

Testimony of Paul Stahura

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Hearing on the Expansion of Top Level Domains and its Effects on Competition

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Chairman Johnson, Ranking Member Coble, Members of the subcommittee: good morning and thank you for inviting me to testify today.

I am the Founder of eNom, a Bellevue, WA based corporation and domain name registrar. Registrars are companies which are authorized by ICANN to sell domain names like pizza.com or fightcancer.org. eNom is also a provider of websites and email services. eNom is the second largest ICANN accredited domain name registrar, by volume, in the world. It powers over 10 million domain names on its platform and connects Internet users to websites two billion times each day. Our executives have been involved in nearly every aspect of the domain name system from technical, policy and business perspectives at both registries and registrars, and dating back to the early years of Internet commerce before ICANN even existed.

eNom's parent company is Demand Media, a company that develops, promotes, and distributes web content. It is a top-25 web property worldwide in terms of unique visitors to its network of Internet media properties such as eHow.com, Livestrong.com, trails.com, and golfink.com. Demand Media is also the largest distributor of videos to YouTube and is widely considered to be at the forefront of social media.

I started eNom in 1997 in my garage in Redmond, Washington with one small computer on an ISDN line, and now the company is one of the largest domain name registrars in the world with hundreds of employees, loads of servers in five locations and millions of domain names under our management.

When I started eNom, there was no competition in the domain name registrar business (you had to get your domain name through the one provider...Network Solutions). Fortunately, one of the first steps ICANN took after its inception was to introduce competition into the registrar business so companies like eNom, Godaddy and Register.com could flourish and provide innovation, better prices and more options for consumers. This is what competition does and I'm proud to say that eNom has brought choice, lower prices and innovation to consumers, as demonstrated by the 10 million names we currently manage.

Back in 1997, my true desire was to become a registry...a company that manages top level domains like .COM. Why just “sell” names when I can be the company that “produces” them. It seemed to me then, as it does today, that competition among top level domains was a good idea. Why should consumers be restricted to web “real estate” in just a limited number of locations? Why couldn’t there be a dot web to compete with .COM? Why should all bands and businesses involved with the music industry be restricted to names in .COM when a domain name such as guitars.music or rollingstones.music may better fit their needs?

Unfortunately, despite the fact that as the introduction of competition through new gTLDs is part of ICANN’s charter and is called for in the Joint Project Agreement between ICANN and the U.S. Department of Commerce, true competition in top level domains has not occurred. Yes, there are some more TLDs than there were 10 years ago, but the doors have essentially remained closed for entrepreneurs like me who have ideas for generic top level domains and are willing to risk significant capital and time in starting new businesses that can not only create jobs, but benefit consumers in many ways.

Some, including my wife, accuse me of being obstinate, but for me, it’s simply a matter of not letting go of a good idea, so I have worked through the years to realize my dream of managing a TLD. However, without true competition, my dreams have been continually dashed. Past efforts to allocate new gTLDs were arbitrary and left ICANN in the position of selecting a limited number of names based on subjective criteria. The result is that some of these TLDs are “hobbled” or underutilized, due to their unattractiveness or restrictions that were placed on them. As a result, Internet “real estate” is still limited.

I credit ICANN for now realizing it’s not in the best position to pick winners and losers and that market forces will better determine which TLDs are successful. Thus, ICANN and the DNS community have spent an extraordinarily long time devising a process that will be fair to all TLD applicants while providing strong protections for trademark holders. That is the only way to truly bring competition and innovation. With its current proposal for introducing new gTLDs, ICANN has wisely created open competition without a predetermined number or type of TLDs. ICANN has recognized that it is not in the position to determine that .BIZ is better than .WEB (for example)

It is true, theoretically, that the number of new potential gTLDs is unlimited. Practically, however, the number of new gTLDs will be limited by the stringent technical and financial requirements imposed by ICANN. In my view we are unlikely to see more than a doubling of the number of TLDs that currently exist. An analogy can be made to any State and their process for incorporating businesses in that State. They don’t limit the number of applicants, but they do have requirements such as a fee and filing of articles of incorporation. However, not every citizen of the State asks to open a new business. Some don’t have an idea, or the technical capabilities, or the time or the money to start such a business. These realities help determine who enters the market, not some arbitrary number set by the State. And, once the business is

launched, the market decides what is most innovative and desired by consumers, and thus, whether the business will be successful. Similarly, ICANN should not artificially limit the number of new TLDs.

