

Testimony of Daniel L. Jaffe
Executive Vice President, Government Relations
Association of National Advertisers (ANA)

Hearing on ICANN's Expansion of Top Level Domains

Senate Committee on Commerce, Science and Transportation

December 8, 2011

The Association of National Advertisers (ANA) appreciates the opportunity to present our serious concerns about the new generic Top-Level Domain Name (gTLD) Program that was approved last June by the Internet Corporation for Assigned Names and Numbers (ICANN).

ANA is the advertising industry's oldest trade association, founded in 1910. Our membership includes 400 companies with 10,000 brands that collectively spend over \$250 billion in marketing communications and advertising. More information about our association is available at <http://www.ana.net>.

I am also appearing on behalf of CRIDO, the Coalition for Responsible Internet Domain Oversight. CRIDO represents 152 major national and international companies and trade associations that have joined together to oppose the roll-out of ICANN's new gTLD Program. A list of all of the members of CRIDO, which represent virtually every sector of the American economy and many important international companies, associations and federations, is attached to this statement.¹ CRIDO members represent some 90 percent of global marketing communications spending, equivalent to \$700 billion annually. While CRIDO members may follow different approaches to domain name activity, they are all united in the belief that the proposed unfettered expansion of generic Top Level Domains is both dangerous and misguided. This proposed ICANN initiative is not merely a bad policy choice but a serious threat to the legitimate interests of business and consumers on the Internet.

On November 10, 2011, ANA and the other members of CRIDO sent a Petition to Commerce Secretary John Bryson outlining our serious concerns about the new gTLD Program approved last June by ICANN despite significant objections from many global Internet stakeholder groups. The CRIDO Petition called on the Department of Commerce, and specifically the National Telecommunications and Information Administration (NTIA), "to use its best efforts to persuade ICANN to stop or postpone the opening of the gTLD application window," which is currently scheduled to begin on January 12, 2012.²

Other important groups have also independently spoken out against ICANN's gTLD Program, including the National Retail Federation (NRF), the Screen Actors Guild (SAG) and the American Federation of Television and Radio Actors (AFTRA). Their letters to the Secretary

¹ See Exhibit A.

² The Petition is attached as Exhibit B.

are available at <http://www.ana.net/getfile/16997> (NRF), <http://www.ana.net/getfile/16998> (SAG) and <http://www.ana.net/getfile/17000> (AFTRA).

We commend the Committee for holding this hearing on this critical issue which could impact the shape of the Internet for decades, and perhaps in perpetuity. In the past twenty years, the Internet has grown from being used by a limited number of engineering and academic elite to being relied on every day by over 2 billion people worldwide. According to a May 2011 report from the McKinsey Global Institute, nearly \$8 trillion are exchanged annually through e-commerce. The former Secretary of Commerce, Gary Locke, emphasized that “[t]he Internet is becoming the central nervous system of our information economy and society.”³ Since the Internet serves as a recognized catalyst for global economic growth, there is far too much at stake, particularly in today’s economic climate, not to ensure that ICANN’s policies are fair and impartial. This is in keeping with the promises that ICANN made in the Affirmation of Commitments between ICANN and the NTIA, in exchange for the considerable power to oversee the Internet that was delegated to ICANN by the U.S. government.

We believe the new gTLD Program is bad for marketers, consumers and the entire online marketplace. Consistent with the Affirmation of Commitments, ICANN has a responsibility to ensure that its actions further the public interest, promote consumer trust and the burgeoning Internet domain.⁴

We strongly believe that ICANN’s new gTLD Program fails all of these standards.

This Program in aggregate has multi-billion dollar implications for all marketers, both in the commercial and the nonprofit sectors, and their brands. It would cause irreparable harm and damage to the entire online business community. It would throw the domain name universe into substantial confusion for both marketers and consumers.

ICANN has been considering this Program for several years. ANA objected to these proposals as did many other industry groups and companies. Even important governmental entities, including international law enforcement organizations,⁵ expressed deep misgivings about

³ Commercial Data Privacy and Innovation in the Internet Economy: a Dynamic Policy Framework, Department of Commerce (2010), Message from Secretary of Commerce Gary Locke at 1, available at: <http://www.commerce.gov/sites/default/files/documents/2010/december/iptf-privacy-green-paper.pdf>

⁴ See <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>. (In relevant part,

- Section 3(a) requires ICANN to “ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent”;
- Section 3(c) requires ICANN to “promote . . . consumer trust . . . in the DNS marketplace” and Section 8(c) commits ICANN to operating “as a multi-stakeholder, private sector led organization with
- input from the public, for whose benefit ICANN shall in all events act.”).

⁵ In 2009, a coalition of law enforcement agencies including the Australian Federal Police; the U.S. Department of Justice; the U.S. Federal Bureau of Investigation; the New Zealand Police; the Royal Canadian Mounted Police and the United Kingdom’s Serious Organized Crime Agency issued “Law Enforcement Due Diligence

ICANN's proposed gTLD Program. Unfortunately these strong objections have largely fallen on deaf ears.

ICANN consistently states that it is a multi-sectoral, bottom-up policy development organization. However, the creation of a massive bureaucratic labyrinth and process does not mean that ICANN is, in fact, representing the views of the majority of the Internet community. There clearly is not "consensus" support for the ICANN gTLD proposals. We cannot let the repetitive mantra that ICANN is a "multi-sectoral organization" camouflage or mask ICANN's lack of responsiveness to the real concerns of a very broad cross-section of the business community, and a growing group of non-governmental organizations, consumer groups and other Internet users.

Key Reasons Why the ICANN Program Must Be Stopped or Delayed

For a variety of reasons, we believe it is critical that the roll-out of the new gTLD Program be delayed.

Flawed Justification: ICANN justifies the Program on grounds that it: "might" or "may" (1) spur competition, (2) relieve scarcity in domain name space and (3) support differentiated services and new products. Yet evidence is sorely lacking that the introduction of new TLDs will actually achieve any of these goals. The very reports relied upon by ICANN to buttress its gTLD proposal prove that such justifications are unsupportable.

Competition. Regarding competition, in the December 2010 report commissioned by ICANN, entitled "Economic Considerations in the Expansion of Generic Top-Level Domain Names, Phase II Report: Case Studies" ("Phase II Report"),⁶ the authors of the Phase II Report clearly conclude that the introduction of new undifferentiated gTLDs is not likely to have a "significant competitive impact" in the market for registry services (Phase II Report, ¶ 12).

Recommendations for ICANN." It is our understanding from the GAC Communiqué at Dakar, dated October 27, 2011, that **none** of law enforcement's recommendations has been adopted; in fact of the 12 recommendations registrars were only able to report on their consideration of **three of the twelve law enforcement recommendations**. GAC Communiqué – Dakar attached hereto as Exhibit C.

