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**INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS (ICANN)
A CALIFORNIA PUBLIC BENEFIT NONPROFIT CORPORATION**

**BEFORE THE U.S. SENATE COMMITTEE ON COMMERCE, SCIENCE & TRANSPORTATION
HEARING ON EXPANSION OF TOP LEVEL DOMAINS**

DECEMBER 8, 2011

Chairman, Ranking Member and members of the Committee, thank you for the opportunity to address you today. I am here today representing the Internet Corporation for Assigned Names and Numbers (ICANN). I am Kurt Pritz, ICANN's Senior Vice President for Stakeholder Relations. Among other responsibilities at ICANN, I manage the Program to implement new Top-Level Domains (also referred to as new gTLDs), which is the subject of this hearing.

I. New gTLDs: Safely Bringing Competition and Choice to the Internet

On June 20, 2011, the ICANN Board of Directors approved the implementation of the New gTLD Program, the culmination of years of policy development by the broad Internet community.¹

Now is the time for launching that program. It is the product of well thought out, thoroughly debated policies that are designed to benefit the billions of Internet users through increased competition, choice and innovation. It is also designed to provide a safer, stable marketplace through the implementation of rights protection mechanisms, malicious conduct mitigation measures and other registrant protections. ICANN extended the discussion to hear all those that wished to participate, to all geographies and all stakeholders. Each issue was thoroughly discussed, there have been no new issues raised. Now is the time to realize the benefits of an expanded and safer marketplace.

The New gTLD Program was created through input across all sectors, including Internet end users, global Fortune 500 businesses, small businesses, trade associations, governments, non-commercial interests, intellectual property experts, brand holders, Internet security experts, ICANN registries and registrars, domain name registrants, Internet service providers, technical experts, not-for-profit organizations and more.

The planning for the New gTLD Program started in 2005 within ICANN's consensus-based policy development process. Since 2008, the New gTLD Program has been shaped through:

- Seven versions of the *Applicant Guidebook*;
- At least 59 explanatory memoranda and independent reports, including 5 economic studies;
- 47 separate, extended public comment periods;²
- Over 1450 pages of summary and analysis on public comments received; and
- Input from no less than ten independent expert and community working groups.

EXTENSIVE PROTECTIONS WILL BE INTRODUCED

The New gTLD Program today includes significant protections beyond those that exist in current TLDs, including new mandatory intellectual property rights protection mechanisms and heightened measures to mitigate against malicious conduct. These new protections are intended to provide a safe, stable Internet, and include:

- **New Trademark protections:**
 - Uniform Rapid Suspension: A rapid, inexpensive way to take down infringing domain names
 - Trademark Clearinghouse: a one-stop shop so that trademark holders can protect their property rights in ALL new TLDs with one registration
 - Mandatory sunrise *and* Trademark Claims processes for *all* new gTLDs
 - The requirement to maintain thick Whois information, the provision of centralized access to zone file data, and a strong incentive to provide a searchable Whois database – all to make it easier for rights holders to identify and locate infringing parties
 - A post-delegation dispute procedure under which rights holders can assert claims directly against TLD registry operators that play an active role in facilitating domain name abuse.

- **Measures to mitigate malicious conduct:**
 - Background reviews of applicants, including reviews for past criminal history (including the use of telecommunications or the Internet to facilitate crimes, illegal sale of drugs, and others);
 - Rejection of applications where the applicant has a pattern of adverse decisions under the UDRP (Uniform Domain Name Dispute Resolution Policy), or has been found to act in bad faith or reckless disregard under cybersquatting legislation;
 - A requirement to have a plan to implement domain name system security extensions (DNSSEC), reducing the risk of “man-in-the-middle” attacks and spoofed DNS records;
 - A requirement to maintain enhanced, or “thick”, WHOIS records at the registry level to allow more rapid search capabilities, facilitating efficient resolution of malicious conduct activities;
 - A centralized zone file access system to allow for more accurate and rapid identification of key points of contact for the domains within each gTLD. This reduces the time necessary to take corrective action within TLDs experiencing malicious activity;
 - A requirement to establish a single point of contact responsible for the handling of abuse complaints (as requested by law enforcement authorities);
 - Requirements that New gTLD Registry Operators must:
 - Maintain a Continued Operations Instrument sufficient to fund basic registry operations for a period of three years in case of business

failure, to protect consumers and registrants within that gTLD in the event of registry failure.

- Maintain continuity and transition plans, including regular failover testing.
- Cooperate with ICANN In the event transition to a new registry operator is necessary. ICANN will identify an Emergency Back-End Registry Operator to assist in the registry transition process and provide emergency registry services as needed.

OBJECTION PROCESSES

The New gTLD Program includes robust processes to assure that stakeholders generally, and governments and rights holders in particular, have the opportunity to raise objections that could lead to the rejection of applications that may cause:

- User Confusion;
- Infringement of legal rights, particularly intellectual property rights;
- Introduction of TLD strings that are contrary to generally accepted legal norms of morality and public order as recognized under principles of international law; and
- Misappropriation of community names or labels.

In addition, there will be a specialized function, an “Independent Objector” that will act solely in the best interest of the public, and may file an objection to an application that may give rise to the concerns raised above.

RIGHTS AND PROTECTIONS MITIGATE COSTS

The existence of objection processes and enhanced rights protection mechanisms were adopted to mitigate the concerns of trademark holders regarding increased costs. With these objection rights, trademark holders have the opportunity to consider whether to apply for a new gTLD based on business needs rather than defensive considerations. These measures greatly reduce the chance that another entity will succeed in applying for the trademarked name. The new rights protections mechanisms also reduce the need for trademark holders to defensively register names across new gTLDs. Further, we’ve learned from prior rounds that trademark holders often do not engage defensive registrations outside of the most popular TLDs.

Additional detail on all of these new protections is provided below.

COMPETITION AND CONSUMER CHOICE

The Board’s approval of a program carefully crafted by the global Internet community is consistent with ICANN’s mission to increase consumer choice, competition and innovation. Organizations will now have the opportunity to apply for gTLDs in the scripts

of the world's languages, to open the world's marketplace further and to welcome the next billion non-English speaking users to the Internet.