Some who are advocating a limited approach to TLDs are voices for incumbents who are not excited about having competitors and have in the past advocated for niche TLDs like “.museums” or “.nonprofits”, just like they argue for geographical or limited gTLDs today. It is as if, in the early days of television, CBS, NBC and ABC lobbied for all new stations to be like PBS because PBS is not for profit (like non profit registries like .ORG). Or, lobbied against CNN because they, the incumbents, already offered news, much like TLD opponents seeking to prevent open generic TLDs like .NEWS.

Let me be clear that despite being denied a TLD through the years, I am a supporter of ICANN. While I may not agree with all of their decisions, many of which have been adverse to me – I do believe that ICANN has a dedicated staff and is the correct organization to oversee the Domain Name System and that the organization has been doing a good job considering the vast array of conflicting interest they must take into account. The success of eNom and the hundreds of other competitive domain name registrars in existence today, is the result of ICANN policies that promoted competition in the registration of domain names. There is no question that competition among registrars has been tremendously beneficial for consumers and businesses. But now it’s time to bring that same intense competition to the top-level of the domain hierarchy so consumers can also see benefits there. I believe the addition of new registries and new TLDs will bring benefits to the ICANN governance process too as we see more established corporations and institutions participating in the ICANN process as registries.

After all this time, I feel like I am closer to realizing my dream. Consumers and businesses are closer to a better, more innovative Internet with more choice and lower prices for them. However, despite the several years of arduous work by ICANN and the Internet community through an open and transparent process and public participation that has resulted in ICANN’s “Draft Applicant Guidebook” (DAG) for new gTLDs, there are still those who want to deny me and many others the opportunity to operate a TLD. The Committee today is focused on two principal allegations ---a) consumers don’t want them and b) the harm they will cause to trademark holders outweighs their benefits to consumers. These objections are being made primarily by those who fear competition and the unknown. We strongly believe objection “a” is inaccurate and regarding objection “b”, we believe the trademark concerns are manageable particularly considering the competitive benefits of new gTLDs. We appreciate this opportunity to address these objections in turn.

DEMAND IS STRONG FOR NEW gTLDs

As a businessman and entrepreneur, I look forward to bringing a new TLD to give consumers choice, lower prices, and innovation. Like other advances with the Internet, new registries operating new gTLDs will create a ripple effect of job creation. Throughout our nation's history, we have seen these results from competition in the marketplace. I couldn't agree more with the following statement made just two weeks ago, and believe it applies to the Domain Name System as much as it does to the insurance or any other industry.

“My guiding principle is, and always has been, that consumers do better when there is choice and competition. That's how the market works.”

– President Barack Obama

Meaningful Names are Essentially Non Existent in .COM

I've heard the concerns that new gTLDs will result in “serious negative consequences for U.S. businesses and consumers.” I believe the exact opposite is true...that lack of competition and options in TLDs is harming US consumers and businesses. Today an effective web presence and identity is critical for business success and also desired by millions of individuals in the United States and around the globe.

Have you tried to register a name in .COM? Small businesses typically can't get the name they want, or even their 3rd, 4th or sometimes 10th choice. If Bob wants to register bobsmusicstore.com, Bob can't, unless he is willing to pay big money, upwards of a thousand dollars in this case, to the guy who got there first. How about soundstore.com? taken. How about mozartstore.com? Taken. Musicstoreplus.com? Gone. Bobsmusic.pro or music.museum may be available, but Bob cannot get a .PRO or .MUSEUM name because those registries are hobbled – they cannot register names to just anyone, besides the fact that Bob is not running a museum. Its obvious consumers would rather pay \$10 to the new .MUSIC registry for bobs.music, or \$10 for bobs.store (in a new .STORE gTLD). The technical functionality is exactly the same – but consumers get better names for lower cost with more open, generic meaningful TLDs.

