

Comment submitted by John Poole, gTLD domain name registrant and editor of DomainMondo.com, re: [Competition, Consumer Trust, and Consumer Choice Review Team \(CCT\) Final Report & Recommendations](#).

“Launched under the Affirmation of Commitments (AoC), the Competition, Consumer Trust and Consumer Choice (CCT) Review Team was formed in January 2016 to assess the New Generic Top-Level Domain (New gTLD) Program in three areas: competition, consumer trust, and consumer choice ...”—[source](#).

The **CCT Review failed** to appropriately consider and evaluate the important and fundamental reasons **why ICANN’s new gTLDs program is a failure** in the areas of **competition, consumer trust, and consumer choice** (noting that “registrants” are included within the definition of “consumer” as used by the CCT Review Team).

Attached and incorporated by reference as if fully set out herein, are the following, including all attachments:

1. My Comment May 19, 2017, to the [CCT-RT-draft-report-07mar17](#) --
<https://mm.icann.org/pipermail/comments-cct-rt-draft-report-07mar17/attachments/20170519/2c6e9f19/CCT-RTComment.pdf>
2. My Comment September 26, 2018 re: [Initial Report on the New gTLD Subsequent Procedures Policy Development Process](#) --
<https://mm.icann.org/pipermail/comments-gtld-subsequent-procedures-initial-03jul18/attachments/20180926/1doa1b63/September26-merged-0001.pdf>
3. My Comment October 21, 2018, to the [Draft Final Report of The Second Security and Stability Advisory Committee Review \(SSAC2\)](#) --
<https://mm.icann.org/pipermail/comments-ssac-review-final-15oct18/attachments/20181021/d55ddffd/CommentSSAC2finalDraft-0001.pdf>

Respectfully submitted,

John Poole, gTLD domain name registrant, and editor, DomainMondo.com
November 26, 2018

Comment by John Poole, domain names registrant and editor of [Domain Mondo](#), re: [Competition, Consumer Trust And Consumer Choice Review Team Draft Report](#), submitted 2017-05-19:

Introduction

Thank you (review team) for the opportunity to comment on your draft report. I have read the entire draft report (146 pages) and attended your [webinar on April 3, 2017](#) (19:00 UTC session). I also reviewed the content at <https://www.icann.org/public-comments/cct-rt-draft-report-2017-03-07-en>.

My perspective in reviewing and commenting on your draft report is from that of (1) a domain names registrant (I have a small portfolio of less than 300 domain names), and (2) a close observer of ICANN, including its processes and policy-making, as editor of DomainMondo.com. I have been a registrant of only 1 new gTLD domain name, which I no longer have. You can read about that experience [here](#). I had hoped to receive ICANN's answers to [my questions](#) submitted in advance of the last ICANN quarterly stakeholder call, some of which relate to the work of this review team. If the review team wants a copy of those answers (which I expect to receive next week), let me know via email.

Overall Comment

Your efforts to meet the stated requirements and goals for this review, fall short in the draft report. The failings are multiple. As I stated during your webinar on April 3, 2017, [chat transcript](#) excerpt:

John Poole: **Your data is already stale and no longer relevant**--new gTLD registrations are now declining

----- (04/03/2017 14:18) -----

John Poole: **You have not considered 3000% pricing increases already announced for some new gTLDs**

----- (04/03/2017 14:19) -----

John Poole: 10% of all new gTLD registrations are now in "delete status"

Carlton Samuels: @John Poole: All true. At the time of the report those were future developments. The final report will likely say something about that.

----- (04/03/2017 14:21) -----

Carlton Samuels: Even your 3000% price increase is dated. Uniregistry is backtracking on that!

Carlton Samuels: <http://domainnamewire.com/2017/04/03/uniregistry-backtracks-price-hike-existing-registrations/>

John Poole: Not really--read the fine print

----- (04/03/2017 14:23) -----

John Poole: <https://onlinedomain.com/2017/04/03/domain-name-news/little-late-uniregistry-will-offer-price-protection-9-extensions/>

----- (04/03/2017 14:27) -----

John Poole: **How are you going to get wholesale pricing data** since ICANN is proposing to delete that reporting requirement in the new gTLD Base Registry Agreement

----- (04/03/2017 14:28) -----

John Poole: My question above

----- (04/03/2017 14:33) -----

John Poole: **How do you define "consumer"--registrant or internet user?**

Jordyn A Buchanan: **"Consumer" includes both.**

----- (04/03/2017 14:35) -----

Jordyn A Buchanan: Elaborating: "Consumer" is subdivided into two categories: registrants and "consumer end users"; the latter are your "internet users"

John Poole: Well **your data is definitely stale if you maintain registrants trust new gTLDs after 3000% price increases--you need to re-examine your data and sources**

----- (04/03/2017 14:37) -----

Jordyn A Buchanan: We would be happy to consider well-conducted surveys that show a change in trust that are more recent than any particular events. So if you have pointers to such data, we'd be happy to consider it.

----- (04/03/2017 14:38) -----

John Poole: **You need to obtain and pay for a well-conducted relevant up-to-date study--**I am not on your committee and I am not going to do your job for you

----- (04/03/2017 14:42) -----

Jordyn A Buchanan: One thing we recommend in the report is to continue various of the data-gathering exercises associated with the report, so assuming those recommendations are adopted you'd expect to see such a survey in the future.

Brian Aitchison: @Jordyn, John: Rec 15 under Consumer Trust recommends ongoing surveys

----- (04/03/2017 14:45) -----

Brian Aitchison: Recommendation 15: ICANN should repeat selected parts of global surveys (for consumerend-user and registrant surveys, in addition to necessary baseline and questions – repeat700, 800, 900, and 1100 series survey questions and questions 775, 1000, 1036, 1050, 155and 1060) to look for an increase in familiarity with new gTLDs, visitation of new gTLDs andperceived trustworthiness of new gTLDs.Rationale/related Findings: Future review teams can compare these results to prior data toassess whether there has been an increase in familiarity with and trust of new gTLDs.

----- (04/03/2017 14:48) -----

John Poole: **Unfortunately Brian, studies authorized by ICANN are usually conducted by "junk science" firms who are paid to come up with the answers ICANN wants--look back at the "junk science" firm ICANN used to justify the new gTLDs program**



John Poole: <http://www.domainmondo.com/2016/11/news-review-icann-used-junk-science.html>






As a domain names registrant and editor of *Domain Mondo*, I am very aware of the new gTLDs and some of the grievous mistakes ICANN has made in connection with this ill-advised, ill-conceived expansion of gTLDs, but the review team seems unaware, in denial, or unwilling to be rigorously honest. Any review, to have merit and lasting value, must be rigorously honest. This is not the time to lapse into ICANN's usual dysfunctional habits of avoiding troubling facts, distorting the historical record, or disregarding the most relevant and current data--







April 13 – May 17, 2017, a loss of 2 million new gTLDs' domain name registrations --per ntlstats.com








A view of all this from an even more experienced domain names registrant:

**Rick Schwartz**  @DomainKing · 13h
"Greater Fool Theory" states the price of an (object) #GTLD is determined not by its intrinsic value, but by irrational beliefs. #Domains

**Rick Schwartz**  @DomainKing · 13h
When this all started, 2 extensions alone told ME they would do 8 million registrations EACH! They overestimated DEMAND! #Domains #gtld
  1  1

**Rick Schwartz**  @DomainKing · 13h
Replying to @DomainKing
500 extensions COMBINED can't stop the bleeding. And .xyz still has "BLACK JUNE" to deal with. #Domains #gtld
**new gTLD Statistics by Top-Level Domains**
new gTLD Breakdown and Statistics by Registrars. Get more insights about all new Top-Level Domains.
ntldstats.com
  1  1

**Rick Schwartz**  @DomainKing · 13h
#GTLD's now down 2MM. Back to Mid-December 2016 levels and heading for November with 1.8MM more 2 drop. #Domains
**new gTLD Statistics by Top-Level Domains**
new gTLD Breakdown and Statistics by Registrars. Get more insights about all new Top-Level Domains.
ntldstats.com

**Rick Schwartz**  @DomainKing · May 17
.Net is an "Orphan Extension" & it's 1000% better than any new #GTLD. .Net has up to a 35% LEAK FACTOR! .Co has a 60% Leak Factor! #Domains



Rick Schwartz @DomainKing · May 17

I can find a GOOD .com name in any subject in MINUTES. Why would new #Startups RISK all on a DUMB #GTLD decision? LAZY? Gullible? #Domains



5



11



Rick Schwartz @DomainKing · May 17

The notion that we are running out of .com or any #cctld names is a FALSE narrative! There is an INFINITE supply of #names. #Domains #gtld



Rick Schwartz @DomainKing · May 17

Of the 2 million #GTLD's that I GUESS are registered by end users, I would also say 90% are defensive. No gas in this tank! #Domains



1



3



Rick Schwartz @DomainKing · May 17

I would GUESS less than 2 Million #gTLD's actually registered by end users. Registries holdbacks & domainers have sucked them up. #Domains



Rick Schwartz @DomainKing · May 16

Domainers and #icann did more harm to #Domains & the "Domain Industry" then all forces combined. 4 #Google, we have been a strategic threat.



1



2



2



Rick Schwartz @DomainKing · May 16

8 out of TOP 10 #gTLD's now in DECLINE! HUGE losses. Millions of #Domains DELETED! Why? They are WORTHLESS CRAP!



new gTLD Statistics by Top-Level Domains

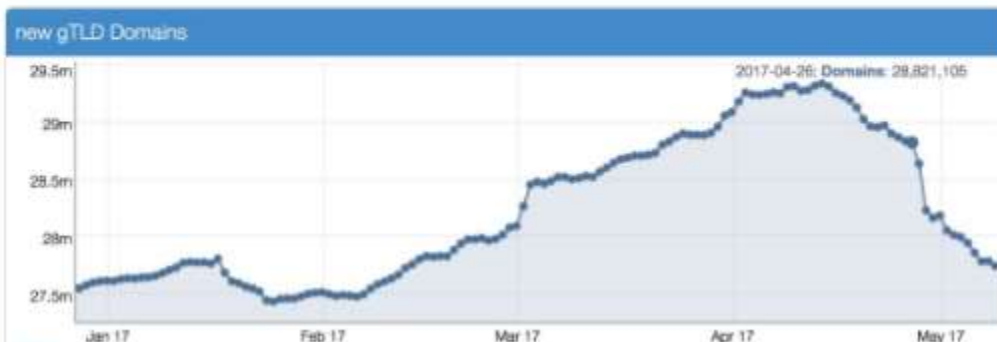
new gTLD Breakdown and Statistics by Registrars. Get more insights about all new Top-Level Domains.