The opening of new gTLDs will be limited by round and by demand. Two prior rounds of new TLDs have been limited by size or type – and the restrictions hobbled the realization of benefits. Competition results from opening, not limiting markets, and encouraging investment and innovation.

After years of policy and implementation work, the Internet community and Board determined that the launch of the new gTLD program was necessary and important in order to increase competition and innovation in the DNS – and I strongly believe this remains the right decision.

This testimony provides information on how and why the New gTLD Program was formed and how it serves the public interest to act now.³

II. Introduction of New Top Level Domains Is One of ICANN's Founding Mandates

ICANN is recognized by the world community as the authoritative body for technical coordination and policy development regarding the security, stability and interoperability of the Domain Name System, or DNS, and we work to maintain a single global Internet. ICANN is organized as a California, public benefit, non-profit corporation. We serve this public benefit through a bottom-up, consensus-based, multi-stakeholder model.

A founding mandate for ICANN, included within the United States Government's "White Paper on the Management of Internet Domain Names and Addresses",⁴ is to create competition in the domain name market and specifically, to "oversee policy for determining the circumstances under which new TLDs are added to the root system."⁵ The introduction of new gTLDs "has been a longstanding goal" of the relationship between the Department of Commerce and ICANN.⁶ The relationship formed with the United States Government in 1998, and set out in the many Memoranda of Understanding between the Department of Commerce and ICANN, included a core objective to "Define and implement a predictable strategy for selecting new TLDs."⁷ This fundamental assumption that increasing the number of gTLDs will increase competition resulted in the House Committee on Energy and Commerce initiating a 2001 hearing regarding the potential detrimental effects to competition when ICANN approved only seven of 200 applied-for TLDs in an earlier application round.⁸

III. The ICANN Model At Work: How ICANN Approved the Expansion of New gTLDs

A. ICANN's Multi-Stakeholder Model

ICANN's processes and policy development depend on the engagement of stakeholders around the world. Stakeholders participate in many ways, including participation in the policy development processes, in public comment processes, on advisory committees, and in ICANN's public meetings.

ICANN's model is based on the principle of reaching consensus solutions to difficult problems.⁹ Consensus within ICANN does not mean unanimous community support on every issue. The Internet community brings a wide range of viewpoints to the discussions, often with diverging interests. Reaching a thoughtful, negotiated solution that is acceptable to most, and ensures that all viewpoints are considered – that is what ICANN strives to do and has done with this program.

As part of this process, ICANN brings together working groups of experts to recommend solutions for further community review. ICANN works closely with all stakeholders to form consensus-based and community-vetted solutions.

These vital discussions give all interests – including those representative of my fellow panelists – a seat at the table.

ICANN has noted the PR campaign driven by industry groups against the New gTLD Program, and the revisionist history they present.

The six-year inclusive policy development process that led to approval of this Program gave all sectors and industries ample opportunity to contribute their thoughts and convey their concerns. The concerns raised by this group of stakeholders were considered, debated and addressed along with those of many other stakeholders. The record is clear that changes have been made based upon their input.¹⁰

They are now forum shopping and asking Congress to give them another bite at the apple. After working for years within ICANN's multistakeholder framework to obtain significant concessions for intellectual property rights holders, they now seek to upset the carefully crafted compromise which they helped create. They now want ICANN to restart the clock, at the expense of the other important participants who negotiated in good faith and who are eager for the program to launch.

B. New Generic Top Level Domains – The ICANN Model at Work

The New gTLD Program demonstrates the strength of the bottom-up, multi-stakeholder process: The New gTLD Program under discussion today is the implementation of an ICANN-community policy recommendation to achieve one of ICANN's foundational mandates.¹¹ ICANN has worked closely with the community in building policy and an implementation plan.

1. The New gTLD Program: Formed through Community Engagement

From 2005 - 2007, business and commercial users, contracted registries and registrars, intellectual property interests, non-commercial users and the at-large Internet community conducted an intensive formal, Bylaws-defined policy development process on the addition of new gTLDs. After intensive policy discussion, *all* those constituency groups concluded that new gTLDs should be made available.

The principles guiding the new gTLD policy development process included that:

- New gTLDs will benefit consumer choice and competition;
- The implementation plan should also allow for Internationalized Domain Names (domain names that are written solely in a non-ASCII script, such as Chinese or Cyrillic) at the top level;
- The introduction of new gTLDs should not cause security or stability issues;
- Applications must be assessed in rounds until the scale of demand is clear; and
- Protection of various appropriate interests requires objection and dispute resolution processes.

In 2008, the ICANN Board approved the policy on the introduction of new gTLDs¹² and directed its implementation. Since October 2008, ICANN has produced all of the documentation cited above – seven versions of the *Applicant Guidebook* (detailing the guidelines and requirements for the evaluation process) as well as numerous report and memoranda. All have been the subject of public comment and vigorous debate. Anyone and everyone can join in; indeed, the process at times has been noisy given the numbers of contributors and divergent views.

Nearly every ICANN Supporting Organization and Advisory Committee was represented in targeted community-based working groups or expert teams formed to address implementation issues, as were representatives from all sectors of society.

The gTLD policy-making body, the Generic Names Supporting Organization, and its component stakeholder groups and constituencies participated in all aspects of the implementation work arising out of its policy recommendations. The Country Code Names Supporting Organization, representing ccTLD operators, was particularly active on issues relating to internationalized domain names in the New gTLD Program.

ICANN’s technical Advisory Committees provided direct input into the implementation work. For example, Root Server System operators and Security and Stability Advisory Group members provided information that there is no expected significant negative impact of new gTLDs on the stability and scalability of the root server system.

Members of the At-Large Advisory Committee – the home within ICANN for individual Internet users – served on nearly every working group and team, giving the world’s Internet users a voice in implementation discussions. The At-Large Advisory Committee has been an active participant in the formal public comment process.

(a) Governments Provided Advice and Engaged In Broad, Substantive Consultations on New gTLDs

ICANN’s Governmental Advisory Committee, made up of over 110 of the world’s governments, including the United States of America, has been deeply and effectively involved in the development of the New gTLD Program. The Governmental Advisory Committee also coordinated information exchanges between law enforcement and ICANN.