A simple perusal of the registered domain names demonstrates that individuals, businesses (large and small), some with trademarks, some without, clearly find sparse availability of desirable names in the current primary (Registry) market. Many registrants are resorting to strained versions of their name just get some “real estate” in existing TLDs. For example, as detailed in a recent Inc. magazine article, we see Flickr.com. socializr.com, who are intentionally misspelling names, and others who are doubling or even tripling vowels in order to get a name at all. Thus, there domain names such as zoomr.com; yuuguu.com and even ooooooc.com.

Evidence of Demand is All Around Us

Others are insisting that studies be conducted to “prove” that consumers want new gTLDs and they will benefit from them. Demand for new gTLDs certainly exists, although it is difficult for a “study” to prove so. However, we believe the following data and examples may be helpful in understanding the consumer demand that exists for new gTLDs and domain names in new gTLDs.

Our experience and that of many registrars shows that 70+ percent of consumers cannot and do not get their first “name of choice” when selecting a domain name. For example, Mary, a hair salon owner in Nebraska interested in “maryshair.com” will likely have to resort to something like “maryshairinomaha.com.” With new gTLDs, Mary may be able to get marys.hair or maryshair.salon or mary.style. Today, no one can get motherhood.com or beaches.com because they are already taken, but with new gTLDs, a movie studio can get beaches.movie or motherhood.movie for their movie website.

The .COM space is simply too crowded. As the Internet grows and grows, there is a need for more and easy to remember domain names other than .COM names. A significant indication of demand for meaningful web names is that Facebook recently had 73 million users sign up for names such as facebook.com/stahura within 45 days of making this option available. However, I for one prefer a simple domain name because 1) the facebook URL is too long for me and 2) I don’t control it like I would a domain name. What if facebook changes their rules or goes out of business? (ICANN protects for both of these situations with gTLDs). I would prefer stahura.family or stahura.facebook and I’m sure many others would prefer something similar. New gTLDs will provide these choices.

Demand for new names is a certainty. Even with the difficulty and high price of obtaining a good .COM name, millions of new names are registered every month. The growth rate of the TLDs with few names already registered is faster than the significant positive growth rate for the large TLDs (like .COM), proving that demand is even bigger for names from smaller, and oftentimes more specific and newer, TLDs. People say “why have new TLDs, if so many names are registered in the old ones?” The answer is even more names, and better names, for lower prices, will be registered in these new TLDs, if they were only allowed to exist.

Meaningful Names are Too Expensive and Out of Reach for Consumers and Small Businesses

For generic names, a wireless company cannot get clear.com except by paying hundreds of thousands of dollars on the “after market” (the non-Registry market) but they may be able to get clear.phones, clear.wire or clear.web for \$50 or less when new gTLDs launch. That is a 10,000 fold price reduction, and for a better, more meaningful, name. A full service intellectual property website will be able to get trademarks.law for much less than having to pay hundreds of thousands, if not millions, of dollars for trademarks.com. It’s no wonder to me that the speculators who own these second level domains don’t want new TLDs.

The result of the current gTLD environment is that consumers who cannot obtain short, meaningful names in the current primary (registry) market are forced to buy from the secondary market where average prices are well over \$1,000 per name. New TLDs would bring these prices down and introduce alternatives. Regarding the secondary market, here are a couple of examples from leading auction sites for domain names. So, instead of a consumer having to pay:

- a. \$50,000 for RESUMES.COM, with new gTLDs, a better option for that consumer might be RESUMES.ONLINE for \$20; or
- b. \$250,000 for JUSTSPORTS.COM, with new gTLDs, they may be able to get JUSTS.SPORTS for \$25.

Trademark Holders Need Better Options Too

It is important to note the realities of limited supply and high prices of .COM to trademarked names as well as generic names. For many trademark owners, perfect fits are already taken in .COM. Thus, there is only one delta.com, united.com, andrew.com and apple.com. However, there are multiple Trademark holders for each of these words (in different trademark classes). Therefore, United Van Lines, who lost out to United Airlines for united.com, may be able to get united.shipping if new TLDs launch. With new gTLDs, trademark owners will be able to get meaningful domain names in extensions that are relevant and meaningful to their activities. This is very important for branding and marketing activities. For example, United Capital, who also lost out to United Airlines for united.com, may be able to get united.fund. Confusion between trademarks will be reduced, and the new domain name space will resemble the real world by having different categories of goods and services. In the example above, United Airlines will not have to worry about policing its trademarks in .FUND, because that describes a different class of goods and services. We know how this plays out in the real world, because we've seen that most companies currently, and logically, do not register in ccTLDs where they don't do business.