ntldstats.com



Rick Schwartz @DomainKing · May 10

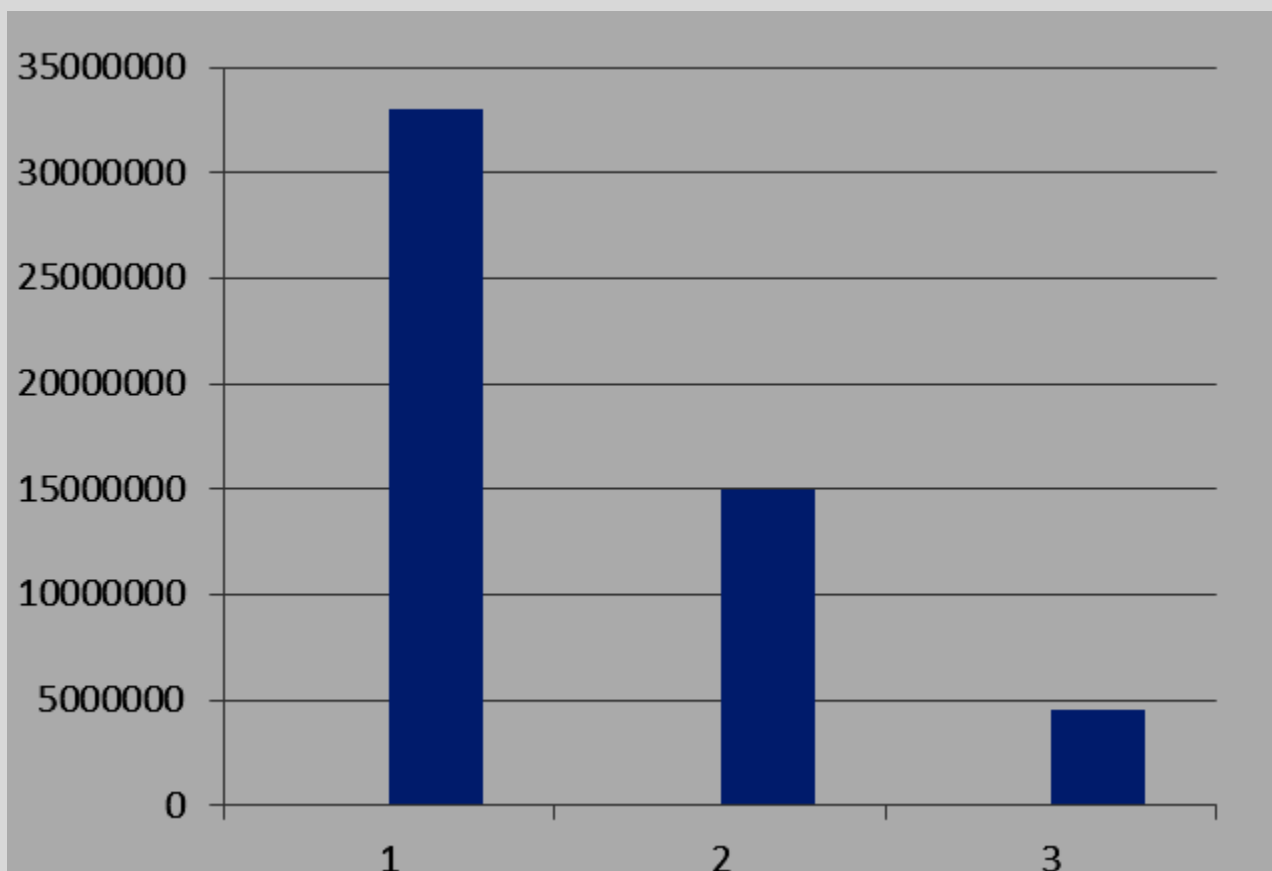
ALL 2017 #GTLD registrations WIPED OUT as per graphic below! Dozens of NEW extensions could not overcome the continuing MELTDOWN! #Domains





“Almost ALL failure happens at the beginning.”—[Rick Schwartz](#)

And of course, some of you may know that ICANN itself “*drank the Kool-Aid*” and grossly overestimated demand for new gTLDs: see [New gTLD Domains, the Walking Dead and Dying, ICANN FY15 Results | DomainMondo.com](#):



Above: Column 1 - ICANN first estimated 33 million new gTLD registrations would occur **in FY15** (July2014-June2015); Column 2 - ICANN revised its estimate (in its adopted FY15 budget) to 15 million new gTLD registrations; Column 3 - Actual new gTLD domain name registrations in FY15: **Less than 5 million.**

No surprise then that among the working titles I considered for this comment:

- The Sordid History of ICANN & Its New gTLDs from [Beckstrom-Thrush-Pritz](#) (pdf) to [Atallah & Chehade](#);
- ICANN & Its New gTLDs: A **Legal Racket** or **Consumer** (registrant) **Scam**?
- New gTLDs: A Dream Come True for Cybercriminals, Cybersquatters, Spammers, & ICANN?
- ICANN's New gTLDs Program: Greed + Incompetence = Choice & Innovation?

Threshold Question

Legal rackets have [two essential components](#): 1) a public-relations "cover" that obscures the racket and 2) the mechanism that extracts the wealth from the "marks." ICANN's new gTLDs program has both components:

1. The **PR cover** is *"the largest-ever expansion of the Domain Name System (DNS); a change that promises to promote global innovation, competition and consumer choice."*—[Akram Atallah](#)
2. The **extraction mechanism** is the new gTLDs' unregulated, monopolistic, "bait-and-switch" price-gouging **pricing model** to extract wealth from the "marks" (domain name registrants), sanctioned by ICANN.

In December, 2008, the U.S. Department of Justice Antitrust Division told ICANN:

*"ICANN is obligated to manage gTLDs in the interests of registrants and to protect the public interest in competition. ICANN appears to have assumed that the introduction of new gTLDs necessarily will enhance competition and promote choice and innovation, without offering any evidence to support that assumption **The Division makes two specific recommendations. First**, ICANN's general approach to new gTLDs should be revised to give greater consideration to consumer [registrant] interests. ICANN should more carefully weigh potential consumer harms against potential consumer benefits before adding new gTLDs and renewing new gTLD registry agreements. **Second**, the RFP process and proposed registry agreement should include provisions that would enable ICANN to constrain new registry operators from exercising market power. In particular, ICANN should establish **competitive mechanisms** for authorizing new gTLDs and renewals of gTLD registry agreements whereby prospective gTLD operators would compete for gTLDs by proposing registry terms – **including maximum fee schedules** – that would provide consumer [registrant] benefits."*—[U.S. Department of Justice, Antitrust Division, December 3, 2008](#) (pdf) (read the entire letter!) via a [U.S. Department of Commerce \(NTIA\) letter](#) (pdf) in December, 2008.

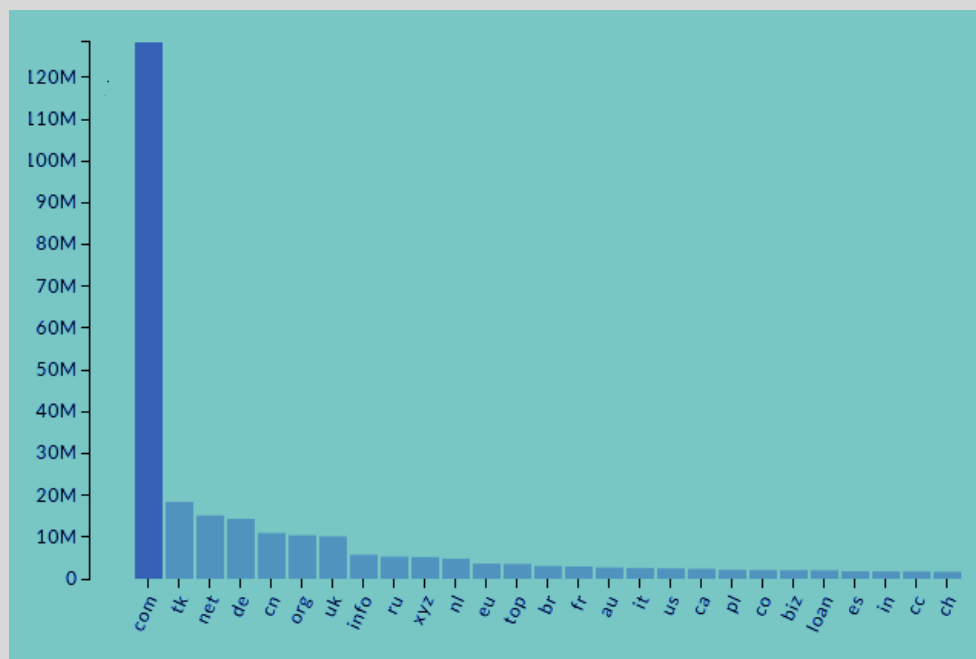
Why did ICANN reject (and to this day continues to reject) the wise, experienced, expert advice of the **U.S. Department of Justice Antitrust Division**, which is among **the world's foremost authorities** on **"consumer choice and competition" issues**?

That's the **threshold question** the review team **failed to ask**, and needs to follow-up on, with both ICANN and the [United States Department of Justice Antitrust Division](#).

Also don't forget the BIG LIE used to justify the new gTLDs program: “we’re running out of domain names.” No we’re not--see comments of Rick Schwarz above about this “false narrative”, and also note the failure of ICANN to understand the importance of the churn of domain names and the secondary market (a/k/a “aftermarket”):

Mike Berkens | [TheDomains.com: ...Thoughts On The New gTLD Program & Some Predictions for 2015](#) (excerpt, emphasis added): “... **The choice consumers have isn’t to register a new .COM or a new gTLD [domain name].** For one, there are around 75,000-100,000 .Com domain names that drop everyday of the year These domain were registered by someone else and some are as old as 20 years. Everyday there are around 10,000 .com domain names that have been registered for 10 years that drop. There are millions of .com domain names for sale on the aftermarket which continue to sell from the hundreds of dollars into the seven figures and those are just the public sales. When you’re talking about spending hundreds, thousands and even five figures a year in registration fees on a new gTLD, then the option of buying a registered .com on the aftermarket becomes much more attractive to the consumer....”

Here’s a graphic of the global domain names market today by TLD (data sets vary depending upon the source, which is another reason ICANN needs a full-time, real-time data collection & publishing department reporting directly to the ICANN President & CEO):



Little has changed since the introduction of new gTLDs because **most new gTLDs are not trustworthy** and are an **inferior alternative** to .COM domain names due to **pricing issues**, as well as **universal acceptance (UA) issues** and **collision issues**, and the draft report fails to even mention either the UA or collision issues!

“**The new extensions (new gTLDs)** are about as reliable and trustworthy as a [CentralNic dot COM subdomain](#): not only is pricing subject to abrupt change with little notice, but even the continued availability of your domain name could be disrupted by transfer to a different operator. ICANN rejected the advice of the US Department of Justice Antitrust Division in December 2008 on how to deliver competition in domain names with new gTLDs while also

providing consumer (registrant) protections. **As a result, for end user registrants, the new gTLDs are an inferior alternative to .COM domain names, and under present circumstances, always will be. Caveat Emptor!"**--

<https://www.thedomains.com/2017/05/09/never-let-someone-else-control-business/#comment-221014>

Universal Acceptance / Consumer Fraud:

Re: [UA study](#) (funded by ICANN) see [MIT Technology Review article comment](#)—

“ The statement *"The bug [Universal Acceptance issue] **wasn't an obvious problem until 2011, when ICANN decided to ...**"* is FALSE. ICANN has known of the problem since at least 2003. The one and same Ram Mohan, who is now Chair of the "industry-led group [Universal Acceptance Steering Group], sponsored by the International [sic] Corporation for Assigned Names and Numbers (ICANN)," has been an ICANN Board Member (SSAC Liaison) since 2008, and documented the history of the problem [here](#).

