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A CALIFORNIA PUBLIC BENEFIT NONPROFIT CORPORATION

BEFORE THE US HOUSE COMMITTEE

ON THE JUDICIARY

SUBCOMMITTEE ON INTELLECTUAL PROPERTY, COMPETITION AND THE INTERNET

HEARING ON NEW GENERIC TOP-LEVEL DOMAINS (gTLD)

MAY 4, 2011

Mr. Chairman and members of the Committee, thank you for the opportunity to address you today. I am Kurt Pritz, the Senior Vice President for Stakeholder Relations of the Internet Corporation for Assigned Names and Numbers (ICANN). Among other things at ICANN, I am responsible for managing the implementation planning for the program to introduce new generic top-level domains (also referred to as new gTLDs).

I. Recent Advancements at ICANN

In September 2009, the Subcommittee on Courts and Competition of this Committee held a hearing on the Expansion of Top Level Domains and its Effects on Competition. ICANN's former Chief Operating Officer, Doug Brent, had the privilege of testifying at that hearing. The record of that proceeding can be found at http://judiciary.house.gov/hearings/hear_090923.html. My testimony will provide background on the program as well as an update to show the continued progress towards implementing and launching the ICANN community's new gTLD program.

The work of the ICANN community has improved the program in many ways. I will describe how, through its bottom-up, multi-stakeholder policy development process, ICANN has prepared to implement a new gTLD program with many important provisions that address the interests of consumers and business:

- many strong provisions for the protection of intellectual property rights;

- review and objection rights created in coordination with governments and the ICANN community;

- consumer protections and heightened law enforcement coordination requirements; and

- the collection of information that will assist in evaluating the effects of the first application round.

I will also describe ICANN's continuing work in other areas, including the Affirmation of Commitments, the launch of top-level domains in international scripts (Internationalized Domain Names or IDNs), and implementation of Domain Name System Security Extensions (DNSSEC).

In all its work, ICANN continues to fulfill its longstanding commitment to accountability and transparency, which is fundamental to its credibility as the steward of the domain name system for the public benefit of the global Internet community, and to its ability to ensure that the global public interest is served.

II. The ICANN Model At Work: Implementation of New gTLDs

A.   *A Multi-Stakeholder Organization*

ICANN was created in 1998 following the United States Government's "White Paper on the Management of Internet Domain Names and Addresses" (White Paper),[1] and has benefitted from the assistance and support of the United States Government across three Presidential Administrations.

ICANN is really two things.

First, it is a California public benefit nonprofit corporation, performing a technical coordination function for the global public interest.

Second, it is a global community of stakeholders, including industry, governments and Internet users.

ICANN is the authoritative body for technical coordination of the Domain Name System, the system that uniquely identifies computers and server addresses on the Internet. It does this through a stakeholder-driven, bottom-up, consensus-based policy development process.

A key mandate for ICANN is to create competition in the domain name market and to "oversee policy for determining the circumstances under which new TLDs are added to the root system."[2] ICANN pursues policies in the public interest through the introduction and fostering of competition, resulting in choice of vendors, differentiation in service offerings, and lower prices. The expected launch of the new gTLD program is consistent with the U.S. Government's mandate that ICANN foster competition and innovation.

On September 30, 2009, ICANN and the US Department of Commerce executed the Affirmation of Commitments, a landmark agreement that replaced the Joint Project Agreement under which ICANN had previously operated. The Affirmation memorializes 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.

The multi-stakeholder model is essential to ICANN. Lawrence Strickling, Assistant Secretary of Commerce for Communications and Information, and Administrator of the National Telecommunications and Information Administration (NTIA), confirmed this when he stated that the Obama Administration's commitment to ICANN's multi-stakeholder model as the "best way to preserve and protect the security and stability of the Internet."[3]

B. The ICANN Model

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

ICANN's robust model is based on the principle of reaching consensus solutions to difficult problems.[4] First, a model solution is proposed. Through public comment processes and other engagement, the ICANN community provides its input. ICANN integrates that comment and produces a new version.[5] The cycle does not stop there. ICANN generally seeks further input from its Supporting Organizations,[6] the community of Internet end users, governments and others,[7] on the sufficiency of the second version. This cycle of iteration-comment-integration continues until no new ideas appear – that is when it is time to move forward and take action on the community's work. The ICANN model provides predictability, and protects against any single person or entity capturing the policy process or unduly influencing the outcome.