The vast majority of trademark holders will actually benefit from new gTLDs and for the small number of large, well-known brand names who fear cyber or typo squatting in new gTLDs, there will be multiple new rules with new gTLDs that will make protection of their mark much easier (a full discussion of which follows below).

Another way to think about how the current selection of gTLDs negatively affects trademark holders is to consider a similar hypothetical situation where the US Patent and Trademark Office initially had just three trademark classes called "miscellaneous", "network" and "non-profit organization", then later, adding "information", and "bizness" (spelled in the slang way) then a few years later, adding another called "asia" and another

called “museum”. Most trademark applicants would use the original “commercial” class – that is the one that fits them best because most trademarks don’t fit the other, available classes, and it came out first and everyone seems to be using it. The “commercial” class then becomes known, essentially as “miscellaneous”. If there weren’t more classes, everyone would pick that one. One can’t use the fact that everyone is picking the miscellaneous class to argue that more trademark classes are not needed. This is a self-fulfilling argument. Not many good names for businesses would be left if whoever registered a trademark in “miscellaneous” had the sole ability to use that name for all types of goods and services. The meaning of “.COM” is so broad, that it has become meaningless. It’s been no surprise to me that most small businesses and consumers can’t find the “class” that closely represents them. When the classes are very broad or so specific *and* few that consumers and business do not fall into any of them well, they stick to .COM in exasperation.

Studies are Bad at Predicting the Future

Again, many individuals and serious business enterprises believe there is demand for new gTLDs and are already investing significant time and money in anticipation of new gTLDs. We hear continued call for a study of the “economic demand” for new gTLDs and whether the benefits of new gTLDs will outweigh the potential harms. I believe these “demands” are misguided. We don’t need a study to direct our entrepreneurial endeavors, just like many entrepreneurs before us. Furthermore, “demand” is hard to prove and certainly impossible to quantify before launch of new technologies and products. Per our discussion above, there clearly is a need for, and benefit for, new gTLDs and as a businessman, I am willing to stake significant capital on that proposition. But the demand to prove “demand” is simply not how markets work.

We know that when it comes to new technology, consumer opinion often is a poor predictor of future demand. As Henry Ford once said: “If I asked my customers what they wanted, they would have said a faster horse.” There is economic demand when a product or opportunity is offered and people buy it or use it. For example, was there economic demand for Federal Express? There was no government study done. It was not a process that took nine years. But once FedEx came into existence, magically, great demand was there. Was their demonstrated demand for Google? For eBay? For computers themselves? In 1943 the CEO of IBM said “I think there is a world market for maybe five computers.”, and in 1977 the CEO of DEC said “there is no reason for any individual to have a computer in their home.” Most people in 1985, including Bill Gates, thought that they didn’t *need* more than 64K (of memory). *And, in 1985, when .COM was introduced as an alternative to two-letter country codes, nobody expected it to dominate all other internet extensions*

Come to think of it, was there “demand” for the Internet in the first place? The reality is there are many problems that have come with the Internet, but we deal with them because the advantages far outweigh the “harms.”

Did the U.S. Government do a study to determine there would be "demand" for HD programming, 300 TV channels, pagers, cell phones, wifi, text messaging, etc when it auctioned more spectrum? And, was an analysis done to determine whether the projected new benefits were worth the costs associated with content problems such as copyright piracy? I don't think there was, but regardless, in the case of new gTLDs, great pains are being taken before implementation to minimize potential harm to trademark holders. This is being done without any such formal study. I address the subject of trademarks in detail below.

NEW gTLDs WILL FOSTER COMPETITION

We believe this assertion is undoubtedly true. Our comments, thoughts and analysis on the issue of demand and competition surrounding new gTLDs are not based on academic or professional expertise in economics but rather on 12 years of practical experience in the business of domain names.