The ICANN Board and the Governmental Advisory Committee held a series of landmark consultations on the New gTLD Program.

Through accommodations made by both sides,¹³ changes were made to the New gTLD Program in each of twelve identified areas including:

- More rigorous trademark protections (making them mandatory and transferring costs to wrongdoers),
- Providing an objection path for governments to avoid delegation of sensitive TLD applications,
- Agreement on a post-delegation economic study to test the results of first set of new gTLDs,
- Agreement that a post-launch study should be conducted on the effectiveness of new trademark protections and any effects on root zone operations, and
- Development of a process for assistance for needy applicants.

Ultimately, mutual agreement among the Board and the Governmental Advisory Committee was reached that, subject to Board approval, the New gTLD Program would proceed to launch, and the process would be self-improving through subsequent studies.¹⁴

(b) Law Enforcement Agencies Are Active Contributors to the New gTLD Program Work

Law enforcement agencies worldwide have worked closely with ICANN in the new gTLD implementation process, with a goal of reducing domain name abuses. Representatives of U.S. law enforcement agencies played a critical role in proposing standards for background screening for applicants. Law enforcement agencies worldwide, including the FBI, the UK Serious Organized Crimes Agency (SOCA) and the Royal Canadian Mounted Police, supported proposals to aid in the prevention and disruption of efforts to exploit domain name registration procedures for criminal purposes. DNS abuse and security are regularly the subject of collaborative meetings between ICANN and the US law enforcement community, as well as representatives of international agencies.¹⁵ ICANN expects this successful collaboration to continue. To that end, there are formal DNS Abuse sessions at every ICANN public meeting where ICANN and law enforcement representatives come together to advance this important work.

(c) Large and Small Businesses and Corporations Have Helped Shape the Program

Business and industry representatives have participated in the new gTLD implementation process from the beginning, through the GNSO's Business and Commercial Users Constituency, through trade organizations and individually, and remain involved today. Participation cuts across business size and geography. Many global trade associations and corporations have participated in the online comment

forums, either individually or through coordinated responses; similarly, great numbers of small businesses have been active. And the involvement continues.

For example, representatives of Microsoft, Google, Time Warner and the BBC are active members of a current community group working to refine the implementation of the Trademark Clearinghouse, one of the new rights protection mechanisms being launched. Representatives of large and small business have been integral in forming the heightened rights protection mechanisms described above, and have contributed to the development of other portions of the program, including participation in many community working groups.

(d) Intellectual Property Owners / Brandholder Experts have been Involved at Every Step

Members of ICANN's Intellectual Property Constituency actively participated in the policy development concerning the introduction of new gTLDs, including the recommendation that new gTLD "strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law" that was included in the 2007 Final Report approved by the Board.

In March 2009 ICANN formed a team of 18 intellectual property experts from around the world representing the interests of trademark holders, business and trade associations¹⁶ – the Implementation Recommendation Team (IRT).¹⁷ The IRT's work led to the identification of specific rights protection mechanisms that are now included in the *Applicant Guidebook* based on the community and the Governmental Advisory Committee's further input and guidance.

(e) Additional Subject Matter Experts Formed Teams to Combat Malicious Conduct and Strengthen Registrant Protections.

In addition to the regular participants in its processes, the ICANN model affords opportunities for experts to provide assistance on particularly challenging topics. ICANN has access to and the ability to form world-class expert groups, for example:

- The Implementation Recommendation Team and Special Trademark Issues team created rights protection mechanisms;
- A Zone File Access Advisory group set out standardized access zone file information to simplify access for those investigating abuses;¹⁸
- The Security and Stability Advisory Committee discussed tools to mitigate the potential for malicious conduct. Its report provided guidance into the management of glue records;
- A High-Security Zone TLD Advisory Group was formed within ICANN in response to requests from governments and the financial services sector to create higher security requirements for TLDs where users have expectations of higher security;

- The Joint Applicant Support Working Group addressed support for needy applicants, and ICANN is currently considering how to implement the recommendations into the first round of the New gTLD Program;
- The Joint ccNSO-GNSO IDN Working Team discussed issues related to Internationalized Domain Names;
- The Vertical Integration Working Group addressed community solutions to the issue of Registry-Registrar cross ownership;
- The Temporary Drafting Group recommended enhancements to the new gTLD Registry Agreement and post-delegation dispute resolution procedures; and
- The Implementation Assistance Group, comprised of over 50 members representing various perspectives such as intellectual property interests and Registry Operations, are assisting ICANN in implementing specified Clearinghouse processes.

Each group worked openly and transparently, and produced reports available for public comment.

Importantly, ICANN listened to and acted on all work produced by the experts and the more general community and modified *Applicant Guidebook* sections to implement the results of this work.

(f) Economic Studies Confirm Overall Benefits of Opening the DNS; Further Studies Would Offer No Benefit

Several expert economic studies have recognized that the fundamental benefits of increased competition (that apply in almost all markets) will also benefit Internet users through enhanced service offerings, competition, innovation and consumer choice in the domain name market.

As the new gTLDs moved closer to launch, there were calls for economic studies to better document the fundamental assumption that increasing the number of gTLDs will increase competition. In response, ICANN commissioned five economic studies that examined anticipated benefits and costs of the New gTLD Program, the effects of price constraints, and the benefits of vertical integration. All support a conclusion that Internet users stand to benefit from the introduction of new gTLDs.

