

## **ICANN Q&A**

### **1. Why is ANA opposing this program?**

To boil it down simply, we oppose the program because it is a solution to a problem that does not exist.

### **2. ICANN claims that multiple public meetings and 45 public comment periods were conducted with thousands of comments – why are you saying that there has been insufficient input into this process?**

Regardless of the number of comments or years that passed, ICANN failed to achieve consensus from the constituent groups. While comments were filed by many constituents, ICANN essentially ignored the obvious lack of consensus represented all the divergent comments and essentially imposed “consensus” at its meeting in Singapore. Despite the weakness of the studies conducted, ICANN summarily concluded that more studies or deliberation would not reveal any new information. That, too, shows ICANN’s disregard for the bottom-up consensus requirements that govern their decision process. Rather than resolve differences, ICANN chose to disregard them and rush to a conclusion that ended years of deliberation.

### **3. What took ANA so long to contest the ICANN program?**

ANA objected to the program twice – on December 15, 2008, and April 12, 2009. So did many brands and groups representing brands. ANA’s decision to vigorously oppose the implementation of the ICANN program came on June 20, 2011 when ICANN’s Board of Directors, ignoring all the objections and failing to find true consensus, finally decided its program would be launched in January 2012. At this point, ANA believed it had no alternative but to move “outside” the box of ICANN’s processes. As such, ANA’s decision was quite timely.

### **4. Because ANA was so slow in objecting to this, isn’t it likely that the program will go forward? If it does, won’t it be tougher for you to roll it back?**

Until ICANN finally decided to implement the program in June 2011 (effective in January 2012), there was nothing ANA could do but wait, along with the entire brand community, hoping ICANN would do the right thing and abandon the program. ICANN did not and ANA immediately responded. Clearly, it is not a fait

acompli that the program will go forward – at least for entities and associations that are prepared to challenge ICANN and its processes outside of ICANN itself. There are many compelling arguments against it that need to be addressed by any number of constituencies that objected but have been ignored, most notably brand owners and consumers.

**5. What does ANA plan to do if the program does come to fruition? Do you plan to take legal steps to block this program if ICANN is unresponsive? What services will ANA perform for members in that new reality on the Web? What does ANA advise members to do at this time / if it does come to be?**

ANA hopes that ICANN, when it recognizes the growing concerns about its decision will do the right thing and abandon the program. We hope that they will see that benefits based on pure speculation, the lack of any scarcity in domain names, the efficiency of search engines, and the potential harm to consumers and brand equity require abandoning the program. ANA does not want to resort to litigation and believes that if ICANN acts reasonably, ANA will not have to consider that remedy. If for any reason, the program goes forward despite ANA's and the brand industry's objections and the harm it will cause to consumers, ANA will then evaluate the situation and decide how it can best serve its members going forward.

**6. What are you doing now – specifically – to combat this ICANN program?**

ANA is reaching out to globally its members, industry associations and consumer groups to organize and focus the objections and concerns. It is also reaching out to various NGO's and governments agencies to express its deep concern that ICANN has totally failed to make the case that either competition or innovation will increase or that there is any scarcity in domain names or other justification for the program. In addition to noting the many serious objections on the putative "merits" of the program, ANA is deeply concerned about the obvious direct harm and injury that the program will cause, most notably that it will add billions of dollars in costs to brands, all of which will be passed on to consumers in one form or another – precisely what the world economy needs least of all in these critical times.

**7. What would ANA do differently to make this program work?**

The Internet works as it currently exists. We don't see a need to change or add anything. We don't believe there is a scarcity of domain names, lack of

competition / opportunities, or any other reason to enact this program. There is also no benefit to doing so for anyone in the business community other than those who register domain names.

