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To: Supporters of ANA Opposition to ICANN gTLD Initiative

Date: October 19, 2011

Subject: ICANN – Executive Summary

We are counsel to the Association of National Advertisers and part of their team opposing the introduction of hundreds of new Top Level Domains by the Internet Corporation for Assigned Names and Numbers. This memorandum provides an overview of the issues.

If you have any questions, please do not hesitate to contact me or Dan Jaffe, Executive Vice President of the ANA at (202) 296-2359 or djaffe@ana.net.

A. Background

1. **ICANN.** The Internet Corporation for Assigned Names and Numbers (ICANN), under a contract with the U.S. Commerce Department, is responsible for establishing and administering the Internet's top level domains, or TLDs. In operating under its mandate, ICANN decisions must represent consumer interests and be the result of a bottom-up consensus process.
2. **Top Level Domains.** A TLD is the word or string of letters that appears to the right of the 'dot' in an Internet address, for example, "com" in .apple.com.
3. **Registry and Registrar.** A TLD is authorized by ICANN upon application of a third party that wants to own and administer it as a "registry". Once owned, a registry can then directly or through "registrars" like Go Daddy, sell second level domain names, or SLDs, attached to their TLD.
4. **Second Level Domains.** A SLD is the word or string of letters immediately to the left of the "dot" in an Internet address, for example, "apple" in apple.com.
5. **Current gTLDs.** There are currently twenty-two so called "generic" TLDs (gTLDs), the ones we are most familiar with and that include long established ones like .com, .org, .net, .edu, and .gov and those introduced in the past ten years like .jobs, .travel, .info, and .biz. There are millions of SLDs.
6. **Commercial gTLDs.** Fifteen of today's gTLDs are used for commercial purposes: .aero, .asia, .biz, .com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .org, .pro, travel, and .xxx.

B. ICANN Proposal

1. **Unlimited gTLDs.** On June 20, 2011, ICANN announced a program, effective January 12, 2012, that would allow anyone to apply for ownership of virtually any gTLD they can think of, both generic and branded.
2. **Process.** ICANN's decision is grounded in the information it gathered over a three year period across 45 "stakeholder" meetings around the world. At these meetings, where there has been thin representation by brand owners and associations, brand owner issues have largely been ignored.
3. **ICANN Justification.** ICANN claims that there were three core reasons for introducing the Program:
 - To promote competition
 - To spur industry innovation
 - To alleviate a shortfall in domain names
4. **Costs to Own.** Ownership of a new gTLD requires a fee of \$185,000 and completion of a 300 page plus application form. If more than one applicant applies for a given gTLD, ICANN will auction off that gTLD to the highest bidder. The money goes to ICANN to help cover its operational costs in administering the program.
5. **Costs to Challenge or Exempt.** Depending upon whether a brand wants to protect its own brands or object to a filing that might infringe its brand, additional fees must be paid to ICANN.
6. **Estimates.** In the first year, ICANN estimates that several hundred new gTLDs will be introduced, with many more to follow in subsequent years.

C. Considerations for All Brands.

All brands will have to deal with the following issues regardless of whether a company purchases a gTLD or not. Many of these issues also adversely impact consumers as well.

1. **Monitoring and Policing gTLDs.** Marketers will be required to monitor and police the new gTLDs, just as they do current TLDs, to guard against cybersquatting, typosquatting and other threats to their brands by third party registrations at the SLD.
2. **Parking SLDs.** To defend against cybersquatting and typosquatting, marketers will buy and park potentially thousands of SLDs in the new gTLDs to protect their brand equity just as they do today in the existing gTLDs. Multiplying brand owner expense by adding hundreds

of new gTLDs where SLDs will need to be purchased will reap billions in profits for domain name sellers and consultants without adding any brand value (or any increased web traffic).