To address more challenging issues, ICANN brings together working groups of experts – many from within the ICANN community – to provide recommended solutions for further community review. ICANN *takes the time* to work with its community to form consensus-driven, community-based and vetted solutions.

C. 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.[8] ICANN has worked closely with the community in building an implementation plan.

1. The New gTLD Program: a Model of Community Engagement and a Careful and Orderly Process

In 2005, ICANN's Generic Names Supporting Organization (GNSO) initiated a formal, Bylaws-defined policy development process on the addition of new gTLDs. By a super-majority vote (19-1), the GNSO approved policy recommendations in 2007 and submitted them to ICANN's Board of Directors. In 2008 the ICANN Board approved the recommendations[9] and directed ICANN staff to commence the implementation phase. . The first version of the *Applicant Guidebook*, detailing the guidelines and requirements for the evaluation process, was released in October 2008; the sixth was released on April 15, 2011. *Applicant Guidebook* postings have been accompanied by 55 explanatory memoranda independent reports to date. For transparency, each new version of the *Applicant Guidebook* is posted in a redline format to show changes.

To date there have been **47** separate comment periods during the implementation phase of the new gTLD program, with nearly all for a minimum of 45 days.[10] ICANN has

produced a summary and analysis of every comment – 1350 pages of summary and analysis so far on the new gTLD program.

Comments previously addressed many substantive issues; today, the comments are more focused on small details. The comments informed further changes to the *Applicant Guidebook*, and a comment period is underway on the most recent version.

(a)   The ICANN community has tirelessly contributed

The ICANN community has devoted tens of thousands of hours to the development of the new gTLD program, through formal and informal measures including online public comment fora and at public "open microphone" sessions at each of ICANN's public meetings. Nearly every ICANN Supporting Organization and Advisory Committee was represented in targeted community-based working groups or expert teams formed to address implementation issues.

The GNSO 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 (ccNSO), representing ccTLD operators, was particularly active on issues relating to internationalized domain names (IDNs) in the new gTLD program.

ICANN's technical Advisory Committees provided direct input into the implementation work. For example, Root Zone System Security Advisory Group (RSSAC) members and Security and Stability Advisory Group (SSAC) members provided information that there is no expected significant potential impact of new gTLDs on the stability and scalability of the root server system.

Members of the At-Large Advisory Committee (ALAC) served on nearly every working group and team, giving the world's Internet users a voice in implementation discussions. The ALAC has been an active participant in the formal public comment process.

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

The Governmental Advisory Committee (GAC) has also been deeply and effectively involved in the new gTLD program. ICANN's Bylaws specify that the GAC "should consider and provide advice on the activities of ICANN as they relate to the concern of governments."[11] Throughout the new gTLD implementation work, the GAC provided advice on the versions of the *Applicant Guidebook*. In late 2010, as the Board moved closer to the *Guidebook's* finalization, close attention was paid to the concern that there were likely differences between GAC advice and the proposed *Guidebook*.

Under the Bylaws, the GAC has an assurance that the Board will take GAC advice into account.[12] The Board is obligated to inform the GAC of an action that may not be consistent with GAC advice, and the GAC and the Board must then try, in good faith, to identify a mutually acceptable solution.[13] If the GAC and the Board are not able to reach

full agreement, the Board is obligated to provide reasons why GAC advice was not followed.[14]

In an effort to identify and resolve differences, the ICANN Board and the GAC held a landmark face-to-face, three-day consultation meeting on February 28 – March 21, 2011. GAC representatives from Africa, the Americas, Asia-Pacific, and Europe all participated in the consultations, including the US representative to the GAC.