**8. Has ANA conducted any research of its own into this topic? Have you had any specific membership research done to determine support?**

ICANN proposes nothing short of a massive change to Internet architecture. ICANN bears the burden to demonstrate beyond a doubt that such a change will help and not hurt world markets and security. The fact is that the research relied upon by ICANN, through the admissions of ICANN's own experts fails to make any case for the program. ANA has not yet expended its resources to conduct any research because ICANN itself has made no case for the program – and again, it is ICANN's job to present a convincing and sound basis for its decisions. It has not done so.

Furthermore, while we have not done formal research, none of our members has shown a need to expand top-level domains.

**9. Have ANA had any further discussion with ICANN since the initial back-and-forth of letters?**

No. ICANN has made it clear that it intends to vigorously defend its program and implement it. They've shown no interest in discussions.

**10. If the program comes to fruition, will ANA and its members purchase top-level domains?**

Each company will have to decide the "case" for itself. Unfortunately, the program imposes this burden of choice (i.e., whether to buy a TLD) that ANA and its members simply would prefer didn't exist at all. Even though there is no guarantee that the program, riddled with speculation and unreasonable costs, will even come about, ANA and all of its members must be prepared for the worst and will have to continue evaluating the pros and cons of purchasing a top-level domain.

**11. ICANN is claiming that the opening of more TLDs would spur innovation and competition on the internet and relieve the TLD scarcity. Is this not an opportunity to take advantage of for brands?**

By admission of ICANN's own experts, any innovation and competition resulting from the program is purely speculative. There is simply no convincing evidence that any meaningful competition or innovation will occur. When weighed against the staggering costs and consumer risks that are a certainty should the program be implemented, possible increases in innovation or competition don't make the cut.

**12. ANA has been communicating that a brand owner would need to spend an average of \$2 million per brand, over ten years, as a participant in this program. How was that number developed and who developed it?**

The number assumes a brand decides to buy a domain name. The minimum price is \$185,000 and at least \$25,000 in annual fees each year. Any buyer must set up an infrastructure and administration to operate the domain, which in most cases will involve yearly technical outsourcing fees. The buyer will also have to arrange to meet financial guarantees with ICANN to ensure business continuity of the TLD in the event of a bankruptcy, insolvency or similar event. It must also adopt and enforce a dispute resolution system. And then, of course, there are consultant and legal fees for a very cumbersome and complicated application process. Regardless of whether a brand buys or does not buy a top-level domain, both domain owners and companies operating on the Internet and in mobile media will be required to police the second-level names, i.e., the names to the left of the "dot" where a great deal of cybersquatting, phishing, and dilution will add to the costs across all brands. If a domain name goes up for auction, because of likelihood of confusion between two competing applied-for TLDs, the price could soar. In this economy, we simply cannot allow businesses to be wasting capital in this manner.

**13. What is the rationalization for such an extraordinarily high cost here? Why can't these top-level domains be formatted under the same cost structure currently exists for domain names? What does ICANN need these funds for?**

It is entirely unclear why the price is so high. ICANN claims it's necessary to finance the review of applications, but the last round of TLDs were at a fraction of that cost. It is also unclear what ICANN will do with the money. Using its estimate that there will be as many as 300 new TLDs, the minimum income to ICANN from this exercise will be over \$55 million in the first round alone.

**14. ICANN claims there are detailed rights protection mechanisms that have been reviewed by trademark experts to prevent cybersquatting and other fraudulent activities. Why are you claiming there is potential for brand and consumer harm?**

There are some protections for trademarks in the program, but they are woefully short of what is needed even if the program were implemented. The reality is that even with those protections – or any protections – in place, the result by ICANN’s own estimates will be the introduction of as many as 300 new TLDs in the first year alone. Once a TLD is in the marketplace, there is little a brand can do about abuses in the second level, the word to the left of the dot. It is in the second level where a lot of the brand damage, cybersquatting, and consumer confusion and harm occur. In addition, brands will be compelled to buy second level names to prevent others from doing so. Across the brand ecosystem, this will cost the economy billions. So the point isn’t whether there are protections. The point is that if this program is implemented, there will be hundreds of new TLDs being marketed when none of them are needed. Brands don’t want them, and consumers aren’t asking for them. If there is any doubt as to that conclusion, one need only look at the experience with the last batch of TLDs introduced by ICANN, e.g., .biz, .info, .travel, .jobs, .aero, .name, and .museum. None of them has been a commercial success, created any competition, or produced any innovation. But they all have needed policing by brands, including defensive registrations, all at considerable cost. Multiply that cost by 300 and one immediately sees the waste of assets this program will cause. Today’s global economy cannot afford that. The protections aren’t adequate no matter how many are put in place.