⁶ Michael L. Katz et al., Economic Considerations in the Expansion of Generic Top-Level Domain Names Phase II Report: Case Studies (2010) <http://www.icann.org/en/topics/new-gtlds/phase-two-economic-considerations-03dec10-en.pdf>. See also, Michael L. Katz et al., An Economic Framework for the Analysis of Expansion of Generic Top-Level Domain Names (2010), <http://www.icann.org/en/topics/new-gtlds/economic-analysis-of-new-gtlds-16jun10-en.pdf>; Michael L. Katz et al., Reply to Comments on An Economic Framework for the Analysis of the Expansion of Generic Top-Level Domain Names (2010 [sic]) <http://www.icann.org/en/topics/new-gtlds/analysis-response-economic-framework-21feb11-en.pdf>; Michael L. Katz et al., Reply to Comments on Economic Considerations in the Expansion of Generic Top-Level Domain Names Phase II Report: Case Studies (2011) <http://www.icann.org/en/topics/new-gtlds/analysis-response-phase-ii-report-21feb11-en.pdf>.

Scarcity. It is equally clear that scarcity is not a current problem. As the Phase II Report concludes, “. . . [T]he relief of name scarcity is unlikely to be the principal source of social benefits derived from new gTLDs” (Phase II Report, ¶ 20).

Differentiated Services and New Products. The Phase II Report notes new domain uses that are possible with TLDs, comparing such prospects to existing TLDs, *e.g.*, domains that are restricted to particular functions or applications (such as existing TLD .mobi), domains that restrict second level registration to a particular class of owners (such as existing TLDs .museum, and .aero), and domains that restrict second-level registration to presenting a certain type of content (such as current domains relating to a specific geographic area). However, in each case, the experts conclude that the benefits were little more than speculative and that many of the TLDs adopted by ICANN in the last expansion round have been practical failures (Phase II Report, ¶¶ 39, 50, 58, 59, 62).

There is no demonstrable need to increase generic Top Level Domain names on an unlimited basis, and no likely benefit that would result from such an unrestricted increase.

A wide array of 22 suffixes such as “.biz,” “.info,” “.jobs,” “.travel” and “.museum” currently exist, not including the country codes. Most of those gTLD names are minimally used, but nonetheless actively policed by brand owners concerned about trademark dilution, cybersquatting and the online sale of pirated or counterfeited products.⁷ The gains assumed by ICANN are completely unsubstantiated. In contrast, the new Program will throw the domain name universe into widespread confusion, impose major costs on marketers and cause harm to consumers. If there is no scarcity of space within the existing domain name system, the ICANN Program appears to be a solution in search of a problem. Even more seriously, the “solution” proposed by ICANN is likely to impose enormous costs on the Internet and divert productive resources at a time where these dollars could be far more effectively used for job creation and productive capital investment.

Serious Economic Impact if the Program is Adopted

These are not just our views. The studies ICANN initiated itself recognize that the Program may cause several severe economic harms. As set forth in Paragraph 63 of the Phase II Report, the costs of the Program may include the following:

Misappropriation of Intellectual Property. The experts cite a key concern of misappropriation of intellectual property rights, including the “costs of domain watching, defensive registrations, litigation or other measures to end

⁷ For further background on the online piracy and counterfeiting arguments, *see* Mark Monitor, Traffic Report: Online Piracy and Counterfeiting (January 2011) (The study used only 22 brands and found that for those brands online distribution of pirated digital content and e-commerce sales of counterfeit goods were rampant).

misappropriation, and costs due to misappropriation that is not blocked (*e.g.*, lost profits due to sales of counterfeit goods or brand dilution).”⁸

Defensive Registrations. As noted, brand owners may be compelled to file defensive registrations, *i.e.*, “registrations undertaken to protect legitimate trademark or intellectual property rights from misuse, not registrations undertaken as the ‘defense’ of one’s business against increased competition on the merits.”⁹ This cost alone could be in the hundreds of thousands of dollars per brand name, creating a multi-million dollar liability for major corporations and a multi-billion dollar cost to the industry.

Several Internet Domain name sellers have estimated the range of costs for gTLD applications alone. For example, in an article entitled, “Sweeping Away Confusion Regarding gTLD’s,” Gretchen Olive stated that, “Those applying will need a *minimum* of \$800,000 to \$1 million to not only submit the application, but also to defend it against objections lodged by third parties and to get through the contract process with ICANN and set up the registry technical infrastructure (emphasis added).”¹⁰ The article further noted that, “Monitoring for infringement and submission of objections will likely run most organizations between \$25,000 and \$50,000 in 2012.”¹¹

Domain Navigation Dilution because Consumers have More Places to Look. The experts note that the “introduction of additional gTLDs may increase the costs of Internet navigation by increasing the number of potential domains over which a user may search. To the extent that such effects arise, they can dilute the value of existing domain names as navigation devices. The costs associated with such dilution include the costs of defensive registrations . . . and the costs due to dilution that cannot be mitigated.”¹²

Harm to Internet Users from Increased Cybersquatting. One of the most incipient and costly challenges to the adoption of any new gTLD is the prospect of cybersquatting and the substantial costs associated with preventing and policing it, which are already well into the billions of dollars. With respect to cybersquatting, the experts note, “In addition to harm in the form of increased search costs consumers may suffer more direct harm from increased

⁸ Michael L. Katz et al., Economic Considerations in the Expansion of Generic Top-Level Domain Names Phase II Report: Case Studies (2010) at ¶63, <http://www.icann.org/en/topics/new-gtlds/phase-two-economic-considerations-03dec10-en.pdf>.

⁹ *Id.*

¹⁰ Gretchen Olive, Sweeping Away Confusion Regarding gTLDs, ADOTAS (Nov. 8, 2011) *available at*: <http://www.adotas.com/2011/11/sweeping-away-confusion-regarding-gtlds/>.

¹¹ *Id.*

¹² *Id.* at note 6, *supra* (Phase II Report).

cybersquatting. This direct harm may result from malware, phishing, and the unknowing purchase of counterfeit goods.”¹³ While the experts opine that such a result “may” occur, history proves that cybersquatting will occur, just as it has with every TLD that has ever been administered by ICANN.

