

Do Not Sell List

Frequently Asked Questions



Q: What would ICANN have to do to implement the *Do Not Sell List*?

A: At present, ICANN is in the process of determining how to batch various applications for the purpose of prioritizing the order they will be reviewed. All they need to do to establish a ***Do Not Sell List*** is to allow registration by brand owners into a Do Not Sell batch.

Q: Isn't that complicated?

A: No, not at all. They're programming batches in any event. Adding one for the ***Do Not Sell List*** is simple and inexpensive.

Q: What should the NTIA do?

A: We would most like them to join with us in the negotiations and be part of the team. But if they are unwilling or unable to do so, we at least expect them to publicly support our proposal and efforts.

Q: How will ICANN know if a request to be placed on the *Do Not Sell List* is from a legitimate brand?

A: If it is not, then we assume the marketplace will raise its voice. There is no real need for pre-clearance. Remember, the ***Do Not Sell List*** is temporary and any issues whether a request is from a legitimate brand or not can be resolved in due course. There's plenty of time from the closing of the first application period to the launching of the first new TLD to address such concerns.

Q: What happens if one of two companies with the same brand names, e.g., Delta Faucets and Delta Airlines, wants to be on the *Do Not Sell List* while the other wants to apply for a TLD?

A: It's simple. The company that wants to be on the ***Do Not Sell List*** will be registered. The company that wants to buy the TLD will be prevented from doing so in the first application window unless they work out an agreement with the company that has registered. This simply shifts the burden of justifying a registration to the party seeking it and removes the need for the party who does not want to purchase to consider a defensive registration at considerable costs.

Q: But doesn't that put the company that wants the TLD at a disadvantage since it might not get it in the first application window?

A: Yes, on a temporary basis. That is a small risk for ICANN to assume in exchange for addressing the grave concerns expressed by the vast majority of brands with regard to defensive registrations at the TLD level.

Q: Is it too late for something like this to be implemented?

A: Not at all. ICANN simply needs to include the ***Do Not Sell List*** in one of the batches it is programming now.

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Q: What happens if ICANN and the groups you represent can't come to an agreement at the end of the application window?

A: If that happens, all of the parties are free to seek whatever remedies are available to them without prejudice to anything discussed in the negotiations. In effect, and unfortunately should that occur, the parties are back to square one.

Q: How will the people representing your groups be chosen to serve on a negotiating committee?

A: We certainly need to work that out but we have been in close partnership with all of the groups since we founded CRIDO. We are confident we can assemble a group quickly.

Q: When and where would ICANN and your group meet?

A: That is largely up to ICANN and its schedule. We will make ourselves available. Given the technology ICANN commonly employs, video meetings can easily be held electronically.

Q: Would meetings of ICANN and your group be public?

A: We would certainly prefer that they be public but there might be instances where ICANN believes something sensitive warrants a closed session. Those issues can be resolved as we progress through discussions.

Q: In the past, other groups claiming to represent the interests of brands, e.g., INTA and CADNA, have met with ICANN and tried to work out differences. Why is your group different and why do you think you'll be successful?

A: We have all the respect in the world for others who have tried to deal with ICANN. Both CADNA and INTA did their best against tough odds. Our coalition, however, represents a broader array of constituencies united behind a single cause than ever before. If we cannot succeed in amicably working something out with ICANN, we doubt anyone else can.

Q: Could one or more of the constituencies that have raised objections negotiate separately with ICANN if they chose not to do so with you?

A: Yes. That is their decision to make.

Q: ICANN says it has a lot of work to do over the next six months to make the application process work smoothly. Is it realistic to think ICANN can also devote the time to seriously participate in your proposed negotiations?

A: Yes. All they need to do is add a **Do Not Sell List** batch to what they're already doing. It's simply untrue that the process to do so is complicated or time consuming. Moreover, NTIA Administrator Strickling already requested that ICANN address many of the same items mentioned in our letter (items, such as WHOIS authentication, that ICANN has delayed for many years). Presumably, ICANN

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should be addressing these items before it introduces new TLDs. Our offer of a way forward should help ICANN short cut its work, because we've started a forum for discussion.

Q: If ICANN agrees with your proposal, will that mean other constituencies like Congress, the IGO's, law enforcement and consumer protection will back off and adopt a wait and see attitude?

A: Each constituency will have to make its own decision, however we truly hope that the constituencies will join with us and weigh into the process.

Q: How does the *Do Not Sell List* address the non-brand concerns from constituencies like law enforcement and consumer protection?

A: The *Do Not Sell List* is a first step to at least address, in a simple and inexpensive manner and on a temporary basis, the immediate concerns of brands with regard to defensive registrations. That concern is shared by many of the constituencies, including the IGO's and NGO's. But the concept of a *Do Not Sell List* is only one idea that will be discussed. We fully intend to discuss all the other concerns of constituencies as well if ICANN is true to its word and shows its sincerity by cooperating.

Q: Why can't you just wait and see who applies and if there are objections, raise them at that time?

A: Waiting is not an option. Unless the *Do Not Sell List* is implemented, constituencies concerned about defensive registrations will have to spend millions to protect their interests before ICANN has addressed what it admits are ongoing concerns.

Q: Why is the *Do Not Sell List* different or better than the protections currently offered by ICANN?

A: Because the purported protections offered by ICANN are hollow and will cost constituencies worried about defensive registrations to spend millions trying to protect their interests. The *Do Not Sell List* alleviates that problem for a temporary period while the parties act in good faith to resolve the issues.

Q: Why did you wait until the 11th hour to suggest a "*Do Not Sell List*"? Will ICANN have sufficient time to respond before the application window opens?

A: We did not wait until the 11th hour. We've been addressing these issues with ICANN for almost six months, only to be largely ignored and never offered a meeting to discuss our concerns. Suggesting the *Do Not Sell List* at this time is our effort to find common ground to sincerely address critical issues that hundreds of constituencies have raised. The solution is simple and ICANN has more than enough time to agree and implement the *Do Not Sell List*.

Q: If ICANN doesn't agree to the *Do Not Sell* proposal, how will CRIDO respond?

A: Should ICANN continue its refusal to engage in constructive discussions by rejecting this proposal, the affected constituencies will need to consider more aggressive and disruptive options, including litigation against ICANN and/or its Board members. We sincerely hope that will not be necessary.