3. **Consumer Confusion and Business Disruption.** Domain registrants on the top-level or second-level domains will register closely associated names to brands in hopes diverting traffic that was destined for the legitimate brand owner. Take, for example, the US government's problems with whitehouse.gov. It was powerless to prevent a registrant from running a porn website at whitehouse.com. Unregistered brands will face these same concerns, as will trademarked brands outside the limited protection of ICANN's Trademark Clearinghouse.
4. **Increased Click Through Fraud.** Pay per click advertising or, PPC, is an arrangement in which webmasters, acting as publishers, display clickable links from advertisers in exchange for a charge per click. Advertisers typically pay 30 cents to as much as \$50 per click, depending on the keyword, industry sector and popularity of the webpage on which their ad appears, and whether the consumer bought merchandise on a website. Closely registered fraudster websites will contain PPC advertising from companies like Google's AdWords and Yahoo. In turn, a company will have to pay Google or Yahoo! for artificially driving traffic to its website and Google/Yahoo! will pay the fraudster for every link to the official website. With more gTLDs harboring SLDs, tracking fraud will be far more prevalent than it is today.
5. **Identity Theft.** Consumers will be lead to believe that various close domain names to banks or credit card brands may be the real company. This harm is likely to occur in second-level domain registrations, where ICANN is not reviewing the applications. Consumers will provide full names, social security numbers, mother's maiden names, full addresses, income and many other pieces of information on credit applications, all of which would be highly valuable to an identity thief. This will deteriorate consumer confidence in on-line transactions.
6. **Charity Fraud.** For each major natural disaster or security event that we have faced in the Internet age we have seen instances of online frauds. There are even fraudsters making profits on Steve Jobs' death with bogus websites seeking contributions in his memory. After Hurricane Katrina, it was reported by Charity Navigator that there were some 4,000 bogus websites for online donations. More gTLDs, more platforms from which to launch charity scams.
7. **Spam E-mail.** Using the credit card example, fraudsters will also spoof legitimate bank or credit card emails. A fraudster will register a closely associated domain to send seemingly legitimate emails urging consumers to apply for a credit card. This would be another method for the fraudster to collect consumer information and engage in identity theft. The more gTLDs, the more bases from which to launch fraudulent schemes.

8. **Spyware/Malware.** New gTLDs and by extension, SLDs, will increase the locations in which the hacking community can hide. There will be an increase in the prevalence of spyware and malware on the net. Currently, large companies such as Microsoft have difficulty controlling spyware automatic programs (called “bots”) that are very prevalent under the current domain structure. Add more gTLDs and the problem is only exacerbated.
9. **Online Predators.** Child predators will have more outlets to run unsupervised message boards asking young children to register and provide a home address. Children are not sophisticated enough to discriminate between credible or non-credible websites. Further, consider if seniors were targeted with deals for their grandchildren. Every senior might not verify whether the website is official before providing his or her credit card.
10. **Product Counterfeiting.** Companies and consumers will face more fraudsters using seemingly legitimate websites to sell unofficial merchandise.
11. **Counterfeiting Funding Terrorism.** In 2007, The New York Times reported that there was a \$500 billion dollar trade in counterfeit goods - a trade that has links and provides revenue to terrorism.
12. **Foreign-Registered Websites and Forum Shopping.** Fraudsters will host more unofficial domains in locations outside of the United States. In ICANN’s own promotional road shows for this program, panelists have recognized the value of jurisdiction shopping to avoid the long arm jurisdiction of U.S. law and the U.S. website seizure process.

D. Considerations for Brands Purchasing a New gTLD. If a brand is considering purchase of a new gTLD, it will have to deal with the following:

1. **gTLD Classifications.** There are three types of gTLDs that will be relevant to most companies: 1) a branded TLD, i.e., a company’s brand name, e.g., .ReedSmith; 2) a generic TLD, e.g., .willsandtrusts; or 3) a “community-based” gTLD, where the owner is the representative of a particular community and has pledged to operate the gTLD for the good of that specific group as a whole, e.g., .law for the legal industry. It is not clear what the difference is between a generic TLD and a community TLD. Here’s chart that illustrates the confusing distinctions (note that some can be both branded and generic):

Branded TLD	Generic TLD	Community TLD
.bankofamerica	.money	.bank
.generalelectric	.windmills	.energy
.allstate	.protection	.insurance
.mcdonalds	.nutrition	.fastfood
.hewlettpackard	.data	.computers
.fidelity	.fidelity	.investment

2. **Onerous Application.** The application for a gTLD is onerous. It is over 200 pages and requires significant time to fill out. In addition to a great number of questions on the applicant’s technical ability to operate a registry, it requires information including a company’s finances, corporate documents, and legal history, much of which will be problematic disclosures for private companies and, to some degree, even public companies. Non-public companies may also even need background checks done on executives. Applicants must also consider a wide variety of issues from intellectual property to finance to antitrust, among many others. Absent extraordinary circumstances, applications will not be considered if they have missing, incomplete, or incorrect information and, in most cases, such applications will be rejected without opportunity to correct.