Reduced Investment by Intellectual Property Owners. The protection and development of intellectual property is a core value for the global economy, particularly given the world’s reliance on technology. As ICANN’s own experts conclude, the Program seriously undermines intellectual property rights – “There may also be indirect harms from the loss of intellectual property owners’ incentives to invest in that intellectual property due to concerns that some of the benefits of that investment would be misappropriated.”¹⁴

Losses from Failed TLDs. History itself discredits ICANN’s position that the introduction of new TLDs will increase innovation and competition. One need only look at the dismal financial registration and track record of TLDs like .museum and .aero to prove the point. Such failures are very disruptive and costly to companies that have registered. This reality is borne out by the authors of the Phase II Report, who conclude that “[i]f a new gTLD failed and ceased operation, external costs might be imposed on the Internet community. Registrants in a failed gTLD might be stranded, unable easily to move their websites (on which they may have based their business) to other TLDs due to embedded links. More generally, Internet users might face increased clutter on the Internet if links fail to resolve.”¹⁵ Clearly, these types of dangers are likely to be substantially magnified by allowing an unrestricted proliferation and explosive growth of domains.

ICANN has in effect dismissed these concerns in reliance on what its own experts have noted as “speculative” competitive benefits of the Program. However, is it really credible that the broad group represented by the CRIDO membership - that includes some of the largest national and international advertisers, brand holders and associations in the world, with representation cutting across a vast range of industry sectors - can all be unable to foresee what are their true competitive interests?

ICANN’s Deliberation Process is Flawed

Nevertheless, ICANN is now moving forward with the Program. ICANN justifies ignoring these studies in its report entitled, “Rationale for Board Decision on Economic Studies Associated with the New gTLD Program.”¹⁶ With all due respect, the “Rationale” is nothing short of a

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Available at www.icann.org/en/minutes/rationale-economic-studies-21mar11-en.pdf. See also ICANN Board Rationales for the Approval of the Launch of the New gTLD Program, *available at*

nullification of ICANN's own mandate to conduct economic studies. Rather than calling for further expert analysis, ICANN dismisses the very economic evidence derived from the studies and opts for a default justification of "competition" in which any TLDs may be adopted. Furthermore, ICANN minimizes the Phase II Report's conclusion that registry competition will not be significantly affected by the Program; ICANN says its real interest is competition in business generally, and claims that any additional economic study on that subject would be futile.¹⁷ We understand that ICANN contemplates further studies once the new gTLD Program is underway,¹⁸ but at that point, the damage will have been done. Once new gTLDs are deployed, there is no turning back.

If this Program, in fact, were likely to enhance competition and the Internet marketplace, one would expect broad statements of support for it. This support would come from many Internet and governmental sources. Instead, the voices that are speaking in favor of the Program appear to come almost exclusively from registrars, registries and others who will directly profit from facilitating the gTLD roll out – not those whom ICANN says will benefit. The broader Internet business community is clearly rejecting the proposal.

This scant and conflicting economic analysis is one of many examples in which ICANN has disregarded its own requirements and unilaterally issued an edict. ICANN's own Code of Conduct¹⁹ mandates that ICANN will "[w]ork to build consensus with other stakeholders in order to find solutions to the issues that fall within the areas of ICANN's responsibility. The ICANN model is based on a bottom-up, consensus driven approach to policy development." Its undertakings with the U.S. Department of Commerce additionally require that ICANN act rationally and transparently.²⁰ Clearly, the legal and due diligence requirements of ICANN's

www.icann.org/en/minutes/rationale-board-approval-new-gtld-program-launch-20jun11-en.pdf. Even in its final rationales, ICANN acknowledges that no determination could be made that the benefits of the new gTLD program will outweigh the costs.

¹⁷ See ICANN, Minutes of Board Meeting 25 January 2011, Economic Studies - <http://www.icann.org/en/minutes/minutes-25jan11-en.htm> ("[T]he Board has determined that no further commissioned economic studies could better inform the Board's decision." *Id.* at 8). See also ICANN, Rationale for Resolution 2011.01.25.22 (2011) at 1, <http://www.icann.org/en/minutes/rationale-economic-studies-21mar11-en.pdf>; see also Anthony Van Couvering, ICANN's Economic Study – It Depends, Minds + Machines Blog (Jul 21, 2010)(Commenting on the June 2010 Katz economic study Mr. Van Couvering said, "Should observers of ICANN lend any credence to this study? If your goal is to advocate a position without any empirical evidence, it is an excellent tool. If your goal is to understand what the new gTLD program will produce, it will, if printed out and bound, make a splendid paperweight").

¹⁸ <http://www.icann.org/en/minutes/minutes-25jan11-en.htm>.

¹⁹ <http://www.icann.org/en/documents/code-of-conduct-10jan08-en.pdf>.

²⁰ ICANN's Code of Conduct at <http://www.icann.org/en/documents/code-of-conduct-10jan08-en.pdf>; see also, Affirmation of Commitments by the United States Department of Commerce and the Internet Corporation for Assigned Names and Numbers (September 30, 2009) at <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm> ("ICANN commits to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders by: . . . (c) continually assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof); (d) continually assessing the extent to which ICANN's decisions are embraced, supported and accepted by the public

own mandates have not been met here. An effort to foist on the world community and markets a change of this magnitude is not the measured “bottom up” approach described in the Code of Conduct. Moreover, it is impossible to describe the decision to adopt the Program as a decision based upon consensus where the research, comments and reports submitted to ICANN clearly show that there was and still is no consensus on the purported benefits of the Program.

Excessive Costs and Harms to Brands

The immediate cost imposed on businesses is likely to be in the billions of dollars. Applying for a new Top Level Domain name will require an extraordinarily expensive registration fee of \$185,000 as well as a minimum cost of \$25,000 paid annually to ICANN over the ten-year contractual commitment that successful applicants must make. Costs will further escalate at the second level of naming – the word to the left of the “dot” – as brand owners will have to consider registering each of their brand-related terms, for either commercial or defensive purposes.

Some have estimated that, for a typical company, the cost of acquiring a single gTLD and managing it over the initial commitment of ten years could easily exceed \$2 million, including expenses for the application process, operations, disputes, and related legal services. The costs associated with trademark monitoring and protection in all the new gTLD spaces will run even higher. Some CRIDO members spend over \$1 million a year today to enforce against cybersquatting and fraud in the existing 22 gTLD spaces. These numbers will clearly escalate if ICANN’s proposal goes forward. In addition, many companies may face an auction for a generic Topic Level Domain, which will result in higher costs to ICANN’s benefit. Many companies have hundreds or even thousands of brands to defend. Brand owners will face a Hobson’s choice of either being compelled to spend substantial resources to acquire and manage new gTLDs or risk the harm to their brands that could occur if they take no action. This has certainly been the message spoken loud and clear to us from our members and the many groups within CRIDO.

Following the Money

Existing and prospective Internet registries and registrars stand to be the primary beneficiaries of the new gTLD Program. Just examining ICANN’s own financial statements, it would appear that registries and registrars pay fees that comprise the lion’s share of ICANN’s budget. According to ICANN’s own audit reports for the Fiscal Year 2011, ICANN’s primary source of revenue comes from Internet registries and registrars. In fact, of ICANN’s \$69.3 million in revenue for Fiscal Year 2011, \$64.5 million came from fees paid by registries and registrars.²¹

and the Internet community; and (e) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development”).