Those studies are:

- Dr. Dennis Carlton, Report Regarding ICANN’s Proposed Mechanism for Introducing New gTLDs, at <http://www.icann.org/en/topics/new-gtlds/carlton-re-proposed-mechanism-05jun09-en.pdf> (“Carlton I”);
- Dr. Dennis Carlton, Preliminary Analysis Regarding Price Caps for New gTLD Internet Registries, at <http://www.icann.org/en/topics/new-gtlds/prelim-report-registry-price-caps-04mar09-en.pdf> (“Carlton II”);

- CRA International, Revisiting Vertical Separation of Registries and Registrars, at <http://www.icann.org/en/topics/new-gtld-crai-report-24oct08-en.pdf>;
- Michael Katz, Gregory Rosston and Theresa Sullivan, An Economic Framework for the Analysis of the Expansion of Generic Top-Level Domain Names, at <http://www.icann.org/en/topics/new-gtlds/economic-analysis-of-new-gtlds-16jun10-en.pdf> (“Katz/Rosston Phase I”); and
- Michael Katz, Gregory Rosston and Theresa Sullivan, Economic Considerations in the Expansion of Generic Top-Level Domain Names, at <http://www.icann.org/en/topics/new-gtlds/phase-two-economic-considerations-03dec10-en.pdf> (Katz/Rosston Phase II).

The two Katz/Rosston reports were commissioned by ICANN to directly address remaining community questions on the potential costs and benefits of the expansion of the gTLD space. Performed in two phases, Phase I provided a survey of published studies and resources on the potential impacts of new gTLD introduction and examined theoretical arguments on the benefits and costs of increased numbers of TLDs. Phase II provided reports of empirical studies proposed in Phase I, to help assess costs and benefits of new gTLDs.

Katz’s and Rosston’s work was consistent with the basic findings of the three previous reports, and supported an open approach in which new gTLDs are added to the root, subject to appropriate restrictions and mechanisms (such as rights protection mechanisms) designed to minimize potential costs to trademark holders and others. As discussed above – and as referenced in Katz’s and Rosston’s work – ICANN has adopted these restrictions, as seen in the inclusion of significant rights protection mechanisms.

What remains clear, as stated by Dr. Carlton, a noted economics professor and former Deputy Assistant Attorney General for Economic Analysis, Antitrust Division, U.S. Department of Justice, from October 2006 through January 2008, is that any resultant *delay of the launch of the New gTLD Program “is likely inconsistent with consumer interests” and could “substantially reduce [consumer] welfare.”* [Emphasis added.]¹⁹

Dr. Carlton explained, “ICANN’s plan to introduce new gTLDs is likely to benefit consumers by facilitating entry which would be expected both to bring new services to consumers and mitigate market power associated with .com and other major TLDs and to increase innovation.”²⁰ Delay will inhibit competition in the use of generic, non-trademarked terms, and runs counter to the generally accepted view that market entry benefits consumers by expanding output and lowering price. Potential innovations in the new gTLD namespace will be stifled if limitations to entry are imposed, which would “essentially freeze the number of TLDs fifteen years after the first commercial development of the Internet.”²¹

Calling for a delay in the entry of new gTLDs serves to perpetuate existing market conditions: concentration within some existing registries, most generic strings

unavailable, and those that trade on the value of the current marketplace holding portfolios based upon the value of current .COM names.²²

ICANN's Board and the Governmental Advisory Committee agreed that further economic study would not be beneficial.²³ Instead, the focus turned to the collection of information that will inform the analysis of the effects of the introduction of new gTLDs after the first round. The *Applicant Guidebook* now includes application questions to collect information relating to the stated purposes and anticipated outcomes of each application, for use in later studies.

IV. The Protections In the New gTLD Program are Substantial

The implementation of the community's policy for the New gTLD Program looks entirely different today than in October 2008. The many revisions to the *Applicant Guidebook* incorporated recommendations and addressed concerns raised by intellectual property holders, governments, law enforcement and security experts, technical experts, business interests, non-commercial interests, individual Internet users, and others.

Below are highlights of the results of the community's work.

A. Trademark Protection: New gTLDs Will Have Robust Rights Protection Mechanisms (RPMs) to Protect Marks and Combat Cybersquatting

New gTLDs will have significant RPMs that don't exist in current gTLDs.

The RPMs will help rights holders protect trademarks efficiently, in terms of both time and money. When new gTLDs launch, trademark holders will have the opportunity to register their trademarks in a single repository that will serve *all* new gTLDs, the Trademark Clearinghouse. (Currently, trademark holders go through similar rights authentication processes for *each separate* top-level domain that launches.)

New gTLD registries are required to use the Trademark Clearinghouse in two ways. First, they must offer a "sunrise" period – a pre-launch opportunity for rights holders to register names in the new gTLD prior to general registration. Second, a Trademark Claims service will notify rights holders ("Trademark Claims") of domain name registrations that match records in the Clearinghouse for a period of time at the beginning of general registration.

The Trademark Clearinghouse will increase protections, as well as reduce costs for trademark holders and start-up registries.

Also with new gTLDs comes the advent of the Uniform Rapid Suspension system (URS), a streamlined version of the Uniform Domain Name Dispute Resolution Policy (UDRP) process, allowing trademark holders a quicker and simpler process through which clear-cut cases of infringing registrations can be "taken down." The URS and the current UDRP will remain mandatory within new gTLDs.

New gTLDs offer protections to trademark holders in the event a registry is actively involved in domain name abuse. The Post-Delegation Dispute Resolution Procedure

(PDDRP) provides a mechanism to make claims directly against registries affirmatively involved in abuses involving domain name registrations.

These RPMs are contemplated to address the issues raised in the economic studies as a means of reducing the potential costs associated with the introduction of new gTLDs.²⁴ Opponents of the new gTLD process have mischaracterized the fact that economists identified specific areas of risk that could be mitigated (such as intellectual property protection costs) as a conclusion that the New gTLD Program will result in net economic harm. As ICANN has explained previously, that is an unsupported reading of the economic studies. The economists noted the benefits of innovation, competition and choice, and concluded that risks and costs could be mitigated through the implementation of RPMs and other mechanisms such as malicious conduct mitigation measures.

The rights protection mechanisms in the *Applicant Guidebook* provide trademark holders with an alternative to engaging in defensive registrations.²⁵ The provision of effective rights protection mechanisms is shown to reduce the need for trademark holders to engage in defensive registrations – but the rights protection mechanisms cannot be too strict, or the growth of a new TLD may be impaired.²⁶ Unsubstantiated fear of forced defensive registrations is not sufficient reason to stall new gTLDs and delay the benefits of introducing competition into the DNS.