3. **Registry Obligations.** If an application is granted, the Applicant will become the “registry” of that gTLD. A registry is the entity responsible for being the backbone of the operation of the domain names associated with that gTLD. The registry makes sure that the system continues to work and that all domain names are properly indexed and connected to the system. For example, VeriSign is the registry for .com, Neustar is the registry for .biz, and so on. For the vast majority of applicants, it is highly unlikely that they will have the structure (or want to develop the structure) to actually handle the technical needs of a registry. Most applicants will likely outsource these functions to one of the existing registries.

4. **Objection Periods.** The seven-month formal objection period starts in late April when the public portions of the application are posted. Any objection will start a dispute resolution process that can cost anywhere from a couple of thousand dollars to approximately \$120,000 per party depending on the type of proceeding chosen. Objections may be based on (a) string contention (the application is too close to another existing or applied for gTLD—for the latter, an auction will typically take place); (b) legal rights such as trademark confusion; public interest

(such as vulgarity); or (c) an objection to a Community-based Application (which can only be made by an established representative of that community).

5. **Community gTLD Obligations.** If an applicant is applying for a Community-based gTLD, it is responsible for defining its application as “community-based” rather than standard. A Community gTLD is operated for the benefit of a “clearly delineated community.” An applicant must substantiate its status as representative of a community by having endorsements in support of the application. Once a Community-based gTLD is active, all domain names and owners of domain names within a community gTLD must be related to the defined community and the registry will be responsible for making sure it has and enforces registration and use policies for domains consistent with the benefit of the community. Objections to the application may be filed if it is believed that the applicant will not properly represent the community as a whole.
6. **Lengthy Process.** The most straight-forward of applications will take approximately nine months from application to becoming a registry. More complex applications, ones that need extended evaluations, or ones where an objection has been filed may take upwards of 20 months (or longer if ICANN gets significantly more applications than expected).
7. **Limited Trademark Protection.** There are certain trademark protections that have been put into the system (with many gaps as described below) concerning the second-level domain names once gTLDs are granted. A second level domain is the word(s) or string of letters immediately to the left of the “dot”, e.g., “reedsmith” in “reedsmith.com”. The purported protections include (a) the existence of a Trademark Clearinghouse where companies can list their marks and be eligible for some of the protections listed here; (b) a Sunrise period for the first 30 days of the launch of any gTLD where trademark owners can get a domain name with their registered mark before open registration; (c) a process where trademark owners will be notified if someone else tries to register a domain name with their mark during the Sunrise period or during the first 60 days of open registration (although only during Sunrise can the trademark owner block the registration before it even occurs); and (d) a Uniform Rapid Suspension Freeze process, which is similar to the existing domain name dispute system (the differences being that it is cheaper, but you can only freeze the name, not get it transferred). Finally, there are procedures against registries themselves who are abusing trademarks, not following proper policies, or not adequately representing communities.
8. **Critical Gaps.** There are many gaps in the protections for trademark owners. The biggest one is that almost all of the protections rely on the trademark owner to engage in substantial monitoring activities and be the one to take action against cybersquatters and typosquatters. The protections only concern exact trademark copying and after the first 60 days that a new gTLD is open for enrollment, the registry is not required to notify the trademark owner when a domain name with even the exact trademark has been registered. Even with all the purported protections, the fact remains that there will be hundreds of new gTLDs that must be monitored. Therefore, the changes will require a tremendous amount of time and expense on the part of brand owners.

E. Critical Failures in ICANN's Proposal. There are any number of critical failures in ICANN's proposal and the process by which it reached its conclusion. They include the following.