²¹ See Report of Independent Auditors and Financial Statements for the Internet Corporation for Assigned Names and Numbers, prepared by Moss-Adams LLP June 30, 2011 and 2010, *available at*: <http://www.icann.org/en/financials/financial-report-fye-30jun11-en.pdf>.

That is 93% of ICANN's 2011 revenue. In 2010, that same figure was 94%.²² Looking ahead to this new gTLD program, more TLDs mean new business for registries and registrars and greater numbers of registries and registrars, which in turn creates more fees for ICANN.

However, ICANN's budget incentive for new gTLDs will be more than increased registry and registrar fees. The initial application fees expected in FY 2012 and 2013 will provide the organization with a considerable boost to its budget – a \$92.5 million dollar boost in fact (which could be quite conservative because it only projects 500 applications; in some of ICANN's earlier delegation scenarios they have projected 1,000 or more applications as the high end).²³ In the Fiscal Year 2012 budget projections for new gTLD revenues are expected to add another \$27.8 million to ICANN's revenue – or adding another 40% to its budget.²⁴ Likewise, in draft Fiscal Year 2013 new gTLD revenues are expected to add another \$64.8 million – that is nearly a 94% increase in revenues above the 2011 fiscal year figures mentioned above.²⁵

ICANN says that it will use these revenues for intensive application review processes, but we would be remiss if we did not add that \$30 million or nearly one-third of all expected gTLD application revenues will be earmarked for a litigation risk fund. ICANN is clearly expecting many problems with this application window given the large litigation budget anticipated.²⁶

Lack of Consensus

It is true that ICANN spent a number of years considering this Program at meetings around the world. However, the 152 members of CRIDO, representing major global companies and business groups, are living proof that the objections of industry sectors most affected by this Program have not been adequately considered or addressed by ICANN. A number of CRIDO members have actively voiced objections to the new gTLD process and the lack of adequate trademark protection mechanisms, yet their concerns have fallen on deaf ears. This entire constituency – the one required to fund the new names and maintain the Internet's economic model – has been largely ignored. On the other hand, we do not hear any clamor for the Program. ICANN has failed to reach stakeholder consensus, a specific requirement of its contract with the NTIA.

²² *Id* at 2.

²³ New gTLD Program Cash Flow and P&L by Fiscal Year, ICANN.org, (September 9, 2011) (showing the gTLD financial projections) *available at*: <http://www.icann.org/en/financials/new-gtld-program-cash-flow-09sep11-en.pdf> ("gTLD Cash Flows Projections"); Delegation Rate Scenarios for New gTLDs, ICANN.org, (Oct. 2010) at p 6 (showing 1000 applications as extremely high activity and 1000's of applications as the maximum throughput) *available at*: <http://www.icann.org/en/topics/new-gtlds/delegation-rate-scenarios-new-gtlds-06oct10-en.pdf>.

²⁴ *gTLD Cash Flow Projections* at 2.

²⁵ *Id*.

²⁶ *Id*.

Conflict of Interest Concerns

We are very concerned about potential conflicts of interest that may be present in this expansion proposal, for both the Board and staff of ICANN. It is very troubling that many of the same individuals who approved this expansion, including ICANN's former Chairman, now stand to benefit substantially from companies that will register applicants and manage the expansion. For example, within one month after the vote of the ICANN Board to approve the new gTLD expansion, former ICANN Chairman Peter Dengate Thrush had joined a London company called Top Level Domain Holdings, a company that will directly profit from the decision.

These events have cast a serious cloud over the legitimacy of the vote to approve the new gTLD Program. ICANN serves as a quasi-governing body for the day-to-day operations of the Internet. It is absolutely critical that all decisions are made in the public interest, not in the best interest of the closely-knit ICANN family.

We believe that ICANN can reclaim its legitimacy as an Internet governance body only by conducting a thorough and proactive review of both the gTLD expansion and the broader conflict of interest and ethics policies for the organization. We expressed these concerns in a letter to ICANN on October 2, 2011, which is available at <http://www.ana.net/getfile/16766>. Our letter notes that serious concerns about the inadequacy of the ICANN conflict of interest policies have been expressed by Senator Ron Wyden (D-OR), by Lawrence Strickling, Assistant Secretary for Communications and Information at the U.S. Department of Commerce, and by the full European Commission.

At its October meeting in Dakar, ICANN's Governmental Advisory Committee (GAC) expressed "extreme concern about the inadequacy of the existing rules of ethics and conflict of interest" in ICANN.²⁷ The conflict of interest issues threaten to undermine confidence in ICANN's decision-making. Obviously, if ICANN merely adopts prospective conflict of interest corrections they will not undo harms that have already occurred. Attention must be paid to the effects of conflicts on ICANN's deliberations and the legitimacy of the gTLD roll out proposal.

Exemptions to the Program

Three groups were exempted or exempted themselves from the new gTLD Program: the Red Cross, the Olympics and ICANN itself. In letters to ICANN, both the Red Cross and the Olympics stated that they needed this type of protection to assure that the public who trust their brand identities would not fall victim to typosquatting, cybersquatting and phishing. The Red Cross noted that a substantial portion of their resources are used to counteract "fraudulent websites containing Red Cross names to solicit donations routinely after virtually every newsworthy disaster."²⁸

²⁷ GAC Communiqué – Dakar, October 27, 2011 (attached as Exhibit D).

²⁸ David Meltzer, Senior Vice President International Services, Peggy Dyer, Chief Marketing Officer and Mary S. Elcano, General Counsel and Corporate Secretary, American Red Cross, to Kurt Pritz, Senior Vice President, Stakeholder Relations and Amy Stathos, Deputy General Counsel, ICANN, June 16, 2011, page 2.

While these exemptions may be appropriate, no other exemptions were extended to the thousands of other charities and foundations that similarly use the Internet to foster their public interest activities – yet they surely face the same kinds of harms.

The fact that ICANN exempted itself is even more informative. ICANN not only exempted its own name from the gTLD process, but several other names as well. But the protections for ICANN will not end at the top level. ICANN will have the opportunity to negotiate more protections for itself at the second level once new gTLD registries are selected. Take for example, the many reservations that ICANN made for itself on the new .xxx domain. In the .xxx registry, ICANN was even able to protect names of some of its leadership.²⁹ No other groups received the same protection. Major universities across the country, for example, have recently found it necessary to purchase multiple .xxx domain names to protect against links of their names to porn sites. The Ohio State University purchased a total of 19 domains, including buckeyeblitz.xxx and goldpants.xxx.³⁰ The cost for each of these domain name purchases was \$200 for a purely defensive purpose. These costs could be substantially higher if an auction is required to protect a name.