In addition, Economic studies refuted the claims that costs of defensive registrations in new gTLDs will be prohibitive. Independent studies support the conclusion that as defensive registrations are made in proportion to the popularity of the gTLD, the large majority of defensive registrations are in .COM and .NET.²⁷ Only if a new gTLD is very popular will there be a significant need for defensive registrations. But, it also follows that if a new gTLD is popular, then it likely is delivering high benefits. Thus, the dual claims of low benefits and high defensive registration costs are unlikely to be simultaneously true.

B. Consumers Will Be Protected Through Efforts to Mitigate Malicious Conduct

The expert and community work to address the potential for increased malicious conduct in new gTLDs has generated many enhanced protections in the *Applicant Guidebook*. With the assistance and involvement of external experts such as the Anti-Phishing Working Group, the Registry Internet Safety Group, members of the Forum of Incident Response and Security Teams (FIRST), and others from the Internet security first responder community, nine specific mechanisms were developed that will improve consumer protection²⁸ and enhance the public interest. They include:

- Prospective registry operators will be appropriately reviewed for criminal history according to established criteria, including the use of telecommunications or the Internet to facilitate crimes, illegal sale of drugs, violation of the UN Convention against Transnational Organized Crime and others. Where the applicant has a

pattern of adverse decisions under the UDRP (Uniform Domain Name Dispute Resolution Policy), or has been found to act in bad faith or with reckless disregard under the US Anti-cybersquatting Consumer Protection Act (ACPA) or equivalent legislation, applications will be rejected.

- Each new gTLD will be required to have a plan to implement domain name system security extensions (DNSSEC), reducing the risk of “man-in-the-middle” attacks and spoofed DNS records.
- Enhanced, or “thick” WHOIS records at the registry level will allow more rapid search capabilities to facilitate efficient resolution of malicious conduct activities.
- A centralized zone file access system allows for easier dissemination of registrant data, reducing the time necessary to take corrective action against registrants.
- All new gTLD operators are required to establish a single point of contact responsible for the handling of abuse complaints. This requirement is a fundamental step in successfully combating malicious conduct within new gTLDs.

Mitigating malicious conduct is and will continue to be an overarching issue within the new gTLD space. The participation of experts has produced mechanisms to benefit all Internet users, providing means for safer online interactions. The contributions of the Governmental Advisory Committee and law enforcement representatives broadened the scope of these protections.

C. Registrant Protections Regarding Registry Operator Continuity and Compliance

In addition to the protections in existing gTLDs, such as data escrow provisions, and participation in Contractual Compliance investigations, there are notable new protections in the New gTLD Program regarding the activities of Registry Operators. New gTLD Registry Operators must:

- Maintain a Continued Operations Instrument sufficient to fund basic registry operations for three years in case of business failure, to protect consumers and registrants within that gTLD in the event of registry failure.
- Maintain continuity and transition plans, including regular failover testing. In the event transition to a new registry operator is necessary, the registrar is obligated to cooperate with ICANN. ICANN is working to identify an Emergency Back-End Registry Operator to assist in the registry transition process and provide emergency registry services as needed. The continuity and transition planning mitigates the potential risk of consumer losses due to registry failure raised within the economic studies.²⁹

D. Objection Processes Empower the Public and Governments

After the application round closes, information on applied-for gTLDs will be made public. At that time, entities and individuals can review the list of strings and consider if they wish to object to any individual application.

The New gTLD Program allows the Governmental Advisory Committee to inform ICANN that there are concerns with an application. Depending on the level of support within the GAC, the advice may result in a presumption that the Board should not approve the application.

There are also four formal objection processes that can be initiated by the public, each administered by a well-known international dispute resolution service provider and protecting against:

- Internet User Confusion;
- Infringement of legal rights, particularly intellectual property rights;
- Approval of new TLDs that are contrary to generally accepted legal norms of morality and public order as recognized under principles of international law; and
- Misappropriation of community names or labels

In addition, an Independent Objector will be appointed with the ability to file objections in certain cases where an objection has not already been made to an application that will infringe the interests listed above. The Independent Objector will act solely in the best interest of the public.

V. ICANN is Committed to an Orderly Implementation of the First Round of the New gTLD Program

ICANN's role in the New gTLD Program is to ensure that the program is fairly, objectively and successfully implemented.

A. ICANN Is Operationally Ready to Administer the New gTLD Program

ICANN's New gTLD Program Office: ICANN will operate a timely, predictable, transparent, consistent program. ICANN is working to ensure operational readiness for an orderly implementation, including enhanced security for the application and evaluation systems to prevent inappropriate access to the infrastructure or data.

Evaluation service providers have been selected: Each has the global and technical knowledge and resources to accomplish the planned work. The gTLD Program Office includes separate quality assurance, governance, systems and customer service functions. Evaluation service providers are completing training to normalize scoring procedures.

ICANN-Provided Services: ICANN has developed detailed staffing plans for all services to ensure adequate administration and enforcement of its agreements, and for addressing

needs the new environment. Particular focus is being paid to contractual compliance, IANA and other functions that formally interface with gTLD registries and registrars.

Creation of new systems: ICANN is creating new business systems that will contribute to its ability to administer this program. Examples include the TLD Application System, contractual compliance tracking, and root zone management automation.

B. The First Round is Limited in Delegation Rate And Incorporates Other Measures to Assure Root Zone Security and Stability

ICANN's paramount mission is to ensure the security, stability and resiliency of the Domain Name System. ICANN's technical community has reported that new gTLDs, in the numbers contemplated, represent no risk to the safe, stable operation of the Internet's root zone. In furtherance of its mission, ICANN has made commitments regarding the size and staging of the first round.³⁰ ICANN also makes the following commitments:

- The impact of first round delegations on root zone stability will be studied.
- Although extremely unlikely, if the root server system shows signs of stress, the process can quickly be halted to preserve stability, using dedicated communications and monitoring systems.