Furthermore, ICANN and the United States government believe it true. As stated above, but it bears repeating -- the introduction of competition through new gTLDs is part of ICANN's charter and is called for in the Joint Project Agreement between ICANN and the U.S. Department of Commerce.

New gTLDs will Compete with .COM

Specific new TLDs like .MUSIC will not necessarily take a huge proportion of business away from .com but they will compete nevertheless. For example, .DRESSES or .FASHION may compete with .COM much the same way a boutique women's fashion store competes with Neiman Marcus without taking away a significant amount of Neiman's overall business. However, **it's not inconceivable that a truly generic, broad-meaning, new TLDs like .WEB will eventually compete directly with .COM.** In, 1850 did anyone expect Los Angeles to rival New York City? In 1920, what would a demand study have shown about the demand to live in Las Vegas? Should we disallow a firm such as Tesla Motors (with their innovative electric cars) from entering the market because an existing firm has dominant market share? Does the fact the GM is selling a vast number of cars convince us that there is no need for Tesla and it should be prevented from entering the market? No, we believe the exact opposite is true.

Although it is possible a single, new TLD will emerge to threaten or eclipse .COM in size, just like Los Angeles emerged as another big city “competing” with NYC, we think it is far more likely that competition from new gTLDs will cause .COM to lose market share, or at least to grow at a slower rate, to the cumulative effect of many smaller to medium-sized TLDs. Previous

new gTLDs were less successful competing with .COM because there were few of them (and hence they lacked overall market visibility), and their ICANN selection process encouraged constrained business models. This round will be more successful because there will be more TLDs and they will not have to constrain their business models, in order to enter the market and win the TLD.

New gTLDs Will Compete With Each Other

The market for gTLDs will foster competition if allowed to operate like most other markets and real estate in general. Government generally don't limit "storefront" space in the physical world, thus, a woman's clothing store can open in the same mall as Neiman's, or across the street or across town and compete for customers who buy women's clothes at Neiman's. In our view, TLDs should compete with each other on price, availability, perceived value and features – like the overwhelming majority of other products do. We think this will be more beneficial to consumers than arbitrary and expensive-to-manage price controls.

As previously noted, many ccTLDs have come from behind to out-compete .COM in their markets. It seems illogical to us that national identity would be the only affinity strong enough to create this competition with .COM. As more TLDs are introduced, such as .ECO, .FAMILY, .SPORT and others, we think affinity groups (large and small) will place a higher brand value on their new TLD than they do on .COM.

Competition From New gTLDs Will Benefit Consumers

The following comments of Professor Dennis Carlton (a noted competition expert who previously served as a member of the Antitrust Study Commission that was created by this Committee) reflect our beliefs and our experience in Internet Commerce, as they reflect the experiences of millions of entrepreneurs before us in other industries:

“Like other actions that remove artificial restrictions on entry, the likely effect of ICANN's proposal is to increase output, lower price and increase innovation. This conclusion is based on the fundamental principles that competition promotes consumer welfare and restrictions on entry impede competition.” and “The availability of new gTLDs also offers increased opportunities for registries and registrars to develop innovative services or business models that could provide significant opportunities for increases in consumer welfare.” (Report of Dennis Carlton for ICANN regarding ICANN's Proposed Mechanism for Introducing new gTLDs, June 5, 2009, page 6).

ENHANCED TRADEMARK PROTECTIONS IN NEW gTLDs

As this Committee is keenly aware, one issue that ICANN continues to work on as it progresses toward the timely introduction of new TLDs concerns the protection of trademark rights in the domain name space. ICANN, trademark owners and potential TLD applicants such as ourselves care deeply about the protection of trademarks in the domain name system and have been significantly involved in developing new “rights protection mechanisms.” Demand Media and eNom own intellectually property and we understand and support the important role it plays in our economy.

The Current Draft Applicant Guidebook For New gTLDs Includes Trademark Protections

Before we discuss the latest trademark protection activity within ICANN, it is important to note that even with no further modifications to the Draft Applicant Guidebook (DAG), trademark interests will have more protection in new TLDs than exist in .COM. For example, the current DAG already has in place significant trademark protections, including mandatory participation in the UDRP, mandatory top level legal rights objection, mandatory requirement that applicants detail measures to reduce abusive registrations, and mandatory centralized, and thick whois for registries.