These exemptions explode the argument that ICANN makes that it has developed adequate protections against cybersquatting, typosquatting and phishing. These charitable and other NGO groups will face the same dangers that the Red Cross and the Olympics highlighted, and many of them will not have the financial wherewithal to defend and protect their good name in the Internet marketplace.

Not All TLDs Are Alike

Our concerns primarily focus on generic Top Level Domains (gTLDs). These concerns do not generally extend to so-called ccTLDs dealing with country designators such as .co, .cn, .eu, and .de. Nor are we opposed to the use of other languages and character sets in the Domain system, although we believe that the public interest requires that all Top Level Domains be cost beneficial and not impose undue burdens on the Internet or undermine consumer trust. Neither do we believe that there is something sacrosanct about maintaining the existing 22 gTLD system unaltered. However, all of our companies, associations and groups believe the unrestricted and unlimited expansion of gTLDs is a reckless experiment that needs to be halted and reassessed before it damages the very positive growth of consumer trust that is fundamental to the Internet marketplace.

²⁹ Kevin Murphy, RodBeckstrom.xxx Will Never See the Light of Day, Domain Incite (Sept. 14, 2011) *available at*: <http://domainincite.com/rodbeckstrom-xxx-will-never-see-the-light-of-day/>.

³⁰ FoxNews.com, Penn State Bought Adult .XXX Domain Names to Block Usage Prior to Sex Abuse Scandal (Nov. 30, 2011) *available at* <http://www.foxnews.com/us/2011/11/30/penn-state-buys-adult-domain-names-to-block-usage/>.

Conclusion

We commend the Committee for holding this important hearing. Examining the membership list of CRIDO demonstrates that the concerns of the worldwide business community are extraordinarily widespread. The issues that we raise will fall even harder on consumer groups, charities, foundations, and myriad other entities that have even less financial ability to protect their institutional interests and that will be impacted by the rapid, unlimited opening of the generic Top Level Domain space.

We reject the argument of those who say that it is too late for ICANN to step back and reevaluate or for NTIA, the Governmental Advisory Committee and other key Internet participants to try to make one last major effort to forestall this potentially severely damaging initiative. There is absolutely nothing sacred about the January 2012 implementation date. Given the serious concerns expressed by a broad and growing cross-section of the entire American and global business community, the companies which provide the economic foundation of the Internet, and the potential dangers to consumers, we believe it would be irresponsible for ICANN to proceed full-speed ahead with the roll-out next month.

We are sensitive to the U.S. government's concern that by acting, in any capacity, it could fracture the voluntary domain name system, which is embedded in the authoritative root. Or, alternatively, that control of the ICANN Internet governance function could be relinquished to the International Telecommunications Union. However, given the potential harms that we have identified from this Program: consumer harm, cybersquatting, typosquatting, Internet piracy and product counterfeiting, inaction could be far more destabilizing to ICANN as a governance body. If the new gTLDs launch and such problems occur en masse, then foreign governments will have no choice other than to call for the dismantling of ICANN. No one here at this hearing wants to see ICANN dismantled. We would like to buttress its authority by ensuring that the gTLD Program is maintained and developed appropriately in the public interest and promotes consumer trust.

We very much appreciate this opportunity to testify and the careful consideration of our and the other members of CRIDO's views.

Association Signatories to the ICANN Petition

AAF-Amarillo
AAF-Dallas
AAF-Fort Worth
AAF Hampton Roads
AdClub Cincinnati
Advertisers Association of Guatemala (Guatemala)
Advertisers Association of Nigeria (Nigeria)
Advertisers Association of Turkey (Turkey)
Advertisers Business Group (United Arab Emirates)
Agrupacion Nacional de Anunciantes de Mexico (Mexico)
American Advertising Federation (AAF)
American Advertising Federation Baltimore, Inc.
American Advertising Federation of Des Moines
American Apparel & Footwear Association (AAFA)
American Association of Advertising Agencies (4As)
American Beverage Association (ABA)
American Council of Life Insurers (ACLI)
American Health Care Association (AHCA)
American Insurance Association (AIA)
American Intellectual Property Law Association (AIPLA)
American Society of Association Executives (ASAE)
Asociacion Espanola de Anunciantes (Spain)
Asociacion Nacional de Anunciantes de Colombia (Colombia)
Asociacion Nacional de Anunciantes Peru (Peru)
Asociacion Nacional de Anunciantes Venezuela (Venezuela)
Asociacion Nacional de Avisadores Chile (Chile)
Associacao Brasileira de Anunciantes (Brazil)
Associacao Portuguesa de Anunciantes (Portugal)
Association of Advertisers in Ireland (Ireland)
Association of Canadian Advertisers (Canada)
Association of National Advertisers (ANA)
Association of New Zealand Advertisers (New Zealand)
Association of Swiss Advertisers (Switzerland)
Austin Advertising Federation
Australian Association of National Advertisers (Australia)
Boise Advertising Federation
Bond van Adverteerders (The Netherlands)
Bulgarian Association of Advertisers (Bulgaria)
Cable Advertising Bureau (CAB)
Camara Argentina de Anunciantes (Argentina)
Camara de Anunciantes del Paraguay (Paraguay)
Camara de Anunciantes de Uruguay (Uruguay)
China Association of National Advertisers (China)

Consumer Electronics Association (CEA)
Czech Association for Branded Products (Czech Republic)
Cyprus Advertisers Association (Cyprus)
Dansk Annoncoerforening (Denmark)
Direct Marketing Association (DMA)
European Association of Communications Agencies (EACA)
European Publishers Council (EPC)
Food Marketing Institute (FMI)
Grocery Manufacturers Association (GMA)
Groupement des Annonceurs du Maroc (Morocco)
Hellenic Advertisers Association (Greece)
Hungarian Branded Goods Association (Hungary)
Idaho Advertising Federation
Idaho Falls Advertising Federation
Incorporated Society of British Advertisers (United Kingdom)
Indian Society of Advertisers (India)
Indonesia Advertisers Association (Indonesia)
Intellectual Property Owners Association (IPO)
Interactive Advertising Bureau (IAB)
IAB Europe
The Israel Marketing Association (Israel)
Japan Advertisers Association (Japan)
Lebanese Association of Advertisers (Lebanon)
Lewis-Clark Valley Advertising Federation
Magic Valley Advertising Federation
Mainostajien Liitto (Finland)
Malaysian Advertisers Association (Malaysia)
The Marketing Association of South Africa (South Africa)
Mobile Marketing Association (MMA)
MPA - the Association of Magazine Media
National Association of Broadcasters (NAB)
National Association of Manufacturers (NAM)
National Confectioners Association
National Council of Chain Restaurants (NCCR)
National Restaurant Association (NRA)
Norwegian Association of Advertisers (Norway)
Organisation Werbungtreibende im Markenverband (Germany)
Pakistan Advertisers Society (Pakistan)
Philippine Association of National Advertisers (The Philippines)
Pocatello Advertising Federation
Promotion Marketing Association (PMA)
Property Casualty Insurers Association of America
Radio Advertising Bureau (RAB)
Retail Industry Leaders Association (RILA)
Russian Association of Advertisers (Russia)
Singapore Advertisers Association (Singapore)

