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ICANN  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094-2536, USA

**Re: ICANN's Proposal to Divert Auction Proceeds**

Dear Sirs:

We represent Karsten Manufacturing Corporation, owner of the famous PING trademark and the parent company of the registry operator for the <.ping> registry and submit these comments on their behalf.

Karsten appreciates the opportunity to participate in the public comment process concerning the proposed ICANN Reserve Fund: Proposed Replenishment Strategy. As you are aware, in Section E of your Second Consultation Paper ("Consultation Paper"), you have proposed both the diversion of Auction Proceeds and a further "tax" on Contracted Parties in order to replenish the Reserve Fund. These proposals are flawed for several reasons, which we discuss below.

As the Consultation Paper makes clear, the need for the replenishment is a direct result of two factors. First, ICANN's unnecessary spending of \$36 million to fund the community deliberations around the foregone conclusion of the withdrawal of U.S. government oversight of ICANN (the so-called "IANA Transition," which we strongly opposed). As was clear to some before the IANA Transition, and which should be obvious to all now, the IANA Transition was a manifestly bad idea that has resulted not in ICANN's freedom from governmental interference but instead has led to an increase in governmental interference.<sup>1</sup> ICANN spent \$36 million to ensure that it would not have a champion to secure its legitimate interests, such as accessible WHOIS to help prevent cybercrime, terrorism, widespread infringement, phishing, and fraud. Second, the further depletion of the Reserve Fund is due to ICANN's failure to govern its own spending. ICANN should not be allowed to cover up this mistake by raiding the Auction Proceeds—it should tighten its belt and learn from the error, building back its Reserve Fund through fiscal responsibility. Third, applicants already paid a hefty \$185,000 application fee in addition to the millions of dollars brand owners spent protecting their brands in mandatory auctions as the only means to prevent sale of those brands by ICANN to windfall-seeking third-party registry applicants. Therefore, introducing new taxes on Contracted Parties to address

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<sup>1</sup> The most recent example of which is the disruption being caused to the domain name industry by the European GDPR law.

ICANN's lavish spending appears to be a bait-and-switch since the Applicant Guidebook was clear concerning costs to operate a registry. Placing further financial burdens on Contracted Parties will not bring ICANN's spending under control.

Finally, as the Applicant Guidebook makes clear, the Auction Proceeds were to be set aside for uses that benefit the Internet community. In fact, the Applicant Guidebook limits spending of the Auction Proceeds accordingly, defining a narrow universe of possible uses as follows:

Possible uses of auction funds include formation of a foundation with a clear mission and a transparent way to allocate funds to projects that are of interest to the greater Internet community, such as grants to support new gTLD applications or registry operators from communities in subsequent gTLD rounds, the creation of an ICANN-administered/community-based fund for specific projects for the benefit of the Internet community, the creation of a registry continuity fund for the protection of registrants (ensuring that funds would be in place to support the operation of a gTLD registry until a successor could be found), or establishment of a security fund to expand use of secure protocols, conduct research, and support standards development organizations in accordance with ICANN's security and stability mission.

Nowhere in the list of possible uses is an option for ICANN staff to divert the Auction Proceeds to pay for the IANA Transition or to mask ICANN's failure to restrain its overspending. If such options were available, why would ICANN have gone through the farce of forming the Cross Community Working Group on New gTLD Auction Proceeds?

As the parent company of a new gTLD applicant who had to pay more than \$2 million in auction proceeds in order to ensure that its famous PING branded top-level domain name was not sold by ICANN to another party with no rights in the trademark, the only silver lining that could be found was ICANN's promise that it intended to do some good with the Auction Proceeds. The proposal for ICANN to divert the Auction Proceeds to itself as discussed above negates that promise. ICANN should stay the course, allowing the Cross Community Working Group to finish its work and should instead focus on replenishing the Reserve Fund by providing value to its applicants, by keeping the promises made to its Contracted Parties and those contained in its Applicant Guidebook, and by spending less than it makes.

Very truly yours,

WINSTON & STRAWN LLP



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