1. **No Benefits to Brands or Consumers.** There are no material or obvious benefits from the Program that provide true, measurable advantage to major parts of the constituency ICANN is charged to protect. Importantly, material gains are sorely lacking for commerce, competition and innovation. While no doubt some industry sectors will make money, most will suffer enormous costs that far outweigh the gains. Throwing the domain name universe into substantial confusion and generating untold costs to domestic and international businesses and consumers violates the framework of rationality, reasonableness and credibility.
2. **Justification Based on Pure Speculation.** ICANN has failed to show with any certainty that there will be benefits for brands or consumers. While ICANN speculates that hundreds of new TLDs will increase competition and foster innovation, they offer no concrete proof. The only thing that is concrete is that the last round to new TLDs cost brands millions, offered consumers nothing, was an economic failure, created no competition, delivered no innovation and only made money for domain name sellers and consultants.
3. **A Solution in Search of a Problem.** Website owners have not asked for more domain names. Consumers have not asked for more domain names. Search engines long ago replaced addresses as the means by which products and services are found on the Internet. There is no scarcity of space within the existing domains. Thus, there is no problem that needs to be solved.
4. **Ransoming Brands.** In order to protect its existing brands from becoming gTLDs, a brand owner must either invest time and money to have it classified as off limits or to purchase a gTLD with the brand name. Unique brands like Coca-Cola will presumably be able to prevent anyone else from applying for .cocacola. But Apple Computers will not be able to prevent someone from owning .apple. If a particular domain name is contested, ICANN will require that this go to an auction that could potentially cost millions of dollars. Either way, if Coca-Cola or Apple Computer wants to own a gTLD with a brand name they already own, they have to pay hundreds of thousands of dollars to ICANN to own something that is already theirs. Thus, brand owners will face a Hobson's choice. They are either compelled to divert valuable marketing, legal, financial and technical resources to acquiring and managing new top-level domains or risk brand harm that would occur if brand owners take no action and watch another company with rights to the same brand applies for its own top-level domain.
5. **Wasted Revenue.** Estimates are that buying a new gTLD will cost marketers hundreds of thousands or even millions of dollars a year for each gTLD it wants to own. Moreover, costs to monitor and police SLDs by would be cybersquatters, typosquatters and other cyber mischief makers in hundreds of new gTLDs will only add more to wasted expenses. Each

choice carries its own costs and harms. Furthermore, the incremental expenses relating to applying for and operating a top-level domain will divert scarce corporate resources that could otherwise be deployed for job creation and capital investment. All this for something brands don't want, didn't ask for, and from which brands won't see any benefits.

6. **Lack of Consensus.** ICANN spent more than four years globetrotting to meetings in exotic places around the world. Only ICANN has the budget to go to all those meetings. After four years, everyone simply grew tired of ICANN's rhetoric, never believing ICANN would suddenly discover consensus in Singapore when it had never existed before. From the groundswell of objections the ANA has brought together since July, it is obvious ICANN failed to reach consensus and came to its decision with speculative economic impact research, no full and open stakeholder discussions, and little concern for the delicate balance of the Internet ecosystem.
7. **Failure to Comply with Department of Commerce Agreements.** Under its agreements with the U.S. Department of Commerce, ICANN is required to reach its decisions through consensus and with regard to consumer interests. Having failed to reach true consensus and with the overwhelming evidence of consumer harm if the program is adopted, ICANN has failed to satisfy its obligations under its agreements with the U.S. Department of Commerce.
8. **Conflict of Interest Concerns.** US Senator Ron Wyden asked the U.S. Commerce Department to look into the departures of key ICANN executives. Within days after voting to adopt the plan and introduce hundreds of new domains, the then Board Chairman of ICANN left, ending his term as Chair, later becoming chairman of a company that sells domain names. Within weeks following adoption of the plan, the President of ICANN announced he would resign in 2012, giving no indication what he planned to do once he left. Earlier, ICANN's Chief gTLD Registry Liaison left ICANN to head a group that will seek a new TLD in the financial sector. This has elicited considerable concern.
9. **False Hope of New Competition or Innovation.** Without financial support of marketers and confidence among consumers to transact business on the Internet, ecommerce would be nothing more than a dream. Today, ecommerce is a healthy, competitive marketplace. Brands innovate and compete every day, either with compelling messaging, search engine optimization, integrated marketing or more. Consumers respond with ever increasing purchases and reliance on the web for consumer services. Neither needs a single new domain to stay the course as brands improve products and services as well as consumer security and confidence. On the other hand, domain name sellers and consultants will most certainly compete and innovate ways to attract the dollars that will be wasted by marketers in protecting their brands and equity among the new, and unneeded, domains. All this without a care about consumer privacy, phishing, or security.
10. **Negative Impact on Small Business.** ICANN's proposal punishes small business. By creating hundreds of new TLDs, small business owners, both new entrepreneurs and