Slovak Association for Branded Products (Slovakia)
Slovenian Advertising Chamber (Slovenia)
Sveriges Annonsorer (Sweden)
Television Bureau of Advertising (TVB)
Union Belge des Annonceurs (Belgium)
Union des Annonceurs (France)
U.S. Chamber of Commerce
Utenti Pubblicita Associati (Italy)
World Federation of Advertisers (WFA)

Company Signatories to the ICANN Petition

Acxiom
adidas
Adobe Systems Incorporated
Allstate Insurance Company
American Express
Autodesk, Inc.
Brinker International
Burger King Corporation
The Coca-Cola Company
Chrysler Group LLC
Church's Chicken
Combe Incorporated
ConAgra Foods
Costco Wholesale Corporation
Darden Restaurants, Inc.
Dell Inc.
Dunkin' Brands, Inc.
Educational Testing Service (ETS)
Fidelity Investments
Ford Motor Company
General Electric Company
GroupM
Hack Creative
Havas
Hewlett-Packard Company
Hunter Douglas NA
J.C. Penney Company, Inc.
Johnson & Johnson
Kellogg Company
Kraft Foods
La Quinta
Liberty Mutual
MillerCoors
Money Mailer of Amarillo

Nationwide Mutual Insurance Company
Neon Sun Tanning Salon
Nestle USA
ORCI
OSI Restaurant Partners, LLC
Papa John's
Procter & Gamble
Publicis Groupe
Pulte Group
Reebok
Rollins, Inc.
Samsung
Siemens AG
Siemens Corporation
The J.M. Smucker Company
Toyota
US Bank
Vanguard
Verge
Walmart



November 10, 2011

The Honorable John Bryson
Secretary
US Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Dear Secretary Bryson:

We, the undersigned, representing large and small business, in virtually every industry sector, in the United States and around the world, are writing to express our strong concern with respect to the June 2011 decision by the Internet Corporation for Assigned Names and Numbers (ICANN) to approve the top-level domain (gTLD) Applicant Guidebook and to move forward with plans to open the new gTLD application window on January 12, 2012 (the ICANN plan, decision or ICANN Proposal) on a virtually unlimited basis.

ICANN's action was taken despite widespread and significant objections raised throughout the process by many in the global community of Internet users. ICANN's decision was not made in the public interest, does not promote consumer trust, and does not benefit the public, as required in the Affirmation of Commitments between ICANN and the National Telecommunications and Information Administration (NTIA).

Moreover, additional facts have come to light since ICANN announced the most recent iteration of the Applicant Guidebook – including rounds of troubling conflict of interest questions - which cast a shadow over the entire process leading up to ICANN's decision. Those facts, combined with the current state of the global economy, raise substantial issues regarding the wisdom of moving forward with ICANN's plan, given its undisputed costs and its merely putative benefits.

The ICANN Proposal would unduly burden a diverse range of public and private brand holders, as they would be forced to spend ever-greater amounts of time and resources simply to protect their brands. In addition, there is an unacceptably high risk that the ICANN plan would confuse consumers, increase the already unacceptable level of fraud and identity theft on the Internet, create new opportunities for Internet crime, and jeopardize cyber security. Businesses and not-for-profits alike have repeatedly raised these issues with ICANN over the last four years, with no acceptable resolution.

For these reasons, we respectfully call on the Department of Commerce and, specifically the NTIA, to persuade ICANN to postpone the opening of the top-level domain application window unless or until such time as ICANN convincingly demonstrates that unlimited TLD name expansion would:

- Promote consumer trust;
- Enhance Internet security;
- Promote widespread economic benefits across diverse economic sectors and stakeholders; and
- Demonstrate that these benefits will exceed the costs that such gTLD expansion would inevitably impose on the global Internet community.

Respectfully submitted,

Organizations

AdClub Cincinnati

American Advertising Federation (AAF)

AAF-Amarillo

AAF-Dallas

AAF-Fort Worth

AAF Hampton Roads

American Advertising Federation Baltimore, Inc.

American Advertising Federation of Des Moines

American Apparel & Footwear Association (AAFA)

American Association of Advertising Agencies (4As)

American Beverage Association (ABA)

American Council of Life Insurers (ACLI)

American Health Care Association (AHCA)

American Insurance Association (AIA)

American Intellectual Property Law Association (AIPLA)

American Society of Association Executives (ASAE)

Association of Canadian Advertisers (ACA)

Association of National Advertisers (ANA)

Austin Advertising Federation

Boise Advertising Federation

Cable Advertising Bureau (CAB)

Consumer Electronics Association (CEA)

Direct Marketing Association (DMA)

European Association of Communications Agencies (EACA)

European Publishers Council (EPC)

Food Marketing Institute (FMI)

Grocery Manufacturers Association (GMA)

Idaho Advertising Federation

Idaho Falls Advertising Federation

Intellectual Property Owners Association (IPO)

Interactive Advertising Bureau (IAB)

IAB Europe
Lewis-Clark Valley Advertising Federation
Magic Valley Advertising Federation
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National Association of Manufacturers (NAM)
National Confectioners Association
National Council of Chain Restaurants (NCCR)
National Restaurant Association (NRA)
Pocatello Advertising Federation
Promotion Marketing Association (PMA)
Radio Advertising Bureau (RAB)
Retail Industry Leaders Association (RILA)
Television Bureau of Advertising (TVB)
U.S. Chamber of Commerce
World Federation of Advertisers (WFA)

Corporations

Acxiom
Adobe Systems Incorporated
Allstate Insurance Company
American Express
Brinker International
Burger King Corporation
The Coca-Cola Company
Combe Incorporated
ConAgra Foods
Costco Wholesale Corporation
Darden Restaurants, Inc.
Dell Inc.
Dunkin' Brands, Inc.
Educational Testing Service (ETS)
Fidelity Investments
Ford Motor Company
General Electric Company
Hack Creative
Hewlett-Packard Company
Hunter Douglas NA
J.C. Penney Company, Inc.
Johnson & Johnson

Kellogg Company
La Quinta
Liberty Mutual
MillerCoors
Money Mailer of Amarillo
Nationwide Mutual Insurance Company
Neon Sun Tanning Salon
Nestle USA
ORCI
OSI Restaurant Partners, LLC
Papa John's
Procter & Gamble
Publicis Groupe
Pulte Group
Samsung
US Bank
Vanguard
Verge

cc: Lawrence E. Strickling, Assistant Secretary for Communications and Information and
Administrator, National Telecommunications and Information Administration, U.S.
Department of Commerce