Additional Trademark Protections Will be Adopted by ICANN Making New gTLDs Much More “safe” for Trademarks than .COM and Other Existing gTLDs

In addition to the trademark protections embedded in the DAG, last spring, ICANN established a committee (the Implementation Recommendation Team or “IRT”) of eighteen trademark law experts from around the globe, and from large brand holders such as Microsoft and Time Warner, to make recommendations for even stronger and more efficient protection of trademarks in new TLDs. The IRT issued its final report last June. We applaud the IRT’s efforts. The recommendations include 1) an ICANN contracted, centralized database of trademark information that must be used by registries, 2) a method for TM holders to “pre” register their trademarked names as a domain name in a new top level domain, and 3) a new, faster and cheaper procedure to “take down” a domain name that is violating a trademark owners rights, in some ways similar to the DCMA for copyrighted material. We support these new “rights protection mechanisms”, with some small but necessary adjustments, and believe they will be a very significant improvement over the protections and remedies trademark holders currently have in .COM.

Between the provisions that are already in the DAG and the fact that ICANN is likely to adopt *significant* portions of the IRT recommendations for trademark protections offered by the IRT, we believe it is indisputable that this combination of requirements that will apply to registries

operating new TLDs will far surpass the trademark protections available in current TLDs such as .COM. And, many of the new registries are aggressively building in additional protections, including proactive policing and takedown measures, adopted from successful ccTLD policies.

Thus, trademark owners and others who are concerned about cyber and typo squatting and spam, phishing, pharming, and other forms of abuse (as we are) should welcome new TLDs and the rules that come with them.

Trademark Issues in New gTLDs Will be Manageable

As noted, we support all of the afore-mentioned trademark rights protection mechanism; no one should profit by stealing or abusing someone's intellectual property. *However, we also believe that trademark problems in new gTLDs will not be severe.* To begin with, our publicly available analysis of new TLDs introduced since 2001 (such as .BIZ, .INFO and .MOBI) shows there have been limited trademark defensive registrations within these TLDs, showing trademark issues continue to be vastly and disproportionately greater in .COM than in new TLDs:

http://www.circleid.com/posts/20090202_analysis_domain_names_registered_new_gtlds/

The amount of traffic and cyber-squatting won't increase significantly with new TLDs. There is only so much internet traffic and so many cyber-squatter dollars available at any given point in time. Doubling the number of TLDs, for example, will not double the amount of cyber-squatting. An analogy might be banks -- just because we build many new banks doesn't mean there will be a large increase in the number of bank robberies. Another example might be roads. If we build twice as many new roads there are not likely to be twice as many cars, twice as much total road-traffic, or twice as many road accidents. In fact, if the new roads are built with more safety features, as new TLDs will be, then as traffic moves to the new roads the number of overall accidents will decrease. Also, if we don't build more roads, folks will drive over the fields to get where they want to go -- witness the "imposter" issues that have come up in facebook and twitter URLs which are private unregulated name spaces.

Additionally, although some large trademark holders profess dire consequences for trademarks if new TLDs are introduced, many of the issues of concern to them are already happening in an entirely unregulated way for many consumers. A large and growing number of ISPs currently resolve queries for non-existent domains to pay per click (PPC) websites. For example, a consumer who uses Verizon as their ISP in the United States and who types in a URL such as www.secure.financing will be taken to a website offering a variety of PPC links including, at the time of this writing, an offer -- *'Would You Like to Make \$5,000 a Month Posting a Link on*

Google?'. Similarly, a Verizon customer who types in www.discountdrugs.pfizer will be returned a wealth of PPC links including those promoting products in competition with Pfizer. Our point here is that the issues of concern to Congress are already happening in many areas of the Internet in a completely unregulated way. By implementing the new TLD program along with some of the recommendations of the IRT we can better manage this existing behavior as it relates to ownership and use of domain names.

Competition Threatens Some Trademark Holders

A concern that large brand holders may have is inter-brand competition. Inter-brand competition, like the other competition, is good for consumers. For example, Parker Shoe Store, a new entrant in the shoe business, would have an easier time branding their company “parker.shoe” than “parkershoes.com”. More consumers will associate “Parker” with “Shoes”, can find them more easily among the fewer .SHOE names than the millions of .COM names, can be more assured that Parker are actually selling shoes, and be generally less confused about what Parker does. I suspect the big shoe brands would rather have this new shoe competitor have a hard time in branding their new brand by forcing Parker to get “Parker.pro” or “Parker.biz”, or “ParkerShoeSeattle.com” for example.