C. ICANN is Committed to a Second Round of the New gTLD Program, Taking into Account Community Comment

One of the initial policy recommendations arising out of the Generic Names Supporting Organization is that, "[t]his policy development process has been designed to produce a systemised and ongoing mechanism for applicants to propose new top-level domains. The Request for Proposals (RFP) for the first round will include scheduling information for the subsequent rounds to occur *within one year*. [Emphasis added.]"³¹

The application round opening on January 12, 2012 is for those entities that are ready to participate in the expansion of choice and innovation in the DNS. There are many who may not be ready, or want to view the progress of the first round prior to taking a decision. They should not feel compelled to participate in the first round – future opportunities will exist.

ICANN is working to identify a clearer timeline for the second round. We have heard the calls from many in the community that certainty in the timing of the second round will reduce some of the pressure to apply in the first. ICANN has agreed with governments and trademarks holders that a second round should occur only after:

- Studying the impact of first round delegations on root zone stability.
- Conducting a post-first round study on whether new trademark protections should be adjusted.

The first new gTLDs are expected to be operational in early 2013 and ICANN will undertake these studies at the earliest opportunity as is practicable – as soon as meaningful data is available.

D. Innovation and Jobs are Waiting

Many new businesses have been formed based on progress in implementing this Internet community-developed program. Some are potential applicants; some will “provision” applicants. For at least the past two years, future applicants have attended ICANN meetings, passing out marketing materials with their “dot-*NEWDOMAIN*” prominently displayed. Consulting businesses to advise applicants have arisen. Over 120 persons or entities have publicly announced their intention to apply for new gTLDs. Nearly 90 declared applicants have active websites marketing their new gTLD idea proposing all types of gTLDs – city names, community ideas, branding opportunities for internationally known corporations and others. American jobs are already being created, and more will be when the program becomes a reality.

We will never know the opportunities and creativity that will come through the introduction of new gTLDs will produce until we move forward. When ICANN was in its infancy, who could have predicted the online possibilities we take for granted today? Since 1999, the Internet has generated new companies and innovative ideas including marketplaces for commerce, communications and social networking: Facebook, Google and Twitter. New gTLDs hold that same potential for innovation.

VI. ICANN Is a Reliable Steward of the DNS

ICANN continues to accomplish much for the benefit of the global Internet community beyond the New gTLD Program. Recent achievements include:

A. Fulfilling the Affirmation of Commitments

On September 30, 2009, ICANN and the US Department of Commerce executed the Affirmation of Commitments, a landmark agreement. The Affirmation institutionalizes ICANN’s technical coordination role and the US Government’s commitment to the multi-stakeholder model. The Affirmation also sets out specific commitments on accountability, transparency and the interests of global Internet users; preservation of DNS security, stability and resiliency; promotion of competition, consumer trust and consumer choice; and enforcement of Whois policies. These commitments are woven into ICANN’s ongoing work.

ICANN dedicates significant time and resources to meeting its commitments under the Affirmation and continues to build on the significant progress it has already made. The Affirmation is not just a reflection of the Department of Commerce’s commitment to the multi-stakeholder model; it is ICANN’s commitment to the global Internet community to operate with *greater* accountability and transparency.

What has ICANN achieved to date?

- In coordination with the community, ICANN has initiated the three reviews called for in the Affirmation: Accountability and Transparency; Security and Stability; and Whois.
- Within weeks of completion of the public comment period on the Final Report of the Accountability and Transparency Review Team (ATRT),³² staff completed detailed implementation plans to meet the recommendations. The Board has decided that all recommendations should proceed to implementation, and the committees of the Board have been active in oversight of ATRT implementation.
- ICANN is now:
 - Publishing translations of Approved Resolutions for all Board meetings and of the Minutes of Board meetings.
 - Developing and posting the rationale for Board actions. This includes rationales for all new gTLD-related actions in 2011, including the Board's decisions on Registry-Registrar Cross Ownership, and the Completion of Economic Studies, and eight additional rationale papers produced to accompany approval of the New gTLD Program.
 - Posting Board Briefing Materials along with the Minutes of each Board meeting, as well as [Guidelines for the Posting of Board Briefing Materials](#) to better explain the redaction process.
 - Using a standardized public comment template to allow for easier understanding and identification of the items posted for comment.
 - Refining the public comment process to allow for comment and reply cycles.
 - Consulting with the Governmental Advisory Committee on implementation of GAC-related ATRT recommendations, including work to create a publicly-accessible registry of GAC advice.
 - Including a template for the submission of Reconsideration Requests, as well as maintaining clearer status of Reconsideration Request ICANN's website.
 - Continuing to evaluate the work of an Independent Valuation Expert regarding Board-member compensation (an ATRT recommendation).
 - Designing the appropriate scope of an independent expert review of ICANN's accountability mechanisms.

ICANN is committed to meeting all of its commitments under the Affirmation of Commitments, and will continue to report on the status of that work through the ICANN website.

B. Conflicts of Interest Policy Refinements and Enhancing ICANN's Ethical Culture – Towards a Gold Standard

ICANN maintains a strong policy regarding the identification and handling of Board member conflicts of interest, as well as a Code of Conduct setting out the ethical standards to which Board members are expected to adhere.³³ In addition, all ICANN staff are bound by a conflicts of interest policy. Prior to the June 2011 approval of the New gTLD Program, ICANN's President and CEO issued a public call that the era of New gTLDs requires ICANN to be even more vigilant in addressing conflict of interest issues.

Work is now well underway with towards strengthening conflicts and ethics practices. ICANN intends to meet or create a gold standard for not-for-profit organizations. This work includes: (1) review of Conflicts of Interest Policy and Code of Conduct by one of ICANN's main outside counsel, to identify proposed revisions; (2) a review of ICANN's Conflicts of Interest Policy, Code of Conduct and other governance documents by new counsel who are expert in governance issues; and (3) compiling a panel of international ethics experts to recommend enhancements to ICANN's ethical culture after a review a of standards from similar organizations from around the world.

The ICANN Board is also voluntarily adopting a stricter conflicts of interest practice for New gTLD-related decisions, and staff are subject to restrictions regarding contact with potential New gTLD applicants. They are prohibited from accepting any gifts, meals or entertainment from potential New gTLD applicants.

