-26jun08.htm (June 26, 2008).
[17] Posting of Draft Applicant Guidebook, http://www.icann.org/en/topics/new-gtlds/comments-en.htm (Oct. 24, 2008).
[18] Memorandum on Protecting the Rights of Others, at http://www.icann.org/en/topics/new-gtlds/protection-rights-22oct08-en.pdf (Oct. 22, 2008).

the DAG (DAG2), along with a full analysis of the public comment received on the prior version.[19]

Because of the high volume and varying nature of the comments received on trademark protection issues in response to the DAG, ICANN did not elect to use the DAG2 to provide alternative proposals. Instead, ICANN noted that additional consultation was required on this issue: "ICANN intends to conduct a series of discussions with all relevant parties relating to proposed enhanced protections for trademark name holders. . . . If additional trademark protection mechanisms are agreed upon and included in the next guidebook, this would likely result in a cost savings to trademark holders, and additional consideration should be given to these concerns raised as part of any proposal."[20]

ICANN further stated: "ICANN must balance the needs of individuals and individual constituencies with the needs of the community at-large. As it pertains to trademark protection, ICANN recognizes the trademark rights holders' concerns with protecting their brands and controlling costs associated with defensive registrations. ICANN believes in protecting brand owners' trademarks and preventing abusive registrations. To that end, ICANN is continuing to evaluate and update its brand protection strategy and will be setting out a process to receive further inputs regarding appropriate mechanisms to enhance those protections."[21]

C. *ICANN Activities Since the Publication of the DAG2*

There are multiple open issues needing resolution prior to publishing a final DAG, and ICANN is actively engaged in consultation – or is coming to a point of closure on the additional consultations, on those issues.

At its March 2009 International Public Meeting in Mexico City, ICANN had several consultations with the public on the DAG2 and the status of the New gTLD Program. In addition to the discussions in Mexico City, ICANN opened a public comment period on the DAG2, from 18 February to 13 April 2009. ICANN analyzed the comments made at the Mexico City meeting as well as the public comments received through the public comment process, and produced another analysis document in May 2009.[22] At that

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[19] Posting of Draft Applicant Guidebook 2 ("Draft Applicant Guidebook: What You Told Us), http://www.icann.org/en/announcements/announcement-3-18feb09-en.htm (Feb. 18, 2009).

[20] New gTLD Draft Applicant Guidebook: Summary and Analysis of Public Comment, http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf, at page 75-76.

[21] *Id*. at 76.

[22] Applicant Guidebook: Public Comments Analysis and Revised Excerpts, http://www.icann.org/en/topics/new-gtlds/agv2-analysis-public-comments-31may09-en.pdf (May 29, 2009).

time, ICANN also posted excerpts of revised sections of the DAG2 for public comment. Trademark Protection is just one of the "Overarching Issues" that remain open for further consultation. Others include (1) Security and Stability; (2) Malicious Conduct; and (3) Demand/Economic Analysis).[23]

In June 2009, ICANN held its International Public Meeting in Sydney. The New gTLD Program was the subject of significant consultation and discussion in Sydney, including a five-hour session on Trademark Protections and Malicious Behavior, and a multi-hour session on issues of vertical integration in registries. Since the beginning of July, ICANN has held four consultation sessions, two devoted primarily to discussions of the IRT Final Report and Trademark Protection (New York and London) and two on more general new gTLD update issues (Hong Kong and Abu Dhabi). Where possible, ICANN has arranged for remote participation for participants who are not able to travel to the regional events. ICANN will also have multiple opportunities for consultation on the New gTLD Program at the upcoming ICANN International Public Meeting in Seoul in October 2009. Several ICANN senior staff participated in these meetings; I participated in-person in Sydney, New York, London and Hong Kong.

ICANN is also preparing to seek further input and guidance from the GNSO on certain of the Overarching Issues, including Trademark Protection, to continue the ongoing community consultation and assistance in the formation of the implementation process. ICANN is dedicated to its mission and core values of bottom-up, consensus driven work, even though this consultation may result in additional delays in publishing the final DAG and moving forward with implementation.

D. *The IRT and Continuing Work on Trademark Protection*

At ICANN's 2009 Mexico City meeting, the ICANN Board passed a resolution directing the formation of the IRT in response to community proposals of solutions to the trademark protection issues identified in the discussions of the DAG.[24]

ICANN's Intellectual Property Constituency (IPC) of the GNSO was integral in forming the IRT, which was ultimately comprised of 18 international members (nine from the United States), as well as two alternates and six ex-officio members.[25] IRT members dedicated a substantial amount of time in-person and on the phone for this significant effort. Further, ICANN provided travel expense support and staffing throughout the process.