Fiona Alexander, Associate Administrator, National Telecommunications and
Information Administration, U.S. Department of Commerce

Vernita Harris, Deputy Associate Administrator of the Office of International Affairs,
National Telecommunications and Information Administration, U.S. Department of
Commerce

Suzanne Murray Radell, Senior Policy Advisor, National Telecommunications and
Information Administration, U.S. Department of Commerce

Elizabeth Bacon, Telecommunications Policy Specialist, National Telecommunications
and Information Administration, U.S. Department of Commerce

Cameron F. Kerry, General Counsel, U.S. Department of Commerce

Daniel K. Inouye, Chairman, Committee on Appropriations, U.S. Senate

John D. Rockefeller, Chairman, Committee on Commerce, Science and Transportation,
U.S. Senate

Patrick J. Leahy, Chairman, Committee on the Judiciary, U.S. Senate

Thad Cochran, Ranking Member, Committee on Appropriations, U.S. Senate

Kay Bailey Hutchison, Ranking Member, Committee on Commerce, Science and Transportation, U.S. Senate

Charles E. Grassley, Ranking Member, Committee on the Judiciary, U.S. Senate

Barbara Mikulski, Chair, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, U.S. Senate

Al Franken, Chairman, Subcommittee on Privacy, Technology and the Law, Committee on the Judiciary, U.S. Senate

Tom Coburn, Ranking Member, Subcommittee on Privacy, Technology and the Law, Committee on the Judiciary, U.S. Senate

Ron Wyden, Chairman, Subcommittee on International Trade, Customs, and Global Competitiveness, Committee on Finance, U.S. Senate

Harold Rogers, Chairman, Committee on Appropriations, U.S. House of Representatives

Fred Upton, Chairman, Committee on Energy and Commerce, U.S. House of Representatives

Lamar Smith, Chairman, Committee on the Judiciary, U.S. House of Representatives

Norm Dicks, Ranking Member, Committee on Appropriations, U.S. House of Representatives

Henry A. Waxman, Ranking Member, Committee on Energy and Commerce, U.S. House of Representatives

John Conyers, Ranking Member, Committee on the Judiciary, U.S. House of Representatives

Bob Goodlatte, Chairman, Subcommittee on Intellectual Property, Competition and the Internet, Committee on the Judiciary, U.S. House of Representatives

Frank Wolf, Chairman, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, U.S. House of Representatives

Mel Watt, Ranking Member, Subcommittee on Intellectual Property, Competition and the Internet, Committee on the Judiciary, U.S. House of Representatives

Chaka Fattah, Ranking Member, Subcommittee on Commerce, Justice, Science and Related Agencies, Committee on Appropriations, U.S. House of Representatives



Governmental Advisory Committee

Dakar, 27 October 2011

GAC Communiqué – Dakar

I. Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Dakar, Senegal during the week of October 22-27, 2011. Forty-nine Governments participated in the meeting: 46 present and 3 by remote participation and six Observers. The GAC expresses warm thanks to the local hosts, The Ministry of Communication, Telecommunications and Information Technology (MICOMTELTIC) and the Regulatory Authority for Telecommunications and Post (ARTP) for their hospitality in organizing the meeting and ICANN for supporting the GAC during the meeting.

II. New gTLDs

The GAC further discussed and decided on the formulation of GAC advice for inclusion in Module 3 of the Applicant Guidebook [Annex I].

During the discussion ICANN Staff underlined their understanding that advice regarding the definition of Geographic Names should be adopted by the GAC.

The GAC congratulates the JAS working group on the final report and recommendations, which are consistent with GAC advice. The GAC looks forward to the Board providing clear timelines for implementation of the recommendations to enable needy applicants to join in full and meaningfully in the first round.

The GAC raised concern about the unpredictability of the actual number of applications that governments would have to digest to proceed after the end of the application period. The GAC made clear, that if the number of applications published by ICANN significantly exceeds 500, GAC members might not be able to process a very large number of applications in the very short early warning procedure and in the limited time for issuing GAC advice on all these strings.

Further, the GAC asked ICANN for clarification about its intention to process these applications in batches of 500, in the case that there are more than 500 applications. The GAC urges ICANN to clarify the procedures and implications for applicants being processed in different batches, as this might have implications for competition and applicants' business models.

Following presentations by the ICANN staff and the Security and Stability Advisory Committee, the GAC took note of the SSAC consideration of the combined impact of new gTLDs and other changes such as the introduction of IPv6, DNSSEC and IDNs to the root. The GAC welcomes the confirmation of the commitment by the ICANN Board to provide a full report with a complete analysis, including all underlying data, of the root system scalability well before the opening of the new gTLDs application round. The GAC further welcomes the confirmation of the commitment by the Board to evaluate the impact on the system after the 1st round, with the understanding that the launch of a second round is contingent on the outcome of this evaluation, in particular the absence of negative effects on the root system. The GAC believes that in order for this evaluation to be effective, an appropriate and trustable monitoring system needs to be in place.

In its discussions with the Board regarding the Communication Plan for new gTLDs, the GAC emphasised the importance of promoting the gTLDs application round in all countries, including developing countries. The GAC suggested that levels of awareness be continually assessed and reviewed, and priorities and target areas under the Plan be adjusted accordingly in the run up to the launch of the round.

The GAC welcomed the assurances received from the Board and staff that the evaluation of applications will ensure a level playing field for applicants and that any conflicts of interest will be identified and avoided accordingly.

III. Law Enforcement (LEA) Recommendations

In recent years, the Internet has grown to have over two billion users and be a significant contributor to the global economy.

Cyber-crime is a growing threat to the security and stability of the Internet, with broad and direct public policy impacts. Recent estimates suggest that the direct financial impact of cyber crime is extremely significant.

Law enforcement agencies have identified a series of specific problems which are limiting their ability to address this growing problem.

As part of this, law enforcement agencies have identified specific areas of concern in the ICANN context, relating to contractual weaknesses and a lack of necessary due diligence.

To address these urgent problems, in 2009 law enforcement agencies made 12 concrete recommendations to reduce the risk of criminal abuse of the domain name system.

These recommendations were informally socialized with the registrar community, the GAC, and with ICANN compliance staff over the course of several months, before the GAC advised the Board in its Brussels communiqué that it formally endorsed the recommendations.

Direct exchanges between law enforcement agencies and registrars continued in September 2010 in Washington D.C., in February 2011 in Brussels, and during the March and June 2011 ICANN meetings.