The GAC and the Board reached alignment on many of the twelve areas of potential difference as identified by the GAC.[15] The alignment included agreements that: additional economic study should be conducted after the first set of new gTLDs is made operational; the GAC would provide advice on individual proposed new gTLDs directly to the Board through Early Warning and Objection procedures; and that trademark protection mechanisms should be sharpened in several specific ways. All of the GAC's twelve issue areas have been addressed in some way, although some differences remain on sub-issues.

Face-to-face consultations resumed in March 2011, at ICANN's 40th Public Meeting in San Francisco, California. Further progress was made in identifying areas of alignment between the Board and the GAC positions. The Board and the GAC also invited community input, which was provided during public sessions and through written submissions that are available online.[16]

The Board and the GAC continued to work together and collected community comments. On April 15, 2011, ICANN produced a revision of the *Applicant Guidebook*, taking into account the compromises with the GAC and additional community comment.

The third GAC-Board consultation is ongoing, as is community input. Every company and individual expected to testify before this Subcommittee has participated in one form or another in these community input processes.

The Board and the GAC have each made compromises to reach this point and they plan a final consultation to address the remaining differences. This is expected around May 20, 2011 to review written materials. After consideration of public comment and the final GAC-Board consultation, ICANN will prepare a proposed final version of the *Applicant Guidebook* for posting on May 30, 2011. According to its March 18, 2011 resolution, the Board anticipates that version will be ready for approval on June 20, 2011 during the ICANN Public Meeting in Singapore.[17]

(c)   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. 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 Canadian Royal 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.[18] ICANN expects this successful collaboration to continue.

(d) IP experts have been Involved at Every Step

Representatives of trademark interests and brand holders have been involved in the development of the new gTLD program since the beginning of the GNSO policy development work. Members of ICANN's Intellectual Property Constituency were among the authors of a June 2007 report on protecting the rights of others in new gTLDs.[19] This work arose out of the specific GNSO policy recommendation on new gTLDs that "strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law", a recommendation that is embodied in this implementation.

Following the publication of first draft of the *Applicant Guidebook* in October 2008, there were calls in the community for some additional rights protection mechanisms (RPMs). In March 2009 ICANN formed a team of 18 intellectual property experts from around the world[20] – the Implementation Recommendation Team (IRT).[21] The IRT's work, through five face-to-face meetings around the world and numerous conference calls, culminated in a report, finalized in May 2009, that recommended a number of new RPMs, but failed to reach consensus.[22] Because the community had not reached consensus on the IRT's proposed RPMs, ICANN requested further community assistance,[23] and the GNSO convened the Special Trademark Issues Review Team (STI), a multi-stakeholder volunteer team, which further refined the IRT recommendations[24] in the next version of the *Applicant Guidebook*.[25] In the past year, refinement of RPMs continued through further consultations with IP experts, public comment and GAC advice.

(e) Additional Subject Matter Experts Formed Teams to Guide the Implementation Process

In addition to the regular participants in its processes, the ICANN model affords opportunities for experts to provide assistance on particularly challenging topics. At times, ICANN retains experts, such as renowned economists, to provide reports for the community. Within the new gTLD program, ICANN commissioned five expert economic reports and retained the services of economists to study the anticipated benefits and cost of new gTLDs, effects of price controls, and the issue of vertical integration of registries and registrars – a study that informed the community debate over this difficult topic.