Trademark Concerns Have Received Extensive Consideration by ICANN

There has been criticism that trademark issues have only recently been considered in conjunction with new gTLDs. This is simply not the case. ICANN did pay attention to trademark interests ‘in the normal course of ICANN’s policy development process’. Extensive attention. The policy development process for new TLDs has been preceded for 3 years during which time intellectual property interests, and ICANN’s own Intellectual Property Constituency (IPC), have been closely and deeply involved in the process. Specific to the new TLD process, the issues of rights protection were under direct and detailed consideration in the first half of 2007. The GNSO Protecting the Rights of Others Working Group (chaired by an Intellectual Property Constituency (IPC) member) delivered a 114 page consensus report to the ICANN community on trademark rights protection in new TLDs. Similarly, after a further year of consideration, the IPC issued its TLD ‘Perfect Sunrise’ document which also addressed the issues currently under consideration. So, the issues, proposed solutions, and community responses on this topic are not new. What is somewhat new is the IRT and its specific recommendations (although many of there recommendations are based on these prior discussions). Since the final IRT recommendations came out in June (which were preceded by preliminary recommendations in April), there has been and will continue to be extensive discussion of these recommendation for trademark protections in new gTLDs, as evidenced by today’s hearing as well as the process laid out by ICANN.

In my view, the process argument is a red herring and the type of thing we frequently hear when one party does not get all of what they want. In this case, large trademark owners will get most of what they have asked for: much improved TM protections for the DNS. But what they shouldn't get is the right to stifle innovation and consumer choice -- rights that the law does not give them.

The Globally Protected Marks List is a Bad Idea

As much as we are in agreement with the IRT, I would like to take a moment to express concern over its recommendation for the creation of a “globally protected marks list” (GPML) which would grant preferential treatment in the DNS to a small number of large, corporate trademark holders. We have significant concerns with the practicality and usefulness of this Super List. To begin with, no one, including the IRT, can seem to come up with the appropriate criteria to be on the Super List. Furthermore, the process for Super List inclusion will likely be exceedingly political, for example, developing countries will fight for special criteria so it is not dominated by large corporate interests from developed countries. Finally, updated intellectual property laws and methods, particularly in the Internet age, have upheld the principle of post-usage enforcement rather than pre-usage approval. However the GPML will reverse this long-held principle and create a pre-usage approval burden. The bottom line is that we believe the costs and problems of the Super List will greatly exceed its benefits and that Trademark rights protection is much better served by other proposed RPMs including the objection process outlined in the current RFP/DAG.

New gTLDs Will Have Better Trademark “Laws”

A long time ago, many who served in this very body opposed the expansion of the United States because they believed the new states created by the Louisiana Purchase would be lawless. It's nearly the same thing with new gTLDs, but in this case, the new states, these new TLDs, will actually have stronger “laws” to protect trademark holders rights than the original “colonial” TLDs did. These lawless concerns were “managed” back then and we believe trademark concerns can, and are, being managed within the new gTLD process to the extent that new TLDs will far surpass the trademark protections available in current TLDs such as .COM.

CONCLUSION:

The U.S. Government Should Support Innovation and Economic Growth

New gTLDs will create enhanced competition which will result in financial investment and job creation in Internet commerce. Many individuals and businesses have capital waiting to invest in TLDs as well as business and hiring plans waiting to implement. Choice and competition have fostered breathtaking economic development in the Internet world and extraordinary economic progress over the past 15 years. We foresee many new business models springing up with the availability of new TLDs; most of us have seen very creative plans already. Like with many aspects of the Internet, innovation has always been key, has always outpaced expectations, and has led to the creation of new businesses (large and small), the expansion of existing businesses and the creation of many new jobs.

The U.S. government has a history of standing back and allowing the Internet to flourish. The benefits to citizens around the globe have been immeasurable. The USG should not depart from this wise precedent now.