C. Registrar Accreditation Agreement Amendments

ICANN and its accredited registrars are currently negotiating a series of amendments, many addressing concerns raised by law enforcement authorities from around the world. The negotiation team has agreed to a demanding schedule to achieve a set of amendments for consideration at ICANN's next public meeting in March 2012. The team has already agreed in principle to the incorporation of some of the heightened protections that will be imposed on registry operators within the New gTLD Program, such as the maintenance of an abuse point of contact. All of the newly adopted and heightened consumer and law enforcement protections will be in place in time for the launch of the first new gTLDs.

The negotiations team is providing regular updates on the status of negotiations, available at <https://community.icann.org/display/RAA/Home>.

D. Internationalized Domain Names

In October 2009, ICANN approved the IDN ccTLD Fast Track Process through which countries and territories around the world can apply for TLDs in character sets other than Latin-based script.³⁴ Through this process, 30 IDN ccTLDs are now available on the Internet³⁵ with more on the way. This has opened the Internet to additional billions in China and India alone.

E. DNSSEC

The Internet is becoming more secure. Following years of development and testing, on July 15, 2010, ICANN, in partnership with VeriSign and the US Department of Commerce, published the root zone trust anchor and a signed root zone became available.³⁶ The implementation of DNSSEC (or DNS Security Extensions) will allow Internet users to know with certainty that they have been directed to the website they intended. This technology will help eliminate a whole class of security threats to the Internet.

ICANN is in active engagement with all registry operators to encourage adoption. As a result, over 75 gTLDs and ccTLDs now deploy DNSSEC; most significantly, the .COM registry adopted DNSSEC on March 31, 2011. DNSSEC will be mandatory in all new gTLDs.

ICANN's work as the DNSSEC Root Zone Key Signing Key (RZ KSK) Manager recently achieved an unqualified SysTrust Certification following an audit to ensure appropriate internal controls are in place to meet the availability, processing integrity and security objectives for the RZ KSK System. ICANN will renew its certification annually.

F. Root Zone Management Automation

In performance of the IANA Function Contract, ICANN has partnered with VeriSign and the Department of Commerce to automate changes to the root zone. The root zone holds the authoritative directory of top-level domains. This automation will make the processing of change requests more efficient, and will enable all who participate in the change process to be better prepared for the increase in root zone changes that will occur through the New gTLD Program.

G. Continued Enforcement of Registrant Protections

Another achievement for the benefit of the global Internet community is the continuous improvement in contractual compliance work. ICANN remains vigilant in its contractually-based consumer protection work and has strengthened the compliance team. The contractual compliance team is now comprised of 8 members, proficient in multiple languages, which has increased capacity as well as ICANN's ability to communicate with its diverse group of contracted parties on compliance-related matters.

Since 2008, ICANN has either terminated or denied renewal of 43 accredited registrars, and issued thousands of compliance notices. Other significant progress includes the relatively recent implementation of registrar data escrow where all registrar data is escrowed by ICANN so that in the event of a registrar failure or termination, the data can be transferred to a successor registrar in order to protect registrants and their web sites. Over 99% of gTLD registrations are covered by ICANN's registrar data escrow agreements.

ICANN continues to explore ways to identify registrar noncompliance early, take action swiftly to bring registrars back into compliance and terminate those that undermine the

domain name registration process. This compliance activity helps ensure a healthy Internet ecosystem.

In early 2011, ICANN enhanced its Whois Data Problem Report System (WDPRS), a system that contributes to Whois accuracy.

VII. Conclusion

The ICANN community has worked tirelessly to create a New gTLD Program that will introduce competition and innovation at the top level of the DNS. Thousands of pages have been carefully written, balancing expert analyses, independent study, and thousands of comments. Governments have provided advice; professionals have weighed in. The new gTLD implementation program represents opportunities for innovation and enhanced competition, with a future of stronger rights protections, stronger consumer protections, and measured paths forward to future rounds.

Thank you for the opportunity to address this Committee. I look forward to answering any questions that you have during the hearing.

¹ ICANN Board Resolution 2011.06.20.01, at [http://www.icann.org/whois-problem-report-system/2011-06-20-01-01-en.html](#).
² Comments came from multiple sources, including NGOs and not-for-profit organizations, such as the Red Cross and the International Olympic Committee (IOC); governments, through the GAC and individually; ICANN's constituencies, Supporting Organizations and Advisory Committees; brand/mark holders, such as Microsoft, Yahoo, Time Warner, AT&T, BBC, and IBM; industry associations, such as International Trademark Association (INTA), World Intellectual Property Organization (WIPO), European Communities Trademark Association (ECTA), and the American Banking Association (ABA); individuals; small businesses/entrepreneurs and many other groups.

³ ICANN has had the opportunity to testify before the House Committee on the Judiciary, Subcommittee on Intellectual Property, Competition and the Internet in September 2009 and May 2011 regarding the New gTLD Program. Information on those proceedings are available at http://judiciary.house.gov/hearings/hear_090923.html and http://judiciary.house.gov/hearings/hear_05022011.html.

⁴ United States Department of Commerce, *White Paper on the Management of Internet Domain Names and Addresses* ("White Paper"), at http://www.ntia.doc.gov/ntiahome/domainname/6_5_98dns.htm (June 6, 1998)

⁵ *Id.*

⁶ Testimony of Fiona Alexander, Associate Administrator, National Telecommunications and Information Administration, June 4, 2009, before the Subcommittee on Communications, Technology, and the Internet, Committee on Energy and Commerce, United States House of Representatives, available at <http://www.ntia.doc.gov/speechtestimony/2009/testimony-associate-administrator-fiona-alexander-issues-concerning-internet-co>.

⁷ See, e.g., Amendment 6 to Memorandum of Understanding Between the U.S. Department of Commerce and The Internet Corporation For Assigned Names And Numbers, *at* http://www.ntia.doc.gov/ntiahome/domainname/agreements/amendment6_09162003.htm (Sept. 16, 2003).