The ICANN model also provides a forum for community experts to provide input into the new gTLD implementation work. In addition to the IRT and the STI, many impressive

subject matter experts have guided the community to solutions on very difficult topics. These groups include:

- A Zone File Access Advisory Group (ZFA) set out standardized access zone file information to simplify access for those investigating abuses.[26]

- The Anti-Phishing Working Group (APWG), an industry association, provided an expert report through its Internet Policy Committee on malicious conduct issues that was integral in the community's consideration of a safe roll-out of new gTLDs.[27]

- The Registry Internet Safety Group (RISG), a global group of Internet-related organizations that work to combat Internet identity theft, provided a report addressing malicious conduct mitigation measures.[28]

- ICANN's Security and Stability Advisory Committee formed a working group to address "orphan glue records" in the DNS – a tool for malicious conduct. Its report provides guidance into the management of glue records.

- Experts from the Internet security first responder community provided advice on the design of tools to combat the potential for malicious conduct, including members of the Forum of Incident Response and Security Teams (FIRST).

- A High-Security Zone TLD Advisory Group (HSTLD) 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 HSTLD included members of BITS, the technology policy division of The Financial Services Roundtable, and other community experts. The HSTLD released its final report in March 2011,[29] for the development of a standard that could be implemented within the first round of new gTLDs.

There are further examples of cross-community volunteer working groups: the Joint Applicant Support Working Group (JAS-WG) addressed support for needy applicants; the Joint ccNSO-GNSO IDN Working Team (JIG) discussed IDN-related issues; the Vertical Integration Working Group (VI-WG) addressed community solutions to the issue of Registry-Registrar cross ownership; and the Temporary Drafting Group (TDG) recommended enhancements to the new gTLD Registry Agreement and post-delegation dispute resolution procedures. Each group worked openly and transparently, and many have produced reports that have been the subject of public comment.

Importantly, ICANN listened to and acted on this work – including modifying germane *Applicant Guidebook* sections.

D.   The Community Improved the *Applicant Guidebook* through the ICANN Model

This is the community's program. Through this extraordinary collaboration, 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 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 some highlights of the results of the community's work.

(a)   Trademark Protection: New gTLDs Will Have Robust Rights Protection Mechanisms (RPMs)

New gTLDs will have significant, robust RPMs that don't presently exist in current gTLDs. The RPMs will help rights holders protect marks efficiently, in terms of both time and money. When new gTLDs launch, mark holders will have the opportunity to register their marks in a single repository that will serve *all* new gTLDs, the Trademark Clearinghouse. (Currently, trademark owners register in similar types of clearinghouses for *each separate* top-level domain that launches.) New gTLD registries are required to use the Trademark Clearinghouse in two ways. First, new gTLD registries 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 ("IP Claims") of domain name registrations that match marks in the Clearinghouse for a period of time at the beginning of general registration.

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 mark 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.

Locating potential infringers should be easier under new gTLDs. While existing gTLDs are only required to provide minimal information about registrants through a "thin" Whois model,[30] new gTLDs will be required to provide "thick" Whois data. Marks holders and law enforcement will thus be able to access more contact information for registrants in new gTLDs.

New gTLDs offer protections to mark 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.

The ICANN community holds diverse views on the proper scope of RPMs, as evident in the community submissions in response to the Board-GAC consultations. However, the proposed RPMs are much broader than those in any prior version of the *Applicant Guidebook*. The proposed RPMs provide far more protections than currently available, and incorporate the need for RPMs into the broader community directive to move forward with the new gTLD program.

(b) Consumers Will Be Protected Through Efforts to Mitigate Malicious Conduct

The expert and community work to address the potential of malicious conduct in new gTLDs has generated many enhanced protections in the *Applicant Guidebook*. Nine specific mechanisms were developed that will improve consumer protection[31] and enhance the public interest. They include:

- Prospective registry operators will be appropriately reviewed for past 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), engaged in reverse domain name hijacking under the UDRP, or has been found to act in bad faith or reckless disregard under the US Anticybersquatting 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 more accurate and rapid identification of key points of contact within each gTLD. This reduces the time necessary to take corrective action within TLDs experiencing malicious activity.

- 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.

The flexibility inherent in the ICANN model, both in access to and ability to empower teams of experts to contribute to the community's work, has produced mechanisms to benefit all Internet users through safer online interactions in the new gTLD space. The contributions of the GAC and law enforcement broadened the scope of these protections.

