



**TESTIMONY BEFORE THE HOUSE COMMITTEE ON ENERGY AND COMMERCE'S
SUBCOMMITTEE ON TECHNOLOGY AND COMMUNICATIONS**

"ICANN'S TOP LEVEL DOMAIN NAME PROGRAM"

DECEMBER 14, 2011

9:00 A.M

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INTELLECTUAL PROPERTY ATTORNEY
COUNCIL OF BETTER BUSINESS BUREAUS**

Good morning, my name is Anjali Hansen. I am the intellectual property attorney at the Council of Better Business Bureaus (CBBB), which is the umbrella organization for the 116 BBBs across North America. I greatly appreciate the opportunity to discuss the issue of the expansion of Internet top level domains with this Subcommittee. I am here to testify on the existing threats to trust on the Internet and how a large-scale adoption of new Top Level Domains (TLDs) may greatly increase these threats if specific measures are not taken in the process of expanding the number of TLDs.

The Better Business Bureaus are a network of non-profit organizations which for the past 100 years have been dedicated to building trust between consumers and businesses. We are uniquely positioned as a bridge between the business community and their customers, and we take seriously our role as an unbiased source of information on which businesses are worthy of your trust.

My workdays are spent on the front line, defending the iconic brands of the BBB—the BBB Torch, trusted by consumers and proudly displayed by ethical businesses; the Wise Giving Alliance logo, that helps consumers identify charities worthy of their donations; and other BBB marks, that also stand for trust in the marketplace. Because the BBB marks are so trusted by consumers and relied on by businesses, they are high profile targets for scammers and criminal groups, who unceasingly try to commandeer them to gain instant credibility and defraud consumers. Our staff and financial resources are strained to the limit today just trying to keep up with these problems which occur almost exclusively online.

Let me tell you what I am up against. I have thousands of referrals of unauthorized online use of our seals and trademarks each year. In addition, like many well-established companies and organizations, BBB's good name and brand is subject to massive fraud and abuse. We are in the midst of the third week of an ongoing, relentless phishing scam using our email address, trademarks and logo. The scam

has been sent to tens of thousands . . .perhaps millions . . . of recipients throughout North America, and warns that someone has filed a BBB complaint against the email recipient and that they need to click a link (purporting to be our link or logo) to respond. Anyone who clicks on the link is taken to a series of redirected websites and their computer is infected by a virus. I have been spending countless hours tracking the emails and reporting them to the Secret Service, FBI and numerous web hosts. But the scammers are sophisticated and leap rapidly from website to website, keeping us trailing behind after unsuspecting recipients have been victimized. This has crippled our organization on several occasions, causing failures in our phone system and website scam reporting portal due to the massive volume of calls and e-mails we are receiving from confused consumers and business owners.

We are besieged and we need resources and help in enforcing our own brand on the Internet.

While we commend the Internet Corporation for Assigned Names and Numbers (ICANN) for its efforts over the past several years to address these crucial issues through various mechanisms, more needs to be done. We remain concerned that even with the safeguards planned by ICANN, the launch of new top level domains is going to make protecting our brand – and those of many other businesses and nonprofits -- a great deal more difficult and costly unless specific measures are taken in the process of expanding the number of TLDs.

We recognize that ICANN has made the barriers to obtaining a Top Level Domain quite high to ensure criminal elements do not get access to a registry. However, the fraud currently taking place on the Internet is not perpetrated directly by registry operators, but rather by individuals who are allowed to buy domain names incorporating our trademarks or which set up websites that display our marks without authorization. These are purchased at the second level through registrars and web hosts that

impose minimal barriers to entry at that level. We think the increase of new TLDs will lead to a corresponding proliferation of domains and websites we will have to police , unless additional protection measures at the registrar level are put in place. The increased protection at the registrar level must match the high barriers to obtaining a new TLD.

We also acknowledge that ICANN has tried to help by adding a new process of protection of trademarks that will be implemented with this new round of TLDS. Under this proposed framework, CBBB will have the ability to register its trademarks in ICANN's central Trademark Clearinghouse, but registering our trademarks in this clearinghouse only guarantees us first right to buy our trademarks as domains in each new TLD. This is called defensive domain registration and is already a burdensome cost to us and every other brand owner trying to ensure online protection of their trademarks. We own over 300 domain names and many of those are defensive registrations in TLDs where we have no intention of operating a website, but we nonetheless feel compelled to purchase in those TLDs to keep our trademarks out of the hands of fraudsters. There is no set price as to what these registries will charge for the defensive registrations and the costs when multiplied by potentially hundreds or more new and unsupervised registries, will get prohibitive.