ICANN was grossly negligent in authorizing new gTLDs and delegating them into the Internet root starting in October, 2013, knowing they would *"fail to work as expected on the Internet."* ICANN has even tried to shirk its public responsibility in [§1.2 of the new gTLDs registry agreement](#).

To add insult to injury, neither ICANN, nor its new gTLD registry operators, have issued any warnings to consumers (registrants) about these new gTLD issues. People are registering these new gTLD domain names and launching businesses only to discover the new gTLD domain names "fail to work as expected on the internet." Sound like **"consumer fraud"** to you? Perhaps the FTC needs to get involved or private class actions filed against ICANN and its new gTLDs' registry operators.

The "technical feasibility of the TLD string" is the issue here. MIT Technology Review has a duty to inform its readers, not mislead them by parroting some "junk study" paid for by ICANN and peddled by ICANN's PR flacks (out of ICANN's Washington D.C. office) to some MIT Technology Review Associate Editor in Washington D.C.

I suggest the review team recommend ICANN publish on its homepage and require all accredited ICANN registrars to publish on their respective homepage(s) the following notice for consumers (registrants):

"Important Notice to Registrants: Please note that annual registration renewal fees charged by new gTLD registry operators and registrars for new gTLD domain names can vary based on the domain and in some cases may be significantly higher than those fees charged for domains under legacy gTLDs such as .COM domain names. Also note that some new gTLDs' domain names may have experienced universal acceptance or collision issues. For more information go to [ICANN webpage dedicated to explaining new gTLDs' pricing, universal acceptance, and collision issues, to registrants]."

Other Specific Comments re: Review Team Draft Report

New gTLD Program history—incomplete, fails to accurately reflect the historical record and context, fails to note the numerous conflicts of interest and controversies surrounding the development of the ICANN new gTLDs program, testimony before the U.S. Congress, the resignation of the ICANN Board Chairman after a critical vote, the [resignation of ICANN's Chief Strategy Officer](#) (“architect of the new gTLDs program”) for an undisclosed conflict of interest, after which he was paid six-figure sums by ICANN for an extended period of time and then became Executive Director of the new gTLDs’ domain name industry trade organization [reportedly founded](#) with the support of ICANN management. No mention of **the .SUCKS debacle**, the 3000% pricing increase announced for Uniregistry new gTLDs and the stated reasons, and other procedural and substantive failings in the new gTLDs program, IRPs, litigation, etc. If the review team needs more information about the **sordid history of ICANN and its new gTLDs** from [Beckstrom-Thrush-Pritz](#) (pdf) to [Atallah & Chehade](#), contact me.

Competition in the DNS Marketplace—fails to properly define, much less understand the global domain names marketplace. Other issues already addressed hereinabove.

Consumer Choice—fails to understand there was little need for such a massive expansion of gTLDs--the global domain names market was already healthy, competitive and vibrant with over 200 ccTLDs plus existing generic TLDs. If ICANN had added say, only 50 new gTLDs (such as .AFRICA, .WEB, .CLUB, .XYZ, .TOP, .VIP, .LINK, .BANK, .APP, .BLOG, .NGO, etc.), with competitive pricing protections as recommended by the U.S. Department of Justice Antitrust Division, the results would have been better and avoided so much of what has gone wrong in ICANN’s new gTLDs’ program. IDNs and intranational geographic TLDs such as .LONDON, .PARIS, should have been assigned for ccTLDs’ expansion. Brand gTLDs should not have been allowed. Any Brand that desires a TLD should have been required to seek such as a ccTLD of the country in which it is jurisdictionally headquartered. Corporations (and similar legally formed organizations) are creations of sovereign governmental authorities. ICANN overstepped its authority by creating separate gTLDs for these kinds of entities.

Consumer Trust—fails to understand components of “consumer trust”—the necessity of regulation of monopolies, and the necessity of having complete wholesale and retail pricing transparency in order to have a healthy and competitive market. Opaqueness or “confidentiality” in pricing is contrary to a free, competitive market. Ask the Securities and Exchange Commission or FTC or United States Department of Justice Antitrust Division. **Collusion** between ICANN’s Global Domains Division and gTLD registry operators is **a real problem already**. In addition the draft report failed to consider the implications of Universal Acceptance issues:

Universal Acceptance debacle: *"1.2 Technical Feasibility of String. While ICANN has encouraged and will continue to encourage **universal acceptance** of all top-level domain strings across the Internet, **certain top-level domain strings may encounter difficulty** in acceptance by ISPs and webhosters and/or validation by web applications. Registry Operator shall be responsible for ensuring to its satisfaction the technical feasibility of the TLD string prior to entering into this Agreement."*--[ICANN Base Registry Agreement](#) (pdf), updated 09 January 2014 (emphasis added).

[ICANN press release](#) April 11, 2017: "... According to one study, 13 percent of websites reject new domain names with more than three letters [in the TLD (top-level domain)] ... **many applications still do not accept the new domains** [[new gTLD domain names](#)]. **Universal Acceptance [UA]** has progressed [even] less for IDNs than for gTLDs ..." (emphasis added) (*Editor's note: ICANN has known about this UA problem since at least 2003 and yet ... ICANN decided to proceed with its [new gTLDs program](#), collect the money, and delegate over 1200 new gTLDs knowing they would "[break stuff](#)," without any disclosures or warnings to the general public or domain name registrants!*)

Add to the above the fact that [ICANN's new gTLDs](#) come with no limitations as to future price increases to consumers (domain name registrants). Unlike .COM domain names, that shiny **new gTLD domain name** that cost you \$XX this year to register could cost you \$XX,000 next year to renew, and ICANN is in the process of deleting the requirement that new gTLD registry operators notify ICANN about price increases--better not put your **new gTLD domain name** on "auto-renew."

"ICANN is just a scam and the entire industry is based on monopolistic fraud with DC payoffs."--[Mike Mann](#), domain name registrant, March 30, 2017.

Public Interest Commitments—fails to note and discuss the complete utter failure in consumer (registrant) protection, including protection from price-gouging, ample notice of price increases, etc.

Right Protection Mechanisms—fails to address the failure of ICANN to provide a means and method for trademark holders to block new TLDs violative of distinctive registered marks. ICANN should not be utilizing extortionate methods to “sell” defensive new gTLDs. See [Frequently Asked Questions | ICANN New gTLDs](#): "1.10 Can I reserve my trademark as a gTLD? No, ICANN does not accept reservations or pre-registrations based on trademarks."

Application and Evaluation—fails to address the already recognized aspects of [new gTLDs' mistakes, fiascos, horrible implementation](#).

Recommendations 1-16 should ALL be Prerequisite or Priority Level and all **wholesale and retail pricing data** should not be confidential but required to be open, disclosed, published, and transparent, in order to have healthy market competition. Opaqueness and “confidentiality” is not consistent with healthy competitive markets, consumer choice, and consumer protection. The internet, its DNS, and ALL TLDs are public resources, not private property, and are subject to the fiduciary requirements set forth by **Jon Postel** in [RFC 1591](#):

- 2) These designated authorities [registry operators] are trustees for the delegated domain, and have a duty to serve the community. The designated manager [registry operator] is the trustee of the top-level domain for both the nation, in the case of a country code, and the global Internet community.
- 3) The designated manager must be equitable to all groups in the domain that request domain names ..."

Draft Report p. 66—**“Public Trusts Legacy gTLDs More Than New gTLDs: The survey data shows that both consumer end users and registrants trust new gTLDs less than they do legacy gTLDs.” So True!**

Additional comments and notes:

ICANN should consider replacing its mostly useless, time-intensive, bureaucratic-like surveys, dashboards, etc., with data-driven, real-time, feedback loops that quickly identify problems including registry operators and registrars price gouging registrants. See [Why Amazon is eating the world | TechCrunch.com](#).

"What amazing benefits will all this [new gTLDs] bring to consumers? None whatsoever, says Esther Dyson, who once chaired ICANN. She says the new plan is wasteful and unnecessary."-- [ICANN's Boondoggle | MIT TechnologyReview.com](#)

"The public at large, consumers and businesses, would be better served by no expansion or less expansion' of domains" said Jon Leibowitz, former chairman of the US Federal Trade Commission in the [New York Times](#)."

[Tim Berners-Lee](#): *"...when a decision is taken about a possible new top-level domain, ICANN's job is to work out, in a transparent and accountable manner, whether it is really in the best interest of the world as a whole, not just of those launching the new domain.*

Ethics Fight Over Domain Names Intensifies: *"A boardroom dispute over ethics has broken out at the organization that maintains the Internet address system after its most important supporter, the United States government, reproached the group for governance standards said to fall short of "requirements requested by the global community ..."*--[The New York Times](#)

"Advocates of Internet freedom contend that such an expanded address system [[new gTLDs](#)] effectively places online control over powerful commercial and cultural interests in the hands of individual companies, challenging the very idea of an open Internet." [New York Times, August 17, 2013](#)

"... we are not running out of domains. This is a "way for registries and registrars to make money," --[Esther Dyson Told ICANN new gTLDs were a mistake in 2011](#)(video)

"[ICANN](#) has a conflict of interest in pursuing the global public interest since its own financial interests are at odds with keeping costs down for Internet users and businesses," Castro [Daniel Castro, senior analyst for the Information Technology and Innovation Foundation] said. "Without US oversight, ICANN has the potential to grow into the world's largest unregulated monopoly." source: [InformationWeek](#)

"We strongly believe that ICANN should substantially reduce the maximum number of new gTLDs that could be introduced in the initial round to a much smaller number. Indeed, doubling the number of existing [22] gTLDs in one year would be an aggressive increase. The imposition of a more reasonable limit is necessary to curb the risks inherent in expanding the number of gTLDs, including the proliferation of malicious conduct. We recommend that ICANN use this round as a limited pilot program, as it has done in previous rounds, assess the organization's ability to evaluate, introduce, and manage additional gTLDs, conduct an assessment of the increased risks posed by the program, and then consider whether a more significant expansion would be appropriate. --[US Federal Trade Commission, letter to ICANN](#), December 16, 2011.

September 26, 2018

To: comments-gtld-subsequent-procedures-initial-03jul18@icann.org

Comment re: [Initial Report on the New gTLD Subsequent Procedures Policy Development Process \(Overarching Issues & Work Tracks 1-4\)](#)

Introduction:

“[Annex C](#) provides a summary of items on which the Working Group is seeking feedback from the community. Please see the Preamble of this report for context about the items included in this table. **It is not necessary to respond to every item in this table. Please respond to the items that you find important. In addition, you are welcome to provide feedback about items included in this paper that are not included in the table below.**”

“As noted in the Preamble, this **Initial Report** does not contain a “Statement of level of consensus for the recommendations presented in the Initial Report. In addition, in some circumstances, **the Working Group and/or Work Tracks did not reach agreement on preliminary recommendations ...**”—[Initial Report](#)

“2.2.1.c.1: The Working Group recommends no changes to the existing policy calling for subsequent application rounds introduced in an ongoing, orderly, timely and predictable manner.”-- Summary of Preliminary Recommendations, Options and Questions for Community Input

Response and Feedback:

I respectfully disagree with your threshold recommendation that there be “no changes to the existing policy”—the existing policy is the product of an incompetent, conflicted, and/or corrupt ICANN Board of Directors, ICANN organization, and “ICANN community”, and has been an unmitigated disaster for the global internet community, including registrants worldwide—and should be replaced in its entirety.