(c) Further Protection against Defensive Registrations Not Supported

Some mark holders may suggest that the *Applicant Guidebook's* RPMs are not enough – marks holders will still face the costs of "defensive" registrations in all new gTLDs (the registration of mark-related domain names solely to ensure that someone else cannot register and use the name in bad faith).[32]

The available evidence does not support this position. Economists Michael Katz and Gregory Rosston performed a study of more than 200 top brands, and determined that brand holders do *not* register names in all available TLDs; that top international brands have a significantly lower rate of registration in gTLDs outside of .COM; and brand owners expend less funds to protect brands in less popular gTLDs.[33] While .COM and .NET together form just over 80% of the domain name registrations in gTLDs, a review of 2010 and 2011 UDRP filings with the World Intellectual Property Organization (WIPO) shows that *over 90%* of the UDRP filings are for .COM and .NET registrations.

Abusive registrations do not occur at the same rates in newer gTLDs because they do not return value to the abuser, and the effectiveness for defensive registrations diminishes sharply outside of .COM and .NET.

Alternate 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.[34] 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.

In addition, not all "defensive" registrations are registrations without value to the mark holder. Mark holders can derive value through the use of productive registrations, such as those that redirect users to main sites.[35]

The robust rights protection mechanisms in the *Applicant Guidebook* provide mark holders with an alternative to engaging in defensive registrations.[36] The provision of effective protection mechanisms is shown to reduce the need for mark holders to engage in defensive registrations – but the RPMs cannot be complete; if the RPMs are too strict, the growth of a new TLD may be impaired.[37]

Unsubstantiated fear of forced defensive registrations is not sufficient reason to stall new gTLDs and delay the benefits of introducing competition into the DNS. The ICANN community has developed substantial cost-mitigation measures that benefit mark holders while remaining consistent with existing trademark law.

(d)   Security and Stability: Expert Study Confirms No Expected Impact on the Stability of the Root

ICANN is committed to the following protections regarding root zone stability:

- To delegate new gTLDs at a rate well within the root server operator capabilities to maintain a stable, secure root zone.[38]

- A second round of applications will not be processed until the impact of first round delegations on root zone stability has been studied and undergone public comment.

- If the root server system shows signs of stress, the process can quickly be halted to preserve stability. ICANN will establish communications and monitoring.

- To prepare operationally to adequately serve additional TLDs with IANA-function services and contractual compliance oversight.

Based on the expert community analysis, the Board determined that the issue of the potential for harmful effects to the stability of the root zone was resolved. ICANN's commitment to studying the impact of first round delegations prior to proceeding with delegations from a second round of new gTLD applications is an important innovation from the GAC consultation process.

(e)   Economic Studies: Confirm Overall Benefits of Opening the DNS; No Further Work Would Better Inform Board

Several economic reports, third-party observers and ICANN stakeholders have recognized that the fundamental benefits of 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.

Since the 1998 White Paper, it has been a fundamental assumption that increasing the number of gTLDs will increase competition.[39] The House Committee on Energy and Commerce relied on this fundamental assumption in 2001, when it held a hearing on the potential detrimental effects on competition when ICANN selected only seven new TLDs out of over 200 different TLDs in its early Proof of Concept round.[40]

However, as the new gTLDs come closer to launch, there has been increased criticism of this collective assumption. In response, ICANN commissioned five economic studies[41] 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.

The Board and the GAC agree that further economic study at this time would not be beneficial. Instead, the Board and the GAC focused on 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 that are specifically targeted to collect information relating to stated purposes and anticipated outcomes of each application, for use in later studies.

In response to more recent community calls for additional economic study on the potential costs and benefits of the expansion of the gTLD space, ICANN commissioned economists Michael Katz and Gregory Rosston, with the assistance of Theresa Sullivan, to perform a two-stage study. The Katz/Rosston reports were completed in June and December 2010, respectively, and each was posted for public comment.[42] Phase 1 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 2 provided reports of empirical studies proposed in

Phase 1, to help assess costs and benefits of new gTLDs.