**15. Isn’t there also a clear objection process that safeguards the legal rights of brand owners to having their own TLDs?**

There is a process to object, and brand owners will be able to review the pending applications. The danger for brand owners at the top level, in a worldwide marketplace, is that multiple companies have a legitimate claim to the same unique TLD string. The real danger continues to be at the second level. While ICANN has attempted to impose protections, including a suspension process, the process is inadequate to protect brands and most certainly is not accepted by the brand community as adequate. In the end, regardless of what ever protections are provided, ICANN predicts as many as 300 new TLDs in the first year alone, none of which is needed.

**16. ICANN has put processes into place to handle conflicting applications for gTLDs. Why do you think this hasn't been addressed so far? Isn't the cost alone a prohibitive barrier to entry for fraudulent TLDs?**

The cost will act as a barrier to entry for some; but, again, brand owners face the prospect of another company registering a string confusingly similar to its brand, and they also face the possibility of a competitor or another entity registering a generic TLD that injects unwanted or dangerous complexity into the marketplace. Again, the real danger for all brand owners is at the second level. The process of policing, monitoring and defensive registrations at this level costs brands millions of dollars every year. Adding as many as 300 more domains will multiply those costs into the billions.

**17. Why do you feel ICANN's protections in the program for trademarks are "woefully inadequate?"**

While there are some protections against infringements, they are narrow in both scope and duration and apply only to potential infringements that are an "identical match" to a trademark an owner has in actual use. Thus, there is no protection for "typosquatting." Given the narrow scope of protection and the limited time frame in which they are offered, it is far from clear that the benefits of these protections will create a safe Internet environment and outweigh the harms and costs that will result from increased cybersquatting and brand dilution.

Today, brands spend millions of dollars to police domains and file defensive registrations in the existing TLDs, most notably .com, .net, .org, .biz, and .info. No one denies that brand protection in the current system is costly and inconsistent. Adding up to 300 new domains in the first year alone takes today's costly and inadequate process from millions to billions of dollars in costs. Describing ICANN's protections as "woefully inadequate" is being charitable.

**18. Given the protection and objection process that ICANN has put in place, why would marketers feel compelled to purchase names if they didn't plan to use them?**

The same reason they file defensive registrations at the second level across the existing TLDs – to forestall cybersquatting, brand dilution, and consumer confusion.

**19. Doesn't the advertising industry have enough money to be able to spend money on this?**

In order to prevent the enormous waste of money, the costs in trying to stop this program are well warranted. But if the program is implemented and the costs rise into the billions as suspected, not only will the advertisers be hard-hit by the increased costs, but most of those costs will be passed on to consumers and increase prices at an economic time when higher costs for absolutely cannot be condoned.

**20. Don't search engines render this a bit ineffective? If so, why does any of this even matter?**

Search engines are the answer and a prime reason why new TLDs are not needed. Today, consumers who want to find a product or service on the Internet know to look for them in a search engine. Within nanoseconds, what they are looking for is found intuitively, not through rote memorization of a virtual address. Domain name addresses are not generally used by consumers.