established companies, will be forced to buy domain names in any number of the new TLDs for fear that someone else will coop their second level name and divert their business. This is exactly what happens today with just 22 TLDs. Add hundreds more and the costs to small business rise without corresponding benefits. That is not competition; that is anti-competition.

11. **Domain Navigation Dilution because Consumers have More Places to Look.** 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. **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 its own experts conclude, the ICANN 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.
13. **Losses from Failed gTLDs.** History itself discredits ICANN's position that the introduction of new gTLDs will increase innovation and competition. One need only look at the dismal financial registration and track record of gTLDs 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” (a report commissioned by ICANN), 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 gTLDs due to embedded links. More generally, Internet users might face increased clutter on the Internet if links fail to resolve.”
14. **New gTLDs Make a Bad Situation Worse.** Today, phishing, hacking, and a host of other cybercrimes plague ecommerce. Privacy concerns by marketers, consumers, and regulators dominate headlines. They all agree that these problems must be solved if consumers will have the confidence in the Internet that assures its continued growth. Now **is not** the time for ICANN to add further complications with the addition of hundreds of new domains where more mischief will reign. Now **is** the time for ICANN to address the real, not the imagined, problems and clean up the current domains before it adds more.

F. The ANA Response.

1. **Official Filings to ICANN.** ANA filed initial comments in December 2008 warning of potential impact to brands and urged further scrutiny and supplemental comments in April 2009 warning that the harm of the proposal would outweigh any perceived gain
2. **Filing to DOC.** ANA filed a comment to the DOC/NTIA in July 2011 in response to a “Notice of Inquiry” regarding the IANA contract (Internet Assigned Numbers Authority) and its renewal in March 2012. ICANN operates under that contract.
3. **Letters to ICANN.** ANA sent two letters of objection to ICANN CEO, Rod Beckstrom in August 2011. The first letter prompted a response by Mr. Beckstrom who “invited” dialogue but demonstrated no willingness to accede or negotiate. There was no response to the second letter.
4. **Conflict of Interests.** ANA filed comments with ICANN on October 2, 2011 citing ICANN’s need to address ongoing conflict of interests among its officers and directors.
5. **Global Coalition.** The ANA has organized a global coalition to oppose ICANN, with the support of the 4As, AAF, IAB, DMA, PMA and WFA – and a growing list of other organizations.

G. Association Supporters

Associations that have joined the coalition include the following:

- American Advertising Federation (AAF)
- American Association of Advertising Agencies (4As)
- American Council of Life Insurers (ACLI)
- American Insurance Association (AIA)
- American Society of Association Executives (ASAE)
- Association of Canadian Advertisers (ACA)
- Association of National Advertisers (ANA)
- Cable Advertising Bureau (CAB)
- Direct Marketing Association (DMA)
- European Association of Communications Agencies (EACA)
- European Publishers Council (EPC)
- Intellectual Property Owners Association
- Interactive Advertising Bureau (IAB)
- IAB Europe
- Promotion Marketing Association (PMA)
- Retail Industry Leaders Association (RILA)

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- U.S. Chamber of Commerce
- World Federation of Advertisers (WFA)

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Petition

Rebecca M. Blank

Acting Secretary of Commerce and Under Secretary for Economic Affairs

US Department of Commerce

1401 Constitution Avenue, NW, Room 4701

Washington D.C. 20230

Dear Acting Secretary Blank:

We, the undersigned, 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 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 local and global, 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 risk of fraud and identity theft, 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.

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Respectfully submitted,

[Names of Associations and Companies]

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