Katz and Rosston's work was consistent with the basic findings of the previous reports, and supported an open approach in which new gTLDs are added to the root, subject to appropriate restrictions and mechanisms (such as RPMs) designed to minimize potential costs to marks 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 RPMs. The empirical studies they created and reviewed in Phase 2 were inconclusive about the balance of costs and benefits, though the inclusion of appropriate protections is expected to allow the benefits achieved through the differentiation of the name space to outweigh the costs.

But what remains clear, as stated by Dr. Dennis 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."[43] "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."[44] 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 – essentially freezing the number of TLDs 15 years after the first commercial introduction.[45]

In the end, calling for a delay in the entry of new gTLDs only 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[46]

2. Innovation and Jobs are waiting

The ICANN community has been working towards the introduction of new gTLDs for years. Throughout the implementation work, businesses have formed based on ICANN's commitment to implement the community's policy recommendations. For the past two years, future applicants have attended ICANN meetings, passing out buttons and materials with their ".EXAMPLE" prominently displayed. Consulting businesses to advise applicants have arisen. We have identified over *120* persons or entities that 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 moves from the planning to approval.

We will never know the opportunities and creativity that will come through the introduction of new gTLDs will produce unless 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 brought about 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.

From its inception, ICANN was charged with introduction of competition in the DNS through the introduction of new TLDs. The community formed a policy recommendation on how to do this. Through its private-sector led, bottom-up, multi-stakeholder process, ICANN developed a plan to implement that policy recommendation, consulted the public and took on board extensive comments. Formal approval of the new gTLD program's next phase will be a milestone in ICANN's commitment to accountability to the Internet community. But the commitment to accountability does not stop there.

(a)   The ICANN Model Ensures Continued Review and Enhancement

Upon the introduction of new gTLDs, ICANN has committed to organize regular reviews "that will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion."[47]

Governments will have an effective voice in the multi-stakeholder review teams; the GAC's Chair will approve their composition in cooperation with ICANN's CEO. Recommendations from the reviews will be subject to public comment, and the Board is committed to take action on them.

Today's new gTLD program reflects years of community comment and collaboration. The regular reviews will ensure that future application rounds are informed by the lessons that can only be learned by making new gTLDs operational. ICANN's work is not done, but the program must launch before further progress can be made.

III. 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.   *IDN ccTLD Fast Track Process*

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.[48] Through this process, 27 IDN ccTLDs are now available on the Internet [49] with more on the way. This has opened the Internet to an additional two billion people within China and India alone.

A.   *DNSSEC*

The Internet is becoming more secure. Following years of development and testing, on 15 July 2010, ICANN, in partnership with VeriSign and the US Department of Commerce, ICANN published the root zone trust anchor and a signed root zone became available.[50] The implementation of DNSSEC (or DNS Security Extensions) will eventually 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 employ DNSSEC; most significantly, the .COM registry adopted it on March 31, 2011. DNSSEC will be mandatory in all new gTLDs.

A.   *Root Zone Automation*

In performance of the IANA Function Contract, ICANN is partnering 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, including technical contact information and name server information. This automation will make the processing of change requests more efficient.

B.   *IANA Functions Department Business Excellence Initiative*

ICANN works to ensure that the IANA Functions Department can continue its operational excellence upon the launch of new gTLDs. The Department is undertaking a Business Excellence Initiative, and enhancing and documenting its processes.

C.   *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.

In the past 18 months, ICANN has either terminated or denied renewal of 27 registrars, and issued thousands of compliance notices.[51] ICANN accredited registrars have recently lost the right to offer domain names for, among other reasons, failure to: (i) provide a working website and Whois look up service; (ii) comply with data escrow requirements (required backups of registration data); (iii) maintain contact information; (iv) provide certificate of insurance; (v) maintain solvency; (vi) process registrant requests to transfer to other registrars; and (vii) post deletion and auto-renewal policies.