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[23] Revised excerpts of New gTLD Applicant Guidebook Public Comment Forum, http://www.icann.org/en/topics/new-gtlds/comments-e-en.htm.

[24] IRT Resolution, at http://www.icann.org/en/minutes/resolutions-06mar09.htm#07 (Mar. 6, 2009).

[25] IRT Membership Directory, at https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/trademark_protection:20090407232008-0-9336/original/IRT-Directory.pdf.

The IRT issued a draft report, posted for public comment on 24 April 2009.[26] After review of the comments and public consultation, the IRT issued its final report on 29 May 2009.[27]

Some new elements of in the new gTLD process, to provide appropriate rights protection, and based in part on the IRT recommendations, will appear in the next DAG. These include both "thick" Whois information (the requirement that a registry maintain and offer Whois information in a centralized way), and a dispute mechanism for use after a registry has been created. In order to address concerns that some of the recommended solutions might impinge on existing policies such as the Uniform Domain Name Dispute Resolution Policy (UDRP) or could themselves be the subject of policy development, ICANN will be asking the GNSO to begin an expedited review of some of the recommended solutions in an attempt to reach consensus on an optimal path for launching new gTLDs with robust mechanisms to ensure the protection of legal rights.

E.   *Mitigating Potential for Malicious Conduct*

Closely connected to concerns about rights protection are concerns about mitigating potential for malicious conduct; work on malicious conduct abuse is another active stream of work in the New gTLD Program. ICANN consulted with several key sources, including: the Anti-Phishing Working Group, the Registry Internet Safety Group, the Computer Emergency Response Team, and community and banking/finance associations and organizations. From these significant inputs, ICANN has identified several potential solutions to mitigate threats. ICANN staff recommends that a series of measures to mitigate malicious conduct be included in the DAG version 3, including enhanced background information and checks for applicants; a designated anti-abuse point of contact and documented procedures; a documented plan for DNSSEC implementation; a prohibition on wildcarding (redirection of non-existing domains, often to ad pages); the development of a domain suspension system; the provision for DNS glue record removal; and participation in an expedited registry security request process. ICANN also recommends the establishment of a voluntary security designation program for new gTLD registries to validate the establishment of an enhanced level of trust and meeting certain verification criteria. The reports that ICANN received that informed these recommendations are located at https://st.icann.org/new-gtld-overarching-issues/index.cgi?potential_for_malicious_conduct.

III. ICANN Has Achieved Great Success in Registrant Protections, and Continues to Improve and Innovate

ICANN has achieved significant successes in its mission of maintaining an interoperable,

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[26] Public comment forum on IRT Draft Report, http://www.icann.org/en/public-comment/public-comment-200905.html#irtdr.

[27] IRT Final Report, at http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf (May 29, 2009).

secure and stable DNS. There still is room for improvement, and ICANN remains committed to moving forward in as transparent a method as possible, and remaining accountable to all stakeholders.

Some of ICANN's recent successes are:

DNSSEC: Coordination with the United States Department of Commerce and VeriSign to achieve the signing of the Root Zone with DNSSEC in the near future.

Enhanced RAA: Through a consensus process, ICANN has amended the Registrar Accreditation Agreement to provide greater consumer protections and increased authority for ICANN's Contractual Compliance efforts. In a benefit to registrants and registrars, ICANN lowered the per-domain registration fee for entities adopting the enhanced RAA.

Data Escrow: The full implementation of Registrar Data Escrow requirements. In just over two years, nearly 99% of all gTLD domain name registrations are currently covered by ICANN's Registrar Data Escrow program, which provides registrant protections in the event of registrar failure, non-renewal or termination. ICANN has recently instituted a Data Escrow audit program to increase the confidence that registrars are depositing sufficient registrant data.

Registrar Transfer: Formulation of a De-accredited Registrar Transition Procedure,[28] which provides for an orderly transition of registrations in the event of loss of accreditation. With a higher rate of registrar terminations, an orderly and planned transition procedure minimizes any registrant impact.

A.   *ICANN's Contractual Compliance Work*

Most notable in registrant protection is the ongoing improvement of ICANN's Contractual Compliance work.