Having to defensively register our own marks to protect them is a stunning reversal of trademark protection in the U.S. where a single registration with the U.S. Patent & Trademark Office should act as notice that nobody else but BBB can use those marks. This standard of protection should be extended to the internet. One potential solution that we would encourage ICANN to explore is to block the new TLD registries from selling domains that incorporate trademarks that have been properly registered in the Trademark Clearinghouse. Only registered trademark holders that have registered in the Trademark Clearinghouse should be allowed to acquire a domain name corresponding to that trademark in any TLD.

It is notable to consider the experience the CBBB had in the most recently opened top level domain, the .xxx TLD operated by ICM Registry for the adult entertainment industry. Any trademark holder that wanted to ensure that its trademark was not sold in that registry had to block it during the “sunrise” period. Otherwise, ICM could sell the trademark in domain names. In all, ICM and the registrars selling to .xxx have made a reported \$20 million from such registrations to block over 90,000 trademarks that were filed during the sunrise period of that TLD. This has creating a unjustified financial windfall for an adult entertainment registry because trademark holders do not want to have their trademarks sold and abused in that TLD.

Even more astounding was the fact that ICM Registry refused to accept CBBB’s registration of its most famous trademark “BBB” because ICM was allowed to reserve bbb.xxx as a premium name that it can later auction off to the highest bidder. We could not even defensively purchase our own trademark.

We are participating in the constituency groups of ICANN and would like to work to reduce the current level of fraud and abuse on the Internet and the high costs of protecting brands online. We believe that BBB’s traditional role of brokering self-regulatory solutions could be of use in developing these crucial policies.

Finally, in conclusion, we believe in an Internet that is open and competitive and innovative. We do not request excessive regulation of the Internet by governments throughout the world and believe in the rights to freedom of expression on the Internet. On the other hand, it serves nobody’s interests but those of criminals if there is insufficient focus on crime on the Internet. It becomes a place of mistrust and widespread fraud.

Without more controls on Internet registries and registrars, the Internet will increasingly serve criminal interests over the public interest. We recommend that ICANN's plans to expand top level domains include procedures that encourage the application of standards by registries and registrars, which in turn will help reduce costs to businesses and restore the trust of consumers.

Lastly, I want to again thank the Committee for convening a hearing on such an important issue. We look to your leadership in protecting American consumer and business interests.

Thank you for your time.

SUMMARY OF TESTIMONY OF ANJALI HANSEN

HEARING BEFORE THE SUBCOMMITTEE ON TECHNOLOGY AND COMMUNICATIONS

DECEMBER 14, 2011

The Better Business Bureaus have for the past 100 years been dedicated to building trust between consumers and businesses. My workdays are spent on the front line, defending the iconic brands of the BBB. Because the BBB marks are so trusted by consumers and relied on by businesses, they are high profile targets for scammers and criminal groups, who unceasingly try to commandeer them to gain instant credibility and defraud consumers. Our staff and financial resources are strained to the limit today just trying to keep up with these problems which occur almost exclusively online.

Like many well-established companies and organizations, BBB's good name and brand is subject to massive fraud and abuse. We fear the proliferation of new TLDs will lead to a corresponding proliferation of domains and websites we will have to police. While ICANN will ensure that top level domains are purchased by reputable registry operators, most of the fraud takes place by website and domain registrants and there are few controls at that level.

ICANN's process of protecting trademarks under the new TLD program is too burdensome and costly. We will have to pay to register our trademarks in ICANN's central Trademark Clearinghouse, which then gives us the option to buy our trademarks as domains in each new TLD to keep our trademarks out of the hands of fraudsters. One potential solution is to block the new TLD registries from selling domains that incorporate trademarks that have been properly registered in the Trademark Clearinghouse.

Without more controls, the Internet will increasingly serve criminal interests over the public interest. We recommend that ICANN's plans to expand top level domains include procedures that encourage the application of standards by registries and registrars, which in turn will help reduce costs to businesses and restore the trust of consumers.