Other significant progress includes the relatively recent implementation of registrar data escrow where all registrar data is escrowed by ICANN so 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

ICANN continues to explore ways to identify registrar noncompliance early, take action swiftly to bring them back into compliance and terminate those that undermine the domain name registration process. This compliance activity helps ensure a healthy Internet ecosystem.

ICANN also recently issued a breach notice to a gTLD registry, and is working with that registry to bring it back into compliance with its contractual obligations.

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

D. *Fulfilling the Affirmation of Commitments*

The Affirmation of Commitments is a major milestone. ICANN dedicates significant time and resources to meet its commitments and 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 *more* transparency.

What has ICANN done to date?

- In coordination with the community, 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), staff completed detailed implementation plans to meet the recommendations.

- On March 18, 2011, the Board noted that all of the 27 recommendations should proceed to implementation immediately, pending appropriate resource, legal and research requirements.

- On April 21, 2011, the Board assigned the various recommendations to its committees for oversight of the implementation work.

ICANN has also started the implementation work to meet the ATRT recommendations:

- Starting with the Brussels Board meeting in June 2010, ICANN has been publishing Approved Resolutions reached at ICANN Public Meetings in the six UN languages.

- Starting with the 25 January 2011 Board meeting, ICANN is now providing translations of Approved Resolutions for *all* Board meetings and of the Minutes of Board meetings.

- Since that meeting, ICANN has also been posting rationales for Board actions, which are also translated. This includes rationales for all new gTLD-related actions taken in 2011, including the adoption of the rationale to support the

Board's decisions on Registry-Registrar Cross Ownership and the Completion of Economic Studies.

- In June 2010, ICANN began posting Board Briefing Materials along with the Minutes of each Board meeting.

- In March 2011, ICANN posted Guidelines for the Posting of Board Briefing Materials to better explain the redaction process. As explained in the Guidelines, ICANN is now providing a description of the basis of each redaction.

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.

IV. 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 written, thousands of comments received, reviewed and considered. Governments have provided advice; experts 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 Subcommittee. I look forward to answering any questions that you have during the hearing.

[1] 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)
[2] *Id*.
[3] Lawrence Strickling, Welcome Comments, ICANN 40th Public Meeting, at http://svsf40.icann.org/meetings/siliconvalley2011/transcript-welcome-14mar11-en.txt (Mar. 14, 2011).
[4] While my testimony today focuses on implementation of community-driven policy recommendations, the ICANN model is also used in non-policy matters.
[5] ICANN strives to make its work accessible to the global Internet community. This year alone, ICANN budgeted $1.3 million for document translations to facilitate global participation in these comment processes.
[6] The Generic Names Supporting Organization (GNSO), Country Code Names Supporting Organization (ccNSO) and the Address Supporting Organization (ASO).
[7] ICANN's formal Advisory Committees are the Governmental Advisory Committee (GAC), The Security and Stability Advisory Committee (SSAC), The Root Server System Advisory Committee (RSSAC), and the At-Large Advisory Committee (ALAC).

[8] 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.

[9] GNSO Final Report on the Introduction of New Top Level Domains ("Final Report"), *at* http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm (Aug. 8, 2007); ICANN Board resolution, http://www.icann.org/en/minutes/resolutions-26jun08.htm (June 26, 2008); GNSO Minutes, http://gnso.icann.org/meetings/minutes-gnso-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 (Mar. 28, 2007).

[10] 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.

[11] ICANN Bylaws, Art. XI, Sec. 2.1.a, *at* http://www.icann.org/en/general/bylaws.htm#XI.

[12] ICANN Bylaws, Art. XI, Sec. 2.1.j, *at* http://www.icann.org/en/general/bylaws.htm#XI.

[13] *Id.*

[14] ICANN Bylaws, Art. XI, Sec. 2.1.k, *at* http://www.icann.org/en/general/bylaws.htm#XI.