- The ill-conceived existing **new gTLD policy** is a corruption of the historic principles underlying generic top-level domains set forth by Jon Postel in [RFC 1591](#).
- **New gTLDs** are known to “break stuff,” cause “collisions,” and otherwise “fail to work as expected on the internet,” with no warnings to consumers (registrants) by ICANN or its “contracted parties,” *i.e.*, consumer fraud. ICANN went so far as to try to absolve itself of all responsibility for “**technical feasibility**” of **new gTLDs** (new generic top-level domains) [thereby violating ICANN’s own bylaws and its ‘public interest’ commitments] by inserting into the [Base Registry Agreement §1.2](#): “*Technical Feasibility of String. While ICANN has encouraged and will continue to encourage universal acceptance of all top-level domain strings across the Internet, certain top-level domain strings may encounter difficulty in acceptance by ISPs and webhosters and/or validation by web applications. Registry Operator shall be responsible for ensuring to its satisfaction the technical feasibility of the TLD string prior to entering into this Agreement.*” As a result, no one tested for **technical feasibility** thereby **defrauding registrants worldwide**.
- A [SIDN Labs](#) and [Delft University of Technology](#)’s [report](#) (pdf), characterizes **new gTLDs** as “*phishing and malware domains*.”
- The **Electronic Frontier Foundation (EFF)** has [warned registrants](#) to **avoid new gTLDs** due to ICANN’s new gTLDs’ [flawed and overreaching RPMs](#).

- **Absolute unlimited monopolistic pricing powers** granted to **new gTLD registry operators**, including the right to **unlimited increases in domain name registration and renewal fees**--ICANN and its "**ICANN community**" ignored and never effectively addressed the [recommendation and advice of the U.S. Department of Justice Antitrust Division](#) (delivered to ICANN by [NTIA](#)) to protect consumers (registrants) and provide benefits to registrants through the new gTLDs program. New gTLD Registry Operators are free to "*rape and pillage*" the global domain names marketplace and consumers (registrants) worldwide, **thanks to ICANN's corrupt new gTLDs policy** developed solely for the benefit of "contracted parties" and back end registry service providers, not registrants.

"... we are not running out of domains. This is a "way for registries and registrars to make money"—ICANN founding Chair Esther Dyson.
[see: [Esther Dyson Told ICANN new gTLDs were a mistake in 2011](#)(video)].

- [ICANN Insiders On New gTLDs: Mistakes, Fiascos, Horrible Implementation.](#)
- ICANN's **.BRAND new gTLDs** are not only a corruption of the principles of aforesaid [RFC 1591](#), but, in effect, constitute a ".BRAND extortion racket" for the benefit of ICANN and back end registry service providers—see [ICANN's Extortionate .BRAND Scam Failing](#) and the [U.S. Senate testimony](#) (pdf) of Dawn Grove, corporate counsel for the parent of the manufacturer of PING golf equipment.

Attached hereto and incorporated herein by reference as if fully set forth herein:

- a. New York Times article [Ethics Fight Over Domain Names Intensifies](#) March 18, 2012;
- b. NTIA letter to ICANN Dec 18, 2008, with attached Dec 3, 2008 US Dept. of Justice Antitrust Division Letter;
- c. Article by Ram Mohan: [More Problems Crop Up With Universal Acceptance of Top Level Domains](#);
- d. U.S. Senate testimony of Dawn Grove, corporate counsel for the parent of the manufacturer of PING golf equipment.

Respectfully submitted,

John Poole, gTLD domain names registrant, and *editor*, DomainMondo.com

cc: NTIA (David Redl);
US Department of Justice Antitrust Division;
EU Directorate-General for Competition.

The New York Times

TECHNOLOGY

Ethics Fight Over Domain Names Intensifies

By ERIC PFANNER MARCH 18, 2012

PARIS — A boardroom dispute over ethics has broken out at the organization that maintains the Internet address system after its most important supporter, the United States government, reproached the group for governance standards said to fall short of “requirements requested by the global community.”

The Commerce Department said this month that while it was temporarily extending a contract with the Internet Corporation for Assigned Names and Numbers to manage the allocation of computers’ Internet protocol addresses — and the .com and .net names of Web sites associated with them — it warned the organization that it needed to tighten its rules against conflicts of interest or risk losing a central role.

Icann, as the company is known, has filled that role since 1998. The Commerce Department said it had received no suitable bids for the contract, and was temporarily extending Icann’s services for six months.

After the department’s announcement, the soon-to-depart chief of Icann, Rod Beckstrom, went on the offensive, taking an unusual public swipe at his own organization’s 21-member board.

“I believe it is time to further tighten up the rules that have allowed perceived

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responsive to the growing chorus of criticism about Icann's ethics environment, but to ensure that absolute dedication to the public good supersedes all other priorities."

Icann has come under heightened scrutiny because of an initiative to increase vastly the number and variety of available Internet addresses. Under the plan, which Icann is putting into effect, hundreds of new "top-level domains" — the letters like "com" that follow the "dot" in addresses — are set to be created.

Some business groups say the expansion of domains will cause a rise in trademark violations and cybersquatting, while some governments object to Icann's move to create address suffixes like .xxx, for pornography.

But the initiative has been cheered by companies that register and maintain Internet addresses. A number of current and former members of the Icann board have close ties to such registrars or to concerns involved in other areas that stand to benefit from the expansion.

"Icann must place commercial and financial interests in their appropriate context," said Mr. Beckstrom, who is scheduled to step down from his post in July. "How can it do this if all top leadership is from the very domain-name industry it is supposed to coordinate independently?"

"A more subtle but related risk is the tangle of conflicting agendas within the board that would make it more difficult for any C.E.O. to meet the requirements of this deeply rewarding and sometimes frustrating job."

Icann directors were taken aback by Mr. Beckstrom's comments. Stephen D. Crocker, chairman of the board, said the chief executive had merely been expressing his "personal views."

"The board has been spending a lot of time on ensuring that we are as clean and straightforward as we can be," Mr. Crocker said. A review of conflict-of-interest policies is under way, he said, and directors already abide by strict guidelines, including a requirement that they file annual statements on potential conflicts.

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maintaining the Internet.

Those countries are said to be lobbying to gain greater influence over the Internet at the global level by bringing more functions under the auspices of the United Nations. The matter could come to a head in November, at a meeting in Dubai of the International Telecommunication Union, a United Nations body.

This campaign has raised alarms among supporters of an open Internet, who fear that transferring authority to international bodies could politicize governance and lead to restrictions on the flow of information.

Eric E. Schmidt, the executive chairman of Google, said recently that giving the United Nations such oversight would be a “disaster.”

“Be very, very careful about moves which seem logical but have the effect of balkanizing the Internet,” Mr. Schmidt said at a conference in Barcelona. “If the current governance is working pretty well — and I think it is — I wouldn’t move it, or if I did, I would do it very, very carefully.”

Yet the United States government is also dissatisfied with Ican. The Commerce Department said it had canceled a request for proposals to run the so-called Internet Assigned Numbers Authority because none of the bids met its requirements: “the need for structural separation of policy-making from implementation, a robust companywide conflict of interest policy, provisions reflecting heightened respect for local country laws and a series of consultation and reporting requirements to increase transparency and accountability to the international community.”

Eyebrows were raised last year when Peter Dengate Thrush, former chairman of Ican and a fan of the domain name expansion, joined a company that invests in domain names.

A version of this article appears in print on March 19, 2012, on Page B6 of the New York edition with the headline: Ethics Fight Over Domain Names Intensifies.

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UNITED STATES DEPARTMENT OF COMMERCE
National Telecommunications and
Information Administration
Washington, D.C. 20230

DEC 18 2008

Mr. Peter Dengate-Thrush
Chairman of the Board of Directors
Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601

Dear Chairman Dengate-Thrush:

On October 23, 2008, the Internet Corporation for Assigned Names and Numbers (ICANN) posted for public comment a series of interrelated documents, including a draft applicant guidebook, related to ICANN's efforts to introduce new generic top level domains (gTLDs). The Department of Commerce (Department) appreciates this opportunity to offer the views of the United States government on such an important topic.

Understanding that the introduction of new gTLDs has been a long standing goal of the DNS Project, we believe it is critical to keep in mind the foundational Memorandum of Understanding between the Department and ICANN stipulating as a core principle the need to manage the Internet domain name and addressing system (DNS) in a manner that permits market mechanisms to support competition and consumer choice so that lower costs are realized, innovation is promoted, and user choice and satisfaction are enhanced. While we acknowledge the effort and hard work involved in producing the documents currently out for comment, it is unclear that the threshold question of whether the potential consumer benefits outweigh the potential costs has been adequately addressed and determined. In that regard, we would like to call to your attention a decision of the ICANN Board in October 18, 2006, that called for an economic study to address questions such as:

- whether the domain registration market is one market or whether each TLD functions as a separate market,
- whether registrations in different TLDs are substitutable,
- what are the effects on consumer and pricing behavior of the switching costs involved in moving from one TLD to another,
- what is the effect of the market structure and pricing on new TLD entrants, and
- whether there are other markets with similar issues, and if so how are these issues addressed and by who[sic]?¹

ICANN needs to complete this economic study and the results should be considered by the community before new gTLDs are introduced.

¹ ICANN, Special Meeting of the Board Minutes (Oct, 18, 2006)
(<http://www.icann.org/en/minutes/minutes-18oct06.htm>) (last visited Dec. 11, 2008).

The United States government recognizes that it is ICANN's intention to carefully consider the comments received in this process and initiate further consultations, including a revised applicant guidebook, before introducing new gTLDs. With that in mind, below is a specific list of initial items we believe need to be resolved in the current documents:

- Ensure that the introduction of a potentially large number of new gTLDs, including internationalized top level domains, will not jeopardize the stability and security of DNS;
- Revise the gTLD approval process, the applicant guidebook and the proposed registry agreement to: (1) consider, allow objections for, and retain authority to address any adverse competitive welfare effects that may arise during the approval of new gTLDs applications or the renewal of subsequent contracts; (2) employ mechanisms such as competitive bidding whereby prospective gTLD operators would compete by proposing registry terms, including price and quality commitments, that provide consumer benefit; and (3) impose maximum price caps or other terms that would redound to the benefit of consumers in those cases where competitive bidding mechanisms will not adequately limit the ability of registry operators to exercise market power;²
- Demonstrate that ICANN has sufficient capacity to enforce contract compliance with an as-yet-unknown number of new contracting parties, especially in light of outstanding questions regarding existing contracts (such as the proposed amendments to the Registrar Accreditation Agreements and problems with the WHOIS data accuracy reporting system);
- State how ICANN will conduct legal reviews of applications, consider legal objections from third parties, and discharge its responsibility to ensure that the process of introducing new gTLDs respects all relevant national and international law, including intellectual property rights;
- Focus on coordinating technical functions related to the management of the DNS and not on matters more appropriately addressed by governments, such as adjudication of morality, public order and community objections in accordance with international human rights law. The proposed mechanisms to address these topics are inappropriate;
- Create a mechanism that provides for the expansion of the gTLD reserved names list, as appropriate, for technical or infrastructure-related names; and,

² See attached letter from Acting Assistant Attorney General Deborah A. Garza, U.S. Department of Justice, Antitrust Division to Acting Assistant Secretary for Communications and Information Meredith A. Baker, NTIA (dated Dec. 3, 2008).