ICANN's recent registrar termination history demonstrates ICANN's commitment to the continuous improvement of its contractual compliance program. ICANN has terminated 38 registrar agreements since 2003, sending 24 termination notices and refusing to renew 14 registrar agreements, over the objection of those registrars. Fourteen of these registrar terminations – 36 percent – occurred in 2009.

The violations cited to support termination or non-renewal include: failure to pay ICANN fees (financial noncompliance is often one of the first signs that a registrar is unable to comply with other provisions of the RAA that are in place for registrant protection); failure to comply with data escrow requirements (6); failure to provide a working

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[28] De-Accredited Registrar Transition Procedure, at http://www.icann.org/en/processes/registrars/de-accredited-registrar-transition-procedure-01oct08.pdf (Oct. 1, 2008).

website and Whois look up service (3); failure to comply with UDRP provisions (1); failure to investigate Whois data accuracy claims (1); and insolvency (1). Data on termination and non-renewals relate to cases where breaches went uncured. ICANN has issued hundreds of compliance notices, which in the vast majority of cases resulted in improved registrar performance. ICANN will continue to explore ways to identify registrar noncompliance early, take action swiftly and terminate those registrars that undermine the domain name registration process.

ICANN has committed significant resources in its budget to its contractual compliance program. ICANN's 2010 operating plan and budget sets out over US$3,000,000 for contractual compliance activities.

1.   ICANN's Cybersquatting Enforcement Actions

Cybersquatting is a major concern for ICANN, the intellectual property community, law enforcement entities, and others interested in eradicating this harmful behavior. ICANN's role in combating cybersquatting has been invoked when those involved are ICANN-contracted parties.

Within the last twelve months, several cases were filed in United States courts alleging that ICANN-accredited registrars are engaging in cybersquatting. Accordingly, in 2009, ICANN terminated one registrar and refused to renew the accreditation of another registrar.[29] Currently, ICANN is assessing whether termination is appropriate in a case where a U.S. court found a registrar engaged in cybersquatting.

ICANN is working with its Registrar and Intellectual Property Constituencies to create advisories clarifying contractual terms for registrars relating to cybersquatting. Further, ICANN's multi-stakeholder community is working on revisions to the RAA, and this process will consider additional elements that would prevent possible cybersquatting by registrars.

It is also important to consider that the act of cybersquatting is not always tied to registrar behavior, and that cybersquatting can be directly addressed through the UDRP, established by ICANN in 1999.[30] The UDRP is an administrative procedure that addresses intellectual property concerns, including cybersquatting, decided by panels appointed under the auspices of the World Intellectual Property Organization (WIPO) and other approved UDRP providers.

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[29] Compliance letters, at http://icann.org/correspondence/burnette-to-sundin-11sep09-en.pdf; and http://www.icann.org/correspondence/burnette-to-malik-14jul09-en.pdf.
[30] Uniform Domain Name Dispute Resolution Policy, at http://www.icann.org/en/udrp/udrp.htm.

2.   **The Whois Data Accuracy Study**

With the proliferation of domain name registrations, trademark holders have become increasingly more concerned about Whois data accuracy as they attempt to protect their intellectual property interests. In an effort to broaden and inform community discussion regarding Whois data accuracy, ICANN has undertaken a Whois Data Accuracy Study of domain name contact information accuracy. ICANN, in collaboration with the National Opinion Research Center (NORC), designed a multistage sample intended to yield a 95% confidence level regarding the results.[31] ICANN's study will determine whether registrant names and addresses are accurate.   Study results will be publicly available in December 2009. Among its many possible uses, the study results will be used to guide ICANN's Whois related contractual compliance enforcement plans.

3.   **The WDPRS**

Today, ICANN accredited registrars have a contractual obligation to investigate Whois data inaccuracy claims. ICANN facilitates this process with an on-line reporting system, Whois Data Problem Report System (WDPRS), originally deployed in 2002.[32] This system notifies a registrar that there is a claim of Whois inaccuracy, and allows the person filing the report to inform ICANN whether action was taken regarding the inaccuracy report after 45 days (i.e., Was the Whois data corrected? Is the Whois data still inaccurate? Was the domain name deleted?).

While ICANN has updated this system from time to time over the years, a system rewrite was completed in December 2008 to provide increased functionality and to add tracking capabilities.[33] ICANN also dedicated additional staff to handling Whois inaccuracy claims.