⁸ See Transcript of February 8, 2001 Hearing before the Subcommittee on Telecommunications and the Internet of the Committee on Energy and Commerce, House of Representatives, On Hundred Seventh Congress, First Session, *available at* <http://archives.energycommerce.house.gov/reparchives/107/hearings/02082001Hearing37/print.htm> (“some view ICANN's approval of only a limited number of names as thwarting competition”).

⁹ While my testimony today focuses on implementation of community-driven policy recommendations, the ICANN model is also used in non-policy matters.

¹⁰ For example, the Association of National Advertisers twice provided comments on the New gTLD Program, on December 15, 2008 and April 12, 2009. In 2008, the ANA provided ICANN with a list of five specific proposals for ICANN's consideration within the program. All five of its proposals have been addressed in the current design: trademark protections have been strengthened; there will be greater transparency of applicant data and more consistent information available on registrants; registration fees have been studied; objection processes have been clarified and strengthened; and provisions have been made for attaching higher security requirements based upon the nature of the string (e.g., an applicant for a financially-related string should have high security capabilities).

¹¹ In addition to the White Paper, the introduction of New gTLDs was consistently identified as a core objective in each of ICANN's Memoranda of Understanding with the U.S. Department of Commerce (1998 – 2006) and the Joint Project Agreement, calling for ICANN to “[d]efine and implement a predictable strategy for selecting new TLDs.” See Amendment 6 to Memorandum of Understanding Between the U.S. Department of Commerce and The Internet Corporation For Assigned Names And Numbers, *at* http://www.ntia.doc.gov/ntiahome/domainname/agreements/amendment6_09162003.htm (Sept. 16, 2003). The study and planning stages, extending back several years, include two trial rounds of top-level domain applications held in 2000 and 2003. The experience of those rounds was used to shape the current process.

¹² GNSO Final Report on the Introduction of New Top Level Domains (“Final Report”), *at* <http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm> (Aug. 8, 2007); ICANN Board resolution, <http://www.icann.org/en/minutes/resolutions-26jun08.htm> (June 26, 2008); GNSO Minutes, <http://gns0.icann.org/meetings/minutes-gns0-29oct03.html> (Oct. 29, 2003).

One of the foundational documents influencing the GNSO Final Report and the community's implementation work is the GAC Principles Regarding New gTLDs, [at](http://gac.icann.org/system/files/gTLD_principles_0.pdf) http://gac.icann.org/system/files/gTLD_principles_0.pdf (Mar. 28, 2007).

¹³ The final points of discussion between the Governmental Advisory Committee and the Board are collected at <http://www.icann.org/en/minutes/rationale-gac-response-new-gtld-20jun11-en.pdf>, beginning at page 52.

¹⁴ The Board's Rationale regarding potential areas of difference with the Governmental Advisory Committee is available at <http://www.icann.org/en/minutes/rationale-gac-response-new-gtld-20jun11-en.pdf>.

¹⁵ ICANN's relationships with law enforcement are not limited to the New gTLD Program; ICANN coordinates regularly on security-related issues and to address threats to the DNS.

¹⁶ IRT Membership Directory, at https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/trademark_protection:20090407232008-0-9336/original/IRT-Directory.pdf.

¹⁷ IRT Resolution, at <http://www.icann.org/en/minutes/resolutions-06mar09.htm#07> (Mar. 6, 2009).

¹⁸ Zone File Access Advisory Group information and documents are available at <http://www.icann.org/en/topics/new-gtlds/zone-file-access-en.htm>.

¹⁹ Carlton I, paragraphs 23, 39 *passim*.

²⁰ *Id.* at paragraph 23.

²¹ *Id.*

²² Katz/Rosston Phase II, at paragraphs 75-76.

²³ Rationale for the Board's decision that no further economic studies would be beneficial at this time is available at <http://www.icann.org/en/minutes/rationale-economic-studies-21mar11-en.pdf>.

²⁴ See, e.g., Katz/Rosston Phase II at paras 64-65, 120.

²⁵ See Dr. Dennis Carlton, "Comments on Michael Kende's Assessment of Preliminary Reports on Competition and Pricing", at https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/tld_demand_and_economic_analysis:20091007232802-2-13939/original/carlton-re-kende-assessment-05jun09-en.pdf (June 5, 2009).

²⁶ Katz/Rosston Phase II, at page 52.

²⁷ See

http://www.circleid.com/posts/20090202_analysis_domain_names_registered_new_gtlds/.

²⁸ While not related to mitigating malicious conduct, consumers and registrants will also be protected due to the work done on registry continuity and the creation of new transition procedures for use in the event of registry failure.

²⁹ As a companion protection for registry operators that maintain exclusive use over all registrations within a TLD – such as brand holder – in the event of registry failure, ICANN may not transfer registry operations without the consent of the registry operator.

³⁰ While rates of 215-240 new gTLDs are expected over a one-to-two year period, it has been determined that the root zone servers can readily accommodate maximum rates of 1000 delegations per year. See October 2010 Root Zone Scaling reports are available

at <http://www.icann.org/en/announcements/announcement-2-06oct10-en.htm>, and the public comment fora can be accessed from there as well. See *also* Letter from Jun Murai, Chair of RSSAC, <http://www.icann.org/en/correspondence/murai-to-board-25nov10-en.pdf> (25 November 2010).

³¹ GNSO Summary of Policy Recommendations, at <http://gnso.icann.org/issues/new-gtlds/summary-principles-recommendations-implementation-guidelines-22oct08.doc.pdf>.

³² The ATRT Report is available at <http://www.icann.org/en/reviews/affirmation/activities-1-en.htm>.

³³ For an example of the application of the Conflict of Interest policy within the New gTLD Program deliberations, Board members and Liaisons regularly identify particular areas of interest that require the members to refrain from voting on issues, or refrain from participating in deliberations, as reported at <http://www.icann.org/en/minutes/minutes-25sep10-en.htm>.

³⁴ The IDN ccTLD Process was created after consultation and planning with the ccNSO (Country Code Names Supporting Organization) and the GAC.

³⁵ These IDN ccTLDs represent 20 countries and territories. Due to language difference in country, for example, India has IDN ccTLDs delegated in seven separate scripts.

³⁶ Information on DNSSEC deployment can be found at <http://www.root-dnssec.org/>.