- Articulate a clear rationale for the proposed fee structure as well as a transparent mechanism, that includes community agreement, for the disposition of excess revenues, should there be any, given ICANN's status as a non-profit entity.

The United States government shares ICANN's commitment to promote competition in the domain name marketplace while ensuring Internet stability and security and looks forward to continuing to participate in this process so that the collective concerns of the community are addressed prior to ICANN moving forward with the introductions of new gTLDs.

Sincerely,

A handwritten signature in black ink, appearing to read "MABaker", followed by a horizontal line.

Meredith A. Baker
Acting Assistant Secretary
for Communications and Information

cc: Dr. Paul Twomey, President and CEO, ICANN



DEPARTMENT OF JUSTICE
Antitrust Division

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December 3, 2008

Meredith A. Baker
Acting Assistant Secretary for Communications
and Information
National Telecommunications and
Information Administration
United States Department of Commerce
Washington, D.C. 20230

Re: ICANN's Draft RFP for New gTLDs

Dear Ms. Baker:

This letter responds to the United States Department of Commerce's ("DOC") request for advice regarding competition issues raised by the draft request for proposal ("RFP") that would govern the issuance of new generic top level domains ("gTLDs") published by the Internet Corporation for Assigned Names and Numbers ("ICANN"). The Antitrust Division has reviewed the RFP and related materials published on ICANN's website, including a proposed registry agreement that ICANN will require successful applicants to execute. Our analysis of the issues raised by these materials is informed by our extensive experience with competition matters as well as the analysis we conducted in connection with our 2006 review of the revised .com registry agreement.¹

As we explain below, some new gTLDs envisioned by the RFP likely would have market power, the exercise of which is not adequately addressed by the RFP or other constraints. Moreover, the creation of additional gTLDs is unlikely to constrain the exercise of market power by existing TLDs, especially the .com registry operated by VeriSign. Contrary to ICANN's apparent assumption, competition from existing TLDs – or from new gTLDs created pursuant to the RFP – is not likely to prevent the exercise of market power by new or existing TLD registries.

¹ See Letter from Thomas O. Barnett to John M. R. Kneuer, dated September 6, 2006.

As a result, although new gTLDs may generate some consumer benefits, ICANN should take additional steps to ensure that the process of creating new gTLDs incorporates to the maximum extent possible competition-based mechanisms and also imposes other constraints on the exercise of market power by gTLD operators.

The Division makes two specific recommendations. First, ICANN's general approach to new gTLDs should be revised to give greater consideration to consumer interests. ICANN should more carefully weigh potential consumer harms against potential consumer benefits before adding new gTLDs and renewing new gTLD registry agreements. Second, the RFP process and proposed registry agreement should include provisions that would enable ICANN to constrain new registry operators from exercising market power. In particular, ICANN should establish competitive mechanisms for authorizing new gTLDs and renewals of gTLD registry agreements whereby prospective gTLD operators would compete for gTLDs by proposing registry terms – including maximum fee schedules – that would provide consumer benefits.

Background:

***Introducing New gTLDs Likely Would Enable the Exercise of
Market Power by gTLD Operators and Likely Would Not Constrain the
Exercise of Market Power by .com and Other Existing TLDs***

Our investigation of the proposed .com agreement generated several findings that bear on the likely effect of creating new gTLDs. First, we found that VeriSign possesses significant market power as the operator of the .com registry because many registrants do not perceive .com and other gTLDs (such as .biz and .info) and country code TLDs ("ccTLDs," such as .uk and .de) to be substitutes. Instead, registrants frequently purchase domains in TLDs other than .com as *complements* to .com domains, not as substitutes for them. In other words, registrants of a particular .com domain (e.g., google.com) will frequently also perceive a need to register the same domain in all or most available TLDs (e.g., google.info and google.biz) because of a desire to expand their presence on the Internet and to protect their brands from being exploited by others.²

We also concluded that existing gTLDs likely would not become a competitive threat to .com registrations because the network effects that make .com registrations so valuable to consumers will be difficult for other TLDs to overcome. Due to a first-mover advantage and high brand awareness, .com registrations account for the overwhelming majority of gTLD registrations. As a result, when users do not know the TLD in which a domain is registered, they most often simply append ".com" to a product or company name when attempting to find the

² In this regard, we discovered that .info often seems to have little value as a stand alone gTLD. Many of the increased domain registrations in .info while those registrations were offered for free were simply bundled with purchases of the same domain in other TLDs or registered to existing users of the same domain in .com.

desired website. This phenomenon creates a strong preference for .com.³ Accordingly, there will continue to be a need for Section 7.3 of the .com registry agreement to replace the discipline that market competition does not provide in this setting, as well as continuing DOC oversight of the .com registry under the Cooperative Agreement, which precludes VeriSign from amending or renewing the .com agreement without DOC approval.

Finally, our investigation of the .com agreement found evidence that other gTLD registry operators may possess a degree of market power. The market power inherent in the other gTLDs is less than the market power in .com, but is still material. The need of many registrants to purchase domains in many or most gTLDs allows each gTLD registry operator to impose costs on registrants that purchase domains simply because a gTLD exists. With respect to existing gTLDs, this power is constrained to some extent by the registry agreements applicable to the other gTLDs. Without those constraints, the gTLD operators likely could profitably charge even higher fees that reflect their market power as to registrants that are willing to pay a premium for their domains, since it appears that the operators may be able to identify those customers and charge discriminatorily high domain registration prices.⁴ The fact that some registrants might view different gTLDs as substitutes would not necessarily constrain the gTLD operators from selectively exercising market power vis-a-vis those that are willing to pay a premium.

In light of these findings, we believe that the introduction of new gTLDs under the RFP could impose substantial additional domain registration costs on many consumers and that many new gTLD registry operators may have market power over registrants. Further, the introduction of new gTLDs is not likely to constrain the exercise of market power by existing gTLDs or ameliorate the continuing need for restraints to prevent VeriSign from exercising market power in the sale of .com domains.

³ VeriSign has argued that the increasing use of search engines will cause the importance of .com to diminish, but "direct navigation" continues to be a common practice. Computer users who type Internet destinations into their browser bars often assume that a domain is in the .com TLD whenever they are uncertain, due to the greater prevalence of .com names relative to other TLDs. As a result, new registrants often search for alternative domains in .com when their preferred .com domain is unavailable, rather than selecting their preferred domain in another TLD because investment in developing the domain in the new gTLD would likely benefit the owner of the domain in .com.

⁴ Registrants that are willing to pay a premium would include those that engage in defensive registrations to protect their trademark or trade name and registrants that make significant investments in their domain names. A registry operator's ability to impose increased prices on registrants willing to pay a premium for domain names in a new gTLD assumes that the registry operator can identify these registrants. The antitrust laws likely would not constrain the unilateral pricing decisions of a gTLD operator whose market power derived from the creation of a new gTLD by ICANN.

Recommendations

1. ***ICANN Should Give Greater Consideration to Consumer Interests before Creating New gTLDs and Renewing Registry Agreements***

ICANN is obligated to manage gTLDs in the interests of registrants and to protect the public interest in competition.⁵ ICANN appears to have assumed that the introduction of new gTLDs necessarily will enhance competition and promote choice and innovation, without offering any evidence to support that assumption. To our knowledge, ICANN has neither studied competition among gTLDs at the registry level, nor commissioned such a study, despite the ICANN Board of Director's specific direction to do so.⁶ On October 18, 2006, the ICANN Board directed ICANN's President to commission an economic study to address questions such as:

- whether the domain registration market is one market or whether each TLD functions as a separate market,
- whether registrations in different TLDs are substitutable,
- what are the effects on consumer and pricing behavior of the switching costs involved in moving from one TLD to another,
- what is the effect of the market structure and pricing on new TLD entrants, and
- whether there are other markets with similar issues, and if so how are these issues addressed and by whom?⁷

⁵ See Articles of Incorporation of ICANN, 4, as revised November 21, 1998 (<http://www.icann.org/en/general/articles.htm>); Joint Project Agreement Between the U.S. Department of Commerce and ICANN, Section II.C., dated Sept. 29, 2006 (<http://www.icann.org/en/general/JPA-29sep06.pdf>).

⁶ ICANN has periodically referenced an OECD report published in 2004 as support for its position that introducing new gTLDs may enhance competition at the registry level. The OECD authors relied on data showing a decline in .com, .net, and .org registrations combined with a significant number of registrations in the new .info, .biz, and .name gTLDs during the six-month period immediately following the introduction of the new gTLDs in 2002. S. Paltridge and M. Matsui, OECD's Directorate for Science, Technology and Industry, *Generic Top Level Domains: Market Development and Allocation Issues*, 4, 22 (July 13, 2004). However, the authors acknowledge that the reduction in .com, .net, and .org registrations was at the end of the "internet bubble," and that registrations in those three gTLDs resumed growth during the succeeding six-month period, while registrations in the new gTLDs tailed off and actually declined in .info during the last six months of 2003, the last period for which registration data was available. *Id.* Indeed, with the benefit of additional, more recent information in our investigation of the new .com agreement, we found no indication that the other gTLDs impose a competitive constraint on sales of .com domains or on VeriSign's ability to charge the maximum .com registry price.

⁷ ICANN, Special Meeting of the Board Minutes (Oct. 18, 2006) (<http://www.icann.org/en/minutes/minutes-18oct06.htm>) (last visited Nov. 17, 2008).

The Board recognized that such a study could help in future negotiations with TLD registry operators.⁸ Now, more than two years later, ICANN has proposed to introduce a new gTLD approval process, complete with a new gTLD registry operator agreement, apparently without having even begun the requested study.

ICANN should revise its general approach to give greater consideration to potential consumer harms and benefits. The creation of new gTLDs could generate consumer harm. First, approval of new gTLDs would proliferate the number of TLDs in which registrants feel that they must purchase registrations to protect their domain names, increasing their costs.⁹ Second, new gTLD operators may be able to exercise market power vis-a-vis some group of customers (e.g., because of a desire to register for defensive purposes or because of investments they make in a domain name).

At the same time, new gTLDs could generate benefits. It is possible, for example, that they would intensify competition among gTLDs other than .com for customers that do not feel compelled to register their domain names in multiple gTLDs. Whether this is likely would require further analysis. In addition, new gTLDs may benefit unique registrant populations that might value a domain in a particular gTLD. An example of this could be a new gTLD that represents a particular community of people, a type of application that ICANN anticipates receiving in response to the RFP. However, we are unaware of any effort by ICANN to quantify this consumer benefit. ICANN has not attempted to distinguish the registrants that might value having a domain in a gTLD other than .com, including a new gTLD, from those registrants that would feel compelled to purchase one or more domains in the new gTLD only because the gTLD was created.