Since introduction of this new tracking system, ICANN has processed approximately 55,000 valid reports of Whois inaccuracy. Results show that 45 days after an initial complaint, about 8,000 (or fewer than 16 percent) of the reported domain names are still indicated by the complainant as remaining inaccurate. ICANN then manually handles each remaining complaint with the result that all but 1,285 (less than three percent) are unresolved. These unresolved complaints are the subject of compliance investigations, and escalated contractual compliance enforcement action is planned if registrar responses are not received.

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[31] Announcement of Whois Accuracy Study, at http://www.icann.org/en/compliance/norc-whois-accuracy-study-design-04jun09-en.pdf.
[32] At http://wdprs.internic.net/.
[33] Announcement of Revisions to WDPRS, at http://www.icann.org/en/announcements/announcement-19dec08-en.htm.

ICANN's WDPRS is not a panacea for Whois data accuracy; however, since its introduction in 2002, the WDPRS has continued to have a measurable impact on the accuracy of Whois data. ICANN will continue to make enhancements to this system to ensure that it positively impacts the accuracy of Whois data.

In the end, ICANN enforcement efficacy is determined by two factors: the dedication of resources to enforcement activity and a set of enforcement rules appropriate to meet the expectations of the community. ICANN has invested ever-greater resources into enforcement with positive results. The rules for compliance also need ongoing review. Today, ICANN can mandate that Whois accuracy complaints be investigated by registrars. In the future, a mechanism that truly requires and defines accuracy will make this process more efficient, effective and reliable.

ICANN is also turning its focus to the base level issue of availability of Whois lookup services. ICANN is developing and testing a software tool to monitor registrar compliance with the contractually mandated requirement for registrars to provide free, publicly available web-based Whois data lookup services. It is anticipated that ICANN will complete its testing and commence using this compliance tool by October 2009.

4. **ICANN's Enhanced Contract Enforcement Tools**

ICANN Staff worked with the Registrar community to propose a new set of contractual provisions that enhances ICANN's enforcement tools and remedies. In May 2009, ICANN's Board of Directors approved a series of important amendments to the contractual framework that governs ICANN's relationships with its registrars. The new RAA includes enhanced compliance tools. The new remedies include allowing ICANN to: (1) suspend registrars for failure to cure breaches; (2) impose sanctions for repeated, willful material breaches; and (3) take compliance action when registrars fail to respond to audit requests.

Either voluntarily, or as existing contracts expire, all registrars are moving to the new contractual basis and it is anticipated that all ICANN-accredited registrars will operate under the 2009 RAA within the next five years. The new RAA is being rapidly adopted, and ICANN has put in place financial incentives to accelerate the adoption of the new RAA as rapidly as possible.

IV. Conclusion

ICANN is the bottom-up, multi-stakeholder entity that coordinates key technical functions of the global Internet, as envisioned by the United States Government eleven years ago. ICANN, in fulfilling that role, has already fostered lower prices for registrants, via the introduction of a competition in the domain name registration market. The long awaited next step is to introduce competition and innovation at the top-level of generic domain names

Years of work from every stakeholder group have taken us to this place; ICANN is in the final stages of formulating an effective way to implement the policy for introduction of new gTLDs. The ICANN community and Board will continue to take into account the important comments and suggestions that are being raised by the intellectual property and other constituent groups in the path to implementation of new gTLDs. ICANN is delivering on its three-fold mission in this regard to: (1) act to introduce competition into the gTLD space in the worlds' languages; (2) account to the varied and disparate set of interest groups that participate in ICANN's stakeholder-driven model; and (3) provide registrant protections throughout the DNS.

As a final note, it is important that we not abandon the efforts that led us to this point, but focus on how to make commitments that make the proposed processes even better, even more fair and equitable to all involved with an eye to the benefits that innovation and competition will bring to registrants and Internet users around the world.

After 30 September 2009 ICANN wants to make even more commitments. Some of these include that ICANN should remain a nonprofit corporation based in the United States, in a lasting relationship with the U.S. government, and maintain a particular focus on ongoing transparency and accountability.

While discussions are occurring between ICANN's CEO and the NTIA, my understanding is that both are striving for a long standing relationship that accommodates these important principles. I understand there will be focus on ICANN conducting periodic community-driven reviews of ICANN's accountability and transparency, and security and stability, among other things. ICANN is committed to being led and reviewed by its stakeholders and remaining open, innovative and capable of addressing the changes occurring in the global Internet now and in the future.