**21. What studies or proof do you have that the program would diminish cybersecurity and increase cyberharm (e.g., phishing)?**

The proof is the alarming increases in phishing, hacking, security breaches, and associated cyberharm reported daily in the press – globally. The problem is worldwide and crosses every domain name in use. It is already costing the world economy billions. Adding 300 more domains owned by entities strewn all over the world will increase the problems exponentially. The added domains will also make enforcement efforts increasingly complicated as those hurt must deal with jurisdictional differences throughout the world. Just this month, CNN reported on two researchers who set up fake domains mimicking legitimate domains belonging to Fortune 500 companies to see what misaddressed emails to the bogus sites could extract from unsuspecting emailers. They amassed 20 gigabytes of misaddressed e-mail over six months that included employee usernames and passwords, sensitive security information about corporate network architecture (useful to hackers), affidavits and other documents related to litigation, trade secrets, and more. Extend that theft with email scams over 300 new TLDs and it's obvious the risks are substantial and unacceptable.

**22. ANA has implied that the Board of ICANN has conflicts of interest and is overly influenced by registration companies who stand to benefit. What evidence do you have that this is the case?**

ANA will not comment on whether the ICANN Board or any of ICANN's key employees have conflicts of interests. However, we do feel the process that led to the proposed program has been unduly influenced by parties standing to directly benefit financially from an increase in domains, namely the commercial companies that charge fees to register new addresses and manage top-level domains.

**23. The Internet has created an even playing field for companies of all sizes. By creating this huge TLD process, does this plan put small businesses at a significant disadvantage?**

At the very least, it increases costs and, by definition, barriers to entry. The added costs and higher barriers to entry will result in less – not more – competition and innovation by diverting assets from brand building to brand defending. This is precisely the kind of waste small businesses cannot afford.

**24. The advertising industry has historically been one of the biggest contributors to spamming on the Web, yet it is now challenging ICANN's program because it has the potential to do the same thing. Isn't that a bit hypocritical?**

ANA and its members are among the leaders in providing consumers with education, transparency and opt-out rights regarding online behavioral advertising under a self-regulatory program that has been praised by the Federal Trade Commission and consumerists throughout the United States. A coalition of ANA, the American Associations of Advertising Agencies, the America Advertising Federation, the Direct Marketing Association and the Internet Advertising Bureau, in cooperation with the National Advertising Review Board (part of the Council of Better Business Bureaus), formed the Digital Advertising Alliance, a self-regulatory body that sets specific standards outreach programs and enforcement protocols to ensure consumer education, marketing transparency and consumer control through the ability to opt-out of online behaviorally targeted advertisements. It is the model upon which the European self-regulatory program is based.

**25. What feedback, if any, are you getting from congressional leaders and the Department of Commerce from your comments?**

We have only begun to have conversations with government leaders. It is too early to generalize on those contacts, but we are pleased with their willingness to listen, their appreciation of ANA's and its members' concerns, and the reception we've received so far. In a letter to the U.S. Department of Commerce, Senator Ron Wyden (D-Ore) raised concerns about ICANN's ethics and transparency rules, noting that they need to be similar to those of federal officials.

**26. Why do you think Mr. Beckstrom is leaving at the end of his existing term as CEO of ICANN? Does his departure have anything to do with ANA's claims about the proposed gTLD program?**

We have no information on the reasons for his departure and will not speculate.

**27. ICANN currently operates under certain Affirmation of Commitments with the United States Department of Commerce. There are some constituencies that want to see the influence and control of the DOC and the U.S. over ICANN continue to diminish. Do you foresee resistance coming from international parties to the concerns raised by ANA? Will these constituencies see ANA's objections as a rejection of ICANN's ability to operate freely?**

The DOC has called into question ICANN's processes in the past and currently has an open administrative proceeding on whether to renew ICANN's contract for certain aspects of DNS administration. Some may see ANA's objection, superficially, as a U.S.-centric vision of ICANN. More likely – and accurately – the world community will understand the objections by ANA are geographically neutral and targeted at the real failures of the program itself and ICANN's processes.

**28. What will ANA do next?**

ICANN has to come up with a system that furthers the public interest in an economically feasible manner. This program as it currently stands is a solution in search of a problem that doesn't exist.