The RFP neither provides for any evaluation of what effect, if any, the new gTLDs will have on competition at the registry level nor allows for objections based on the likely adverse competitive effects of the gTLD. The RFP also does not establish any mechanisms or processes that would minimize the potential for harm from new gTLDs while enabling the potential benefits to be realized. For example, the proposed registry agreement (unlike the .com agreement and other existing gTLD registry agreements) does not include any price caps that would limit the ability of new gTLD registry operators to charge the highest possible prices for domains in the new gTLDs. Similarly, the proposed agreement does not include any restrictions against price discrimination, bundling, and tying. It also does not require registry operators to offer domains pursuant to long term contracts, meaning that registry operators would be free to raise

⁸ *Id.*

⁹ The circumstances under which registry operators may impose additional costs on registrants willing to pay a premium for a domain name depends on the registry operator's ability to price discriminate as well as their pricing strategy. The magnitude of the overall increase in costs will likely to some extent depend on the number of new gTLDs introduced as a result of the RFP process.

Ms. Meredith A. Baker

December 3, 2008

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prices to registrants willing to pay a premium for specific domain names. The proposed registry agreement also allows for the perpetual renewal of every new gTLD registry agreement without regard to competitive effects or consumer-based objections.

ICANN should recognize that new gTLDs, while providing a desired choice for some registrants, are unlikely to restrain the exercise of market power by the .com registry operator and may impose significant costs on registrants, particularly those that will feel compelled to register their domains in the new gTLDs. ICANN should explicitly include this type of analysis as part of its evaluation of each new gTLD application, and should proceed cautiously in authorizing new gTLDs, attempting to assess both the likely costs and benefits of any new gTLD.¹⁰ If ICANN is not prepared to act now to address the competition-related issues identified in this letter, it should at a minimum postpone the introduction of new gTLDs and the adoption of additional perpetually renewing gTLD agreements until it receives and reviews the study that the ICANN Board requested over two years ago.

2. *ICANN Should Revise the RFP Process and the Proposed Registry Agreement to Protect Consumers from the Exercise of Market Power*

ICANN should take steps to protect consumers from the exercise of market power by gTLD operators. First, the new gTLD approval and management process should be amended to reduce the potential adverse results of new gTLDs. The RFP process should require ICANN to consider, allow objections for, and retain authority to address any adverse consumer welfare effects that may arise during the new gTLD approval process and registry agreement renewal process. For example, ICANN should be sensitive to complaints that consumers may feel compelled to register domains in a new gTLD for defensive purposes, without expectation of receiving meaningful value from the new registration other than avoidance of even higher costs that would be incurred to combat third parties' improper use of the registrant's trade name in the new gTLD.

Second, once it has decided to authorize a new gTLD, ICANN should implement a process by which prospective gTLD operators compete for the privilege of operating a particular gTLD by offering terms that benefit consumers. Effectively implementing such a process would require

¹⁰ ICANN has consistently told us that its primary concern is with DNS management from a technical perspective and that it does not have the expertise or inclination to protect or preserve the public interest in competition and low domain costs, preferring instead to allow government competition authorities to take whatever action might be necessary to address issues of competitive abuse. The problem with ICANN's preferred approach is that the antitrust laws generally do not proscribe a registry operator's unilateral decisions made under the processes established by ICANN – such as, for instance, pricing decisions. See, e.g., *Verizon Commc'ns Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398, 407 (2004) (“The mere possession of monopoly power, and the concomitant charging of monopoly prices, is not . . . unlawful . . .”). Accordingly, ICANN should create rules fostering a competitive environment to the greatest extent possible.

that ICANN evaluate bids from the perspective of the benefits they provide consumers, not merely the amount bidders are willing to pay to ICANN for the right to operate the gTLD. ICANN's requests for bids should expressly call for bids to specify an initial maximum price that would be charged by the operator for domain registrations, as well as limitations on price increases over time. ICANN should also encourage improved performance by asking bidders to propose any operating specifications that exceed the minimum standards established by ICANN. ICANN's requests for bids should also solicit other proposals for providing consumer benefit, such as commitments not to discriminate in price across registrants (in order to avoid the ability to "hold up" registrants that have made investments in a domain name) and not to require the purchase of other services from the registry operator as a condition of registration (to limit price cap evasion). All such terms should be incorporated in the registry agreement so that ICANN can enforce them.

Third, although a competitive bidding mechanism likely is the best mechanism for simulating a competitive outcome in most circumstances, it may not be effective in all cases. Because ICANN's proposed registry agreement lacks any of the kinds of safeguards included in Section 7.3 of the new .com agreement or other gTLD agreements, ICANN should consider revising the proposed registry agreement, at least for instances where there is not competitive bidding to operate a new gTLD, to include provisions designed to limit the ability of the registry operator to exercise market power, i.e., price caps and commitments against price discrimination and tying. In addition, it may be preferable to require long-term agreements (the .com agreement, for example, requires that the operator offer domains for terms of up to 10 years). If a competitive bidding mechanism is infeasible, protections of this sort would prevent the exercise of market power by the operators of many of the contemplated gTLDs. Even if a competitive bidding mechanism is implemented, moreover, it might still be appropriate to incorporate some protections into the standard registry agreement, to anticipate the possibility that there is not effective competition for a particular gTLD.

Finally, ICANN should require competitive bidding for renewals of a gTLD registry agreement, rather than granting the incumbent operator a perpetual right to renew without competition. Such a mechanism would both assist in disciplining the conduct of the incumbent during the initial term insofar as the incumbent would want to maximize the likelihood of renewal, and ensure the benefits of competition when potential operators bid for the right to operate the gTLD in the renewal term. Instead, ICANN has conformed the proposed registry agreement to the existing gTLD agreements, effectively granting perpetual renewal rights to registry operators without the prospect of periodic rebidding, and without regard to potential adverse competitive effect. Experience with the .net TLD and other gTLDs has shown that competitive bidding in the award of gTLD registry agreements, and periodic rebidding, has served as an effective tool for managing the interests of registrants in gTLDs. Indeed, competitive bidding has resulted in lower domain prices and higher operating specifications than what ICANN has achieved through non-competitive negotiations. In particular, competitive

Ms. Meredith A. Baker
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bidding prompts bidders to propose and accept registry improvements, higher operating standards, and lower registration fees to win the contract.

Opponents of competitive bidding on renewals have contended that ICANN needs to grant perpetual registry contracts in order to motivate registry operators to invest in their registries. However, incumbent registry operators have an incentive to make investments in order to maintain their competitive advantage in a rebid situation.¹¹ Thus, the effect on innovation of potential termination of a registry agreement is at worst inconclusive. Further, experience demonstrates that any concern about the risk of transferring a new gTLD registry after a rebid is misplaced. Management and operation of many gTLDs and ccTLDs have been successfully transferred without imposing undue burdens on DNS stability or security. For example, VeriSign successfully transferred the .org registry to the Public Interest Registry in January 2003.

* * *

ICANN's approach to TLD management demonstrates that it has adopted an ineffective approach with respect to its obligation to promote competition at the registry level. We respectfully suggest that the DOC refrain from expressing satisfaction with ICANN's progress toward the goal of promoting competition among TLDs unless and until ICANN develops a credible and effective policy that compels it to employ tools such as competitive bidding to manage TLDs in a manner that safeguards the interests of registrants in obtaining high quality domains at the lowest possible prices. To date, we believe that ICANN has not come close to fulfilling its obligations to employ competitive principles in its management of TLD registry operations.

Sincerely,


Deborah A. Garza

cc: Kathy D. Smith, Esq.

¹¹ We have identified no registry operator that reduced investment because of potential termination.



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More Problems Crop Up With Universal Acceptance of Top Level Domains

Feb 07, 2014 11:26 AM PDT | Comments: 3 | Views: 25,026

By [Ram Mohan](#)



I've often found truth in the famous [George Santayana quote](#), "Those that cannot remember the past are doomed to repeat it." That's an apt warning for what is currently happening — again — with the hundreds of new generic Top Level Domains (gTLDs) that are launching ... and failing to work as expected on the Internet.

First, a quick refresher: As most *CircleID* readers know, in the early 2000s, seven new gTLDs were launched: .AERO, .BIZ, .COOP, .INFO, .MUSEUM, .NAME and .PRO. Aside from Country Code TLDs (ccTLDs), these were the first top-level changes to the DNS since the early days of the Internet.

Any TLDs that were more than three characters long promptly ran into usability issues. I know this from first-hand experience with .INFO, for which my company, Afilias, is the registry operator. With .INFO's position as the most popular of all new gTLDs, I spent a good part of my time, in the first five years after .INFO launched, working with vendors to get their systems to accept .INFO email addresses and .INFO domain names as valid. Now, 13 years later, it's still possible to find systems that reject .INFO addresses. From that experience, I developed my three rules of TLD acceptance.

Mohan's Three Rules of TLD Acceptance:

1. **An old TLD will be accepted more often than a new TLD.**
2. **An ASCII-only TLD will be accepted more than an IDN TLD.**
3. **A two or three letter TLD will be accepted more often than a longer ccTLD or gTLD.**

Web browsers use different algorithms to improve security and certificate processing. They also have varying rules for how to deal with a website address in a top-level domain that the browser does not recognize (including the use of a technique called search-list processing, which sometimes exacerbates the problem). The use of different algorithms combined with search-list

processing can pierce the boundary between private and public administration of namespaces. In addition, many applications and apps that use the Internet still refer to a locally held (and quickly outdated) list of "valid" TLD names, rather than using the DNS to determine domain name validity, despite being warned away from this approach in the IETF's [RFC 3696](#).

While the issue of universal acceptance never really got solved, the topic takes on heightened importance due to the creation of hundreds of new top-level domains on the Internet. In the earlier set of new TLDs, the primary problem occurred for TLD strings with a length of more than three characters. However, in the current crop of new TLDs, even three character strings get caught in the mix. What was previously considered primarily an infrastructure-level issue is now poised to become a major user-level issue, with negative impact on both the regular Internet user and inside corporations.

In 2003 ICANN's [Security and Stability Advisory Committee](#) (SSAC), of which I am a member, studied problems with the support of new top-level domains by infrastructure and software providers and made several [recommendations](#), including:

- Internet infrastructure providers that have their own customised software for Internet service provision should test the capability of the software to support new TLDs, and correct problems quickly where they are found.
- Internet software application developers should be encouraged to review their software for support of new TLDs. Where problems are found, application developers should upgrade their software, and provide these updates to their user base.
- A central repository of known, commonly used software that has compatibility problems (e.g., DNS resolver software used by common operating systems) with new TLDs, and instructions for how to upgrade the software should be created. This repository would facilitate Internet infrastructure providers and software application developers to provide necessary software updates to users of the Internet to resolve known compatibility issues.

That was over a decade ago! It's somewhat astonishing that these recommendations are as valid today as they were then, and that readiness is still not measurable.

For example, try to resolve a new TLD such as .email or .onl using a mobile Android device. On my Android phone, typing in www.nic.onl is rejected by the browser and handed off to be treated as a search query, not a DNS query. However, if you typed in the same web addresses on a browser — Chrome, Internet Explorer, Firefox or Safari — in a desktop environment, they go to the right destination. The experience varies even further if you try to resolve a multilingual (Internationalized Domain Name or IDN) top level domain on your browser or email system — and over 100 internationalized top level domains are being activated on the Internet this year. For instance, typing in www.nic.移动 or www.nic.xn--6frz82g, the newly delegated .MOBI TLD in Chinese, Safari shows the ASCII string only in the address bar, while Chrome and Firefox show

the Chinese string; Internet Explorer dumps it to a search result screen, Users deserve to be taken to the correct destination when they type in an address in their browsers, regardless of the type of device they use or language they type the address in.