As a complement to the June exchanges in Singapore, the GAC urged the Board to support actions necessary to implement those recommendations as a matter of urgency.

To date, none of the recommendations have been implemented, and the risks remain. The GAC therefore advises the ICANN Board to take the necessary steps to ensure that ICANN's multistakeholder process effectively addresses these GAC-endorsed proposals as a matter of extreme urgency.

IV. Accountability and Transparency Review Team Recommendations (ATRT)

The GAC welcomes the update provided by ICANN staff on the ATRT Recommendations progress and the suggestions presented with regards to the implementation of recommendations 9 through 14 on the GAC role, effectiveness and interaction with the Board.

The GAC looks forward to an expedited implementation of the Joint Working Group and ATRT recommendations and is keen to continue working with the Board on the Recommendations related to the GAC.

V. Conflict of interest

The GAC expresses extreme concern about the inadequacy of the existing rules of ethics and conflict of interest in the light of recent events and therefore welcomes the approval of the motion by the Board Governance Committee on 15 September 2011 concerning "ethics and conflicts of interest". The GAC looks forward to the publication of a timeline with clear and effective actions as a conclusion of the Dakar meeting or shortly thereafter. In order to ensure the legitimacy and sustainability of the multi-stakeholder model as enshrined in ICANN, the GAC underlines the extreme urgency of putting in place effective and enforceable rules on conflicts of interest.

The GAC will keep this important issue under review and may come forward with further advice before the Costa Rica GAC meetings.

VI. Meeting with the Generic Names Supporting Organisation (GNSO)

The GAC and the GNSO exchanged views on a number of issues, beginning with an overview by ICANN staff of the GNSO policy development process. Consistent with the recommendations of the Accountability and Transparency Review Team and the related GAC-Board Joint Working Group, the GAC stressed its interest in ensuring that GAC views are provided and taken into account at early stages in the policy development process.

The meeting also discussed the implementation of the Law Enforcement Agency (LEA) recommendations to mitigate Domain Name System abuse, which were endorsed by the GAC in June 2010. The GAC expressed its disappointment that registrars were only able to report on their consideration of three of the twelve LEA Recommendations. Further, the reported progress fell substantially short of what GAC members believed had been achieved during its meetings with registrars in Singapore in June 2011. The GAC also expressed concern that there was no clarity on how the other nine recommendations were being progressed, despite the registrars' agreement at the Singapore meeting to provide regular status

reports. The GAC informed the GNSO Council of its intention to request the ICANN Board to take prompt and concrete action to implement the GAC/LEA recommendations.

The meeting also addressed the GAC's proposal to the GNSO on the protection mechanism for the International Olympic Committee and Red Cross/Red Crescent names at the top and second levels. The GAC requested feedback from the GNSO on the proposal as a first step in collaborating on advice for the ICANN Board in this regard, consistent with the ICANN Board Resolution in Singapore.

The GAC looks forward to further engagement with the GNSO to work more effectively within the ICANN processes and reinforce the sustainability of the multi-stakeholder model.

VII. Meeting with the At-Large Advisory Group (ALAC)

The GAC met with the ALAC to discuss Conflict of Interest issues within the ICANN Board and staff. The GAC agrees that this is a critical matter that needs to be addressed as a high priority within the community.

The GAC and ALAC also discussed the Joint Applicant Support (JAS) Working Group as well as the ALAC and GAC Joint Statement. The GAC expects a decision to be taken for implementation in time for the opening of the first new gTLD round.

In light of the common interest of advancing improvements in the ICANN model, the GAC and ALAC also discussed the ongoing work of the Accountability and Transparency Review Team (ATRT). The GAC shared the areas identified as a priority in the framework of the ATRT and the Joint Working Group recommendations, looking forward to an expedited implementation.

VIII. GAC Operating Principles

The GAC amended Principle 47 of its Operating Principles clarifying its understanding of consensus. The definition now introduced derives from United Nations practice and understands consensus as adopting decisions by general agreement in the absence of formal objections. The GAC noted that according to UN practice individual members may make reservations, declarations, statements of interpretation and/or statements of position regarding a consensus decision, provided such texts do not represent an objection to the consensus [Annex II].

IX. Joint session with the Country Code Names Supporting Organization (ccNSO)

The GAC met with the ccNSO to discuss the progress and ongoing work of the Framework of Interpretation cross-community Working Group (Fol) on delegation and redelegation, and the mechanisms for the GAC to provide feedback and contribute to this work within a timeline that the ccNSO has provided. In addition, the ccNSO shared an update of its current work areas and its organisational structure.

The GAC is eager to further engage with the ccNSO to provide timely inputs on the different stages of the Fol work.

X. Meeting with the Security and Stability Advisory Committee (SSAC)

The GAC thanks the SSAC for providing an update on its work including blocking and reputation systems, WHOIS matters and single label domain names. Further, the GAC thanks the SSAC Chair for discussions on Root Zone Scaling and Resource Public Key Infrastructure (RPKI).

The GAC looks forward to receiving further updates on DNS blocking matters and other relevant security and stability related matters.

XI. Meeting with the Nominating Committee (NomCom)

The GAC met with the Nominating Committee and discussed the skill-sets needed of an ICANN Director, as outlined in the Accountability and Transparency Review Team (ATRT) recommendations to improve the selection process. The NomCom invited individual GAC members to provide further inputs.

XII. Election of Vice-chairs

The GAC has reelected the current vice-chairs, Choon-Sai Lim (Singapore), Maria Häll (Sweden) and Alice Munyua (Kenya) to continue their mandate for another year.

The GAC warmly thanks all those among the ICANN community who have contributed to the dialogue with the GAC in Dakar.

The GAC will meet during the period of the 43rd ICANN meeting in San José, Costa Rica.

Applicant Guidebook Module 3.1: GAC Advice on New gTLDs

ICANN's Governmental Advisory Committee was formed to consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.

The process for GAC Advice on new gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.

GAC members can raise concerns about any application to the GAC. The GAC as a whole will consider concerns raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors.

The GAC can provide advice on any application. For the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period (see Module 1).

GAC Advice may take one of the following forms:

- I. The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.*
- II. The GAC advises ICANN that there are concerns about a particular application "dot-example". The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.*
- III. The GAC advises ICANN that a particular application should not proceed unless remediated. This will raise a strong presumption for the Board that the application should not proceed unless there is a remediation method available in the Guidebook (such as securing one or more government's approval) that is implemented by the applicant.*

Operating Principles Article XII Principle 47

The GAC works on the basis of seeking consensus among its membership. Consistent with United Nations practice¹, consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection. Where consensus is not possible, the Chair shall convey the full range of views expressed by members to the ICANN Board.

[Foot note to UN practice be inserted]

¹ Statements by GAC members related to such advice will be posted on the GAC website.