The problem isn't technical in nature; we know how to address the technical issues. What's needed is coordination and collaboration between far removed actors in the Internet world, so that the software and systems they create can act in a standard way and return a predictable experience to users. The era of hundreds of new TLDs requires new energy, focus and cooperation. New gTLD owners, software developers, network providers and infrastructure companies must work together to ensure their software, browsers, forms, apps, email and other systems are compliant and can handle all delegated new TLDs.

The stakes are even higher than they were in 2001, when I first encountered serious problems with the universal acceptance of .INFO, followed thereafter by .AERO and .MOBI. The need for a coordinated response and clearly visible results to the universal acceptance challenge has never been greater; not doing so could deal a devastating blow to the utility, relevance and legitimacy of all new top level domains. Ensuring universal acceptance should become one of the foremost priorities of all entities engaged in the Domain Name System and using the Internet.

By [Ram Mohan](#), Executive Vice President & CTO, Afiliast. Mr. Mohan brings over 20 years of technology leadership experience to [Afiliast](#) and the industry.

Related topics: [Cybersecurity](#), [DNS](#), [Domain Names](#), [ICANN](#), [New TLDs](#)

Comments

Ram,I agree that we need coordination and

[Alex Tajirian](#) – Feb 07, 2014 1:11 PM PDT

Ram,

I agree that we need coordination and collaboration, but it must also encompass additional parties to fight a new flood of signal confusions, cybersquatting, phishing, and security breaches. It must involve registries, webhosting companies, parking/monetization companies, and ICANN.

I am also not sure about your third rule, “A three-letter gTLD will be accepted more often than a longer ccTLD or gTLD.” I don’t understand what you mean by “accepted” and “a longer ccTLD.”

Hi Alex,I'm glad you agree that more

[Ram Mohan](#) – Feb 07, 2014 3:03 PM PDT

Hi Alex,

I'm glad you agree that more collaboration is needed. You're spot on about the wide range

of parties who need to be actively engaged, as well as the need for an organization to coordinate this - perhaps ICANN, perhaps the W3C, perhaps others?

Regarding my third rule - new IDN ccTLDs are more than 3 characters long. They will run into the same problem of software and systems that discriminate against TLDs that are more than 3 characters long. Therefore a 3 letter gTLD will be accepted more than a longer gTLD or ccTLD.

Many email systems, web applications, forms and applications on the Internet, and systems and hardware have at best obsolete rules about what constitutes a valid TLD and at worst have completely wrong rules about what constitutes a valid TLD (see RFC 3696 reference above). This ecosystem should be able to handle the introduction of new TLD's without requiring a full scale revamp each time. The DNS itself handles this well - new names can be introduced and nameservers are updated within minutes.

The big change is that universal acceptance has now moved from "infrastructure" to mainstream, and the impact could be significant.

-Ram

Ram, Thanks for the clarification.

Alex Tajirian – Feb 07, 2014 4:34 PM PDT

Ram, Thanks for the clarification.

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TESTIMONY
OF
DAWN GROVE
CORPORATE COUNSEL
KARSTEN MANUFACTURING CORPORATION
PROTECTING INTERNET FREEDOM: IMPLICATIONS OF ENDING U.S. OVERSIGHT
OF THE INTERNET.
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT, AGENCY ACTION, FEDERAL RIGHTS AND FEDERAL
COURTS
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

SEPTEMBER 14, 2016

Executive Summary

Dawn Grove, who serves as Corporate Counsel, is appearing on behalf of Karsten Manufacturing Corporation (Karsten). Karsten is the parent company of PING, a U.S. manufacturer of premium custom-fit golf equipment, and PING REGISTRY PROVIDER, INC. (PING REGISTRY), the ICANN contracted party that operates the .PING branded top level domain name.

While many have diligently worked on the IANA transition for several years, ICANN's structure remains seriously flawed, and rushing the transition through now in its current state will endanger manufacturers' rights to their trademarked brand names, severely disadvantage states' rights, jeopardize national security, and prevent the safeguarding of the Internet freedoms we have come to depend on.

* * * * *

Good morning, Chairman Cruz, Ranking Member Coons and members of the Subcommittee,

I thank you for this opportunity to share the view of a U.S. manufacturer and its subsidiary's experience as an ICANN contracted party regarding the proposed IANA transition. Many thanks to you for caring about these most important and time-sensitive issues.

I. Introduction

My name is Dawn Grove, Corporate Counsel for Karsten Manufacturing Corporation. I also chair the Arizona Manufacturers Council and serve on the board of directors of the Arizona Chamber of Commerce & Industry, both of which oppose the current IANA transition. (See attached portions of the Arizona Chamber of Commerce & Industry 2016 Business Agenda.) Karsten Manufacturing Corporation is the parent company of both PING and PING REGISTRY. PING is one of the top three golf equipment brands in the U.S. and provides over 800 jobs in Arizona that people want to hang onto—nearly 60% of our workforce has worked with us for over 10 years, and nearly 30% of our workforce has worked with us for over 20 years. I have worked at Karsten for only 18 years, so I am relatively new. We are a closely held, private family business started by my grandfather in his garage, and we have been passionately designing and manufacturing custom-fit premium golf equipment in Arizona for the past 57 years.

PING has built a reputation for innovation, design, quality, and service and we actively protect our brand name in many ways including with trademarks throughout the world. While golf clubs are our bread and butter, we make and license a wide variety of products—apparel, hats, gloves, backpacks, towels, software, cradles to use iPhones to analyze a golfer's putting strokes; Apple even once licensed our PING trademark for its social media for a number of years. We have vigilantly protected our brand name in many categories, including for domain name registry services. Our name is our lifeblood, and we aim to ensure that the PING name reflects the innovation and perfection we put into every one of our custom-built golf clubs.

II. Our Experiences With ICANN's Monopoly

Despite the extremely high cost of applying for a gTLD—the application fee unilaterally set by ICANN is \$185,000—Karsten, through its affiliated company, PING REGISTRY, paid the \$185,000 application fee for .ping. In our application, we informed ICANN of our well-known rights to our famous PING marks. We also paid legal experts to help us navigate the application process, and we set aside hundreds of thousands of dollars for startup costs for the registry, all to satisfy ICANN's extremely unpredictable application process. We understood then, as we do now, that the Internet is also a place to lead as innovators and wanted to ensure a secure way of communicating with our customers and protecting them from counterfeit products in the future. More importantly, we did not want to risk having someone else obtain the exclusive right to use our PING mark as a registry term via a contract with ICANN. It ended up being the right decision, because a wealthy ICANN insider based in India that had never made or sold a PING product, had not trademarked the name throughout the world or otherwise had any respectable claim to our name, filed a competing application with ICANN for .ping. The fact that one of the other applicant's affiliated companies had a number of Uniform Dispute Resolution Policy decisions against it did not deter the applicant. It should have, since the Applicant Guidebook makes it clear that parties with a history of adverse domain name decisions should not apply to run registries.

At first, we felt hopeful that ICANN would do its job, as any company would that takes due diligence seriously, and vet proposed registries against known trademark registrations. ICANN is not above the trademark laws of the United States and should not offer registry contracts in violation of well-established trademark rights. We also expected ICANN to follow its own charter, bylaws, and the Applicant Guidebook, and disqualify the competing applicant based on our trademark rights and the other applicant's history of adverse domain name decisions against its affiliate. To be sure that ICANN's applicant background review did not miss these prior adverse decisions, we made ICANN directly aware through the filing of public comments, which is the method of communicating to ICANN about such concerns. Despite ICANN's actual knowledge of the India company's problematic history and actual knowledge of our rights in our global brand, it became clear that ICANN had no intent to vet the other applicant or deter its desire to run a registry consisting of our PING mark. We realized there was no structural incentive for ICANN to follow its bylaws and rules (which would have prevented ICANN from awarding our name to the other applicant), and there was no process and no one willing to actively hold ICANN's new gTLD staff accountable. You see, when there are competing applications for the same term, ICANN simply forces all applicants into an auction. When we asked ICANN to postpone the auction and provided it, again, with actual notice of our trademark rights, ICANN's counsel threatened to terminate our application for .PING if we went to the courts to seek relief. If ICANN terminated our application for seeking to enforce our trademark rights, it would have ensured that the company from India would obtain the operating contract to run a registry consisting of our brand. We had no choice but to pay ICANN's auction price. I cannot begin to tell you how scary it was for my family to go into that auction not knowing whether we would be able to keep our PING name after all these years. We ended up paying ICANN \$1.5 million at the auction to reclaim our name from ICANN. If ICANN is prepared to sell a domain name consisting of our brand to a third party with full knowledge of our trademark rights unless we paid an enormous sum, all the while under the close watch of the Department of Commerce, you can imagine how this experience has left us very wary of how a monopoly, such

as ICANN, will act if the Department of Commerce completely abdicates its historic oversight role.

III. Our Experience is Early, But Not Unique

ICANN benefits to the tune of potentially millions of dollars every time there's an auction and, indeed, has taken over \$230 million from businesses in auction proceeds alone since it rolled out its top level domain name program. ICANN also accepted an extra million dollars in a side deal with the .sucks registry, which company turned the Trademark Clearinghouse on its head and instead of using it for its purpose of allowing trademark owners a central place to detail their registered trademarks, allows the unscrupulous to pressure brands into purchasing .sucks domain registrations at unusually high prices to avoid having people post defaming comments on brandname.sucks websites. Of course, twisting brand owners' arms for high payments based on their trademark rights should never be the intended purpose of any registry, but ICANN's financial structure derives its revenue from selling more and more top and second level gTLD's to the business community; holding more auctions increases its resources and power to influence others. Its revenue has no tie to whether it follows its own charter and rules.

Commerce says ICANN made all the changes multistakeholders wanted and that Commerce cannot influence the process. However, there were fundamental changes requested by the global multistakeholders which the ICANN Board rejected at the Dublin meeting last year. For example, the global multistakeholders requested a very common Single Member Model of governance where the stakeholders would be empowered as the Single Member to address issues on an ongoing basis. The ICANN Board rejected this in favor of an untested Sole Designator Model of governance that only allows the multistakeholders to come together as an "Empowered Community" to address crises on occasion, rather than day-to-day oversight, assuming the whole world of global stakeholders can agree on what constitutes such a crisis. It was highly rumored that the Board's position was that it would rather there be no transition than a transition with the Single Member Model in place. Predictably, the members of the multistakeholder community within the Cross Community Working Group for Accountability caved under the pressure rather than stand up to the ICANN Board and the transition plan now anticipates the Sole Designator experiment in Internet governance. Instead of implementing the change to the bylaws this spring so that they could be tested for a few months prior to the proposed transition, the ICANN Board made the accountability reforms contingent on the transition, signaling that the ICANN Board may not really believe that it should improve its accountability to the community.

IV. This Handoff Is More Than a Technical Matter

ICANN is currently accountable to NTIA for both policy and technical functions until a transition is made away from NTIA oversight. NTIA has announced that it is now ready to transition its stewardship of the Internet policy and technical functions to ICANN and its global stakeholders. Following the transition, ICANN will be a stand-alone monopoly accountable only to its stakeholders, including 162 foreign government members and 35 "observers" (the "Governmental Advisory Committee" or "GAC"). Under recent accountability reforms, which are set to become effective only upon transition, GAC "consensus advice" must be taken unless overridden by a supermajority of the ICANN Board. If the policy functions were to remain under the oversight of the Department of Commerce, perhaps the transition would not be as

troubling. However, the transition is not merely just about who performs technical functions, no matter how many times proponents of the transition make that claim or call it just a spreadsheet. If there were nothing at stake here, none of us would be here and none of the advocates who are pushing hard for this transition to occur would be pushing as hard as they are.

V. No Role for State Governments

State governments are excluded from participating as voting members of the GAC. The only way for a State government to have its concern reach a vote within the GAC is if the NTIA decides to champion the State's cause. Even assuming the NTIA were to decide to champion such causes, the NTIA's voice will be lessened in the GAC following transition. The United States will be a mere equal with other governments, such as Iran, Russia, or even tiny countries like Grenada. States, such as California, Texas, and New York, whose GDP and populations dwarf many GAC members, will have no voting seat at the table. With the U.S. Government giving up its oversight role, U.S.-based law enforcement agencies will be on the same footing as agencies from other countries. With foreign interests leading the charge to move ICANN out of the U.S., registries and registrars may be less likely to respond to information requests from various State Attorneys General. This will make it harder for federal law enforcement and State Attorneys General to determine where threats are originating from that impact its citizens. If the ICANN model is so inclusive, where are the seats at the GAC table for the 50 sovereign States?

VI. Expanded Role for Foreign Governments

The transition plan that ICANN sent to the NTIA lacked a promised provision in the bylaws making it clear that GAC "consensus advice" would not trigger a mandatory, supermajority ICANN board vote. Stakeholders who voted in Marrakech for the transition plan voted for the proposal based upon that promised provision ensuring that the GAC would remain in its advisory role and not dictate policy to the ICANN Board and community. Instead, as feared, governments now possess essentially unlimited power to "advise" the ICANN Board to take or not take actions. There are no guardrails around what subject matter GAC advice can cover or when that advice needs to be provided. Importantly, "consensus advice" does not require unanimous agreement of all countries on the GAC, only that there is "general agreement in the absence of any formal objection." In other words, the United States' GAC representative need not vote yes for "consensus advice" to be binding on the ICANN Board, only not object to what others are doing. Unless the ICANN Board has the political will to stand up against inappropriate GAC advice, and it has shown in the past that it does not, ICANN will be vulnerable to capture.

During its stewardship, the U.S. has strived to create an environment where the entire world community had free and open access to the Internet. It is essential to U.S. manufacturers that such an environment continues, and in order to accomplish that goal, the transition must ensure that checks and balances are in place to resist and prevent capture by governments which could act to restrict this access.

VII. Lack of NTIA Authority

The NTIA's involvement with ICANN has been via the Executive Branch and not with Congressional authority. The NTIA itself acknowledges that it never had authority to regulate ICANN:

“Throughout the various iterations of NTIA's relationship with ICANN, NTIA has never had the legal authority to exercise traditional regulatory oversight over ICANN”
https://www.ntia.doc.gov/files/ntia/publications/iana_stewardship_transition_assessment_report.pdf at 4 (accessed 8-21-2016).

Conversely, the NTIA also states that while it has contracted with ICANN, it has the authority to discontinue contracting with ICANN for the IANA services:

“Just as federal agencies can enter into contracts they need to fulfill their missions without specific legislative authority, federal agencies can discontinue obtaining such services when they no longer need them.” *Id.* at 6.

What is missing from the NTIA analysis is clarity on what happens to a federal contractor when the government ceases contracting with it for services. It appears that both the NTIA and ICANN are operating under the assumption that a former federal contractor “inherits” the right to continue performing services absent a contract. Applying that conclusion to various government services, such as defense contracting, would lead to chaos. The Internet is no less important to national security. In order for any transition to be legitimate, and for ICANN to retain its policymaking and technical functions legitimacy after transition, Congress must act, but should act promptly to delay the transition, repair ICANN's faulty structure, and test the repaired structure for some period of years prior to any potential transition.

VIII. Unsolved Problems

NTIA reviewed this proposal and found not even one item amiss despite ICANN drafting whole new provisions not vetted previously by the multistakeholder community in contravention of its own rules. Clearly, NTIA rushed the final decision in order to meet an artificial deadline. There is no time to implement the accountability changes prior to the deadline and to test them in advance. There are a number of changes included in the proposal that are not fully developed or will require proof testing before it is clear that they achieve the objectives stated. As mentioned before, the ICANN Board has made all of the accountability changes contingent on the transition occurring, providing no time to “test drive” them.

In ICANN's rush to meet the NTIA's deadline, important work was left undone. This is what ICANN means when they refer to “Workstream 2.” However, some of the most important issues were pushed off into Workstream 2, such as the permanent jurisdiction of ICANN and the protection of human rights, including free speech. Make no mistake, there are participants involved in the Workstream 2 work who desire to see ICANN leave California and be reconstituted in another jurisdiction outside of the easy reach of the federal courts. Likewise, there are participants within the Workstream 2 process who wish to cherry-pick which human rights are observed by ICANN and which are not. Where ICANN is formed and whether or not ICANN respects the longstanding human rights enjoyed by every American, such as free speech,

are not minor considerations. The transition should not occur until these issues are firmly and finally resolved and Congress consents to the outcomes.

IX. Conclusion

Right now, ICANN is under contract with the NTIA, which contracts provide guardrails to what ICANN can and cannot do. While the NTIA's governance might have been a "light touch," particularly over the most recent years, that does not undo the benefits of NTIA's stewardship. If NTIA's stewardship had no real effect, there would be no clamoring for the transition to occur. The so-called "Empowered Community," a convoluted structure of stakeholders that will only be activated in times of crisis, is not suitable to provide day-to-day oversight of ICANN's Board. Instead, after the transition, which will result in a power vacuum, the stage is set for an enhanced GAC to step into the role previously held by the NTIA. Not every GAC member values free speech, predictable markets, and intellectual property protections for consumers. Replacing the NTIA with the enhanced GAC whose "consensus advice" is binding absent a supermajority pushback from the ICANN Board flunks the NTIA's own test of what a suitable transition plan should entail.

Congress, at a minimum, should require the NTIA to renew the IANA contract prior to September 30, 2016, and to ensure that all community-approved accountability changes in the bylaws and procedures of ICANN be implemented and be operational for a reasonable time period, protocols rightfully followed, and risks to manufacturers and other trademark rights holders addressed prior to any transition. An orderly, legitimate transition, if desired, then can be considered by Congress in cooperation with the NTIA.

My hope is that Congress will intervene to safeguard the free and open Internet for the use of the world, and hold Commerce to actively oversee ICANN's activity and help repair its faulty structure in the waning hours when it still has time and authority to do so. No country is better suited than the United States to safeguard the Internet for the use of the world, because more than many of the nations around us, we protect intellectual property, value free speech, safeguard the free exercise of religion even for those who believe differently than we may, and champion the rights of minorities.

* * * * *

Karsten, as an ICANN contracted party, manufacturer, and Arizona employer, thanks the subcommittee for its continued action in this matter and urges Congress to take steps to ensure that any transition of the oversight of the policy and technical functions to ICANN be prevented from occurring at least until ICANN's faulty structure is repaired and ICANN has completed all the necessary work and has evidenced for a significant period of time that it is truly accountable and ready to fulfill its commitments globally.

Thank you.

To: comments-ssac-review-final-15oct18@icann.org

Date: Oct 21, 2018

Comment re: [Draft Final Report](#) of The Second Security and Stability Advisory Committee Review (SSAC2) a/k/a "Independent Review of the ICANN Security and Stability Advisory Committee (SSAC)" [Draft Final Report](#) (pdf)

I have read all 84 pages of this mostly worthless report, much of which is regurgitation of already existing documentation that could, and should, have been referenced via footnotes and an appropriate appendix, but I guess the "Review Team" had to justify their fees somehow.

The report fails to meet its purported purposes (p.2 of the draft), including, but not limited to, *"How effectively the SSAC fulfills its purpose and whether any change in structure or operations is needed to improve effectiveness. The extent to which the SSAC as a whole is accountable to the wider ICANN community, its organizations, committees, constituencies, and stakeholder groups."*

On July 1, 2018, I sent the email below which the Review Team conveniently ignored, and even followed that email up with a question at the [Assessment Report Webinar - 12 July 2018 @ 20:00 UTC](#), only to be given a vague, non-responsive answer.

The fundamental, core failings of the SSAC (and as a result, ICANN) to the global internet community, including domain name registrants worldwide (as raised in my email below), are not addressed in the "Draft Final Report."

It is not hard to understand why most ICANN reviews are considered by many a "waste of time" and ICANN is held in such low regard by the global internet community, including most domain name registrants worldwide.

John Poole
gTLD Domain Name Registrant, and Editor, [DomainMondo.com](#)

cc: NTIA (David Redl), and Federal Trade Commission (FTC)

----- Forwarded message -----

From: **John Poole**

Date: Sun, Jul 1, 2018 at 2:05 AM

Subject: Comment re: SSAC2 Review: Assessment Report

To: mssi-secretariat@icann.org

Comment re: [SSAC2 Review: Assessment Report](#) via email to: mssi-secretariat@icann.org

I request that the **Analysis Group** address SSAC's inexplicable **failures** in regard to **new gTLDs**--failures subsequently acknowledged, implicitly, by SSAC's ICANN Board liaison--read: [More Problems Crop Up With Universal Acceptance of Top Level Domains](#) by Ram

Mohan, Feb 07, 2014, particularly in view of [ICANN's contract provision](#) with **new gTLDs registry operators**:

"1.2 Technical Feasibility of String. While ICANN has encouraged and will continue to encourage universal acceptance of all top-level domain strings across the Internet, **certain top-level domain strings may encounter difficulty in acceptance by ISPs and webhosters and/or validation by web applications.** Registry Operator shall be responsible for ensuring to its satisfaction the technical feasibility of the TLD string prior to entering into this Agreement." (emphasis added)

And further, SSAC failing to demand or even recommend that either ICANN or the new gTLDs' registry operators and registrars **warn** prospective registrants of **new gTLDs' domain names** *"failing to work as expected on the internet."*

*How could a group of otherwise competent professionals be so irresponsible and negligent? I can only speculate, but I attribute it to "conflicts of interest"--for example, [Ram Mohan, a member of the SSAC and ICANN Board \(2008-present\)](#) is employed by **Afilias**, a new gTLDs applicant and TLD registry operator, including providing new gTLDs' backend registry services.*

What we now know is that apparently **no one** tested for **"technical feasibility"** before hundreds of [new gTLDs](#) were negligently and irresponsibly delegated by ICANN into the global internet root-- [UASGo17](#): Evaluation of Websites for Acceptance of a Variety of Email Addresses:



[UASGo17](#) (pdf): "**Conclusion:** There is much work to be done to get many of the world's websites UA and EAI-ready. Where we thought we could address just a few applications and code repositories, that does not appear to be the case."

But **domain name registrants** still are not warned that their **new gTLDs' domain names** may *"fail to work as expected on the internet."* Occasionally they show up at an ICANN meeting to complain, but **no one of consequence at ICANN cares about domain name registrants--**[*"it's all about the money."*](#)

Respectfully submitted,

John Poole
Domain Name Registrant and editor, [DomainMondo.com](#)
July 1, 2018