[15] The Board provided notes to the GAC's identification of areas of difference. The Board Notes, available at http://www.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-04mar11-en.pdf, capture the progress made during the consultation.

[16] Community comment on the Board/GAC consultations is compiled at http://www.icann.org/en/topics/new-gtlds/related-en.htm.

[17] March 18, 2011 resolution available at http://www.icann.org/en/minutes/resolutions-18mar11-en.htm#3.

[18] 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.

[19] Report of Working Group on Protecting Rights of Others, http://gnso.icann.org/files/gnso/drafts/GNSO-PRO-WG-final-01Jun07.pdf (Jun. 1, 2007).

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

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

[22] Public comment forum on IRT Draft Report, http://www.icann.org/en/public-comment/public-comment-200905.html#irtdr; IRT Final Report, at http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf (May 29, 2009).

[23] Letter from Rod Beckstrom to GNSO Council, http://gnso.icann.org/correspondence/beckstrom-to-gnso-council-12oct09-en.pdf (October 12, 2009).

[24] Final Report of the STI, at http://gnso.icann.org/issues/sti/sti-wt-recommendations-11dec09-en.pdf (December 11, 2009).

[25] March 10, 2010 Board resolutions, at http://www.icann.org/en/minutes/resolutions-12mar10-en.htm#6.

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

[27] APWG Report on Potential Malicious Abuse and New gTLDs, https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/potential_for_malicious_conduct:20090619162304-0-3550/original/DRAFT%20Potential%20malicious%20use%20issues%2020090617.pdf (June 17, 2009).

[28] RISG Statement on New TLDs, https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/potential_for_malicious_conduct:20090519220555-0-2071/original/RISG_Statement_on_New_TLDs-20090519.pdf (May 19, 2009).
(March 11, 2011).

[30] While some existing gTLDs choose to use "thick" Whois models today, it is not required.

[31] 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.

[32] An economic study commissioned by AT&T suggests that 97% percent of mark holder registrations in new gTLDs will be defensive registrations. *See* Michael Kende, "Assessment of ICANN Preliminary Reports on Competition and Pricing" (April 17, 2009). However, there are several reasons why the results of Kende's study provide little reason to oppose the new gTLD program. First, the study makes it clear that most defensive registrations take place on .COM. Second, Kende's definition of a defensive registration is overly expansive. According to Kende, defensive registrations would include domain names that can facilitate efficient user navigation by collecting and redirecting traffic, such as obvious misspellings. However, even if there were no fear of

typosquatting, it probably would make sense for companies to acquire some misspellings of their brand names.

Kende's work has been refuted by other economists, including Dr. Dennis Carlton, who produced a paper rebutting Kende's claims. *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).

[33] Michael Katz, Gregory Rosston and Theresa Sullivan, Economic Considerations in the Expansion of Generic Top-Level Domain Names – Phase II Report: Case Studies, at paragraph 8, http://www.icann.org/en/topics/new-gtlds/phase-two-economic-considerations-03dec10-en.pdf (December 2010) ("Katz/Rosston Phase II").

[34] See http://www.circleid.com/posts/20090202_analysis_domain_names_registered_new_gtlds/.

[35] Carlton, Comments on Kende, *supra* note 32, at paragraph 11.

[36] Carlton, Comments on Kende, *supra* note 32, at paragraph 16.

[37] Katz/Rosston Phase II, *supra* note 33, at page 52.

[38] 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).

[39] "The U.S. Government is of the view, however, that competitive systems generally result in greater innovation, consumer choice, and satisfaction in the long run. Moreover, the pressure of competition is likely to be the most effective means of discouraging registries from acting monopolistically." White Paper, *supra* note **Error! Bookmark not defined.**.

[40] *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").

[41] 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 Katz/Rosston Phase II, *supra* note 33.

[42] Katz/Rosston Phase I, *supra* note 41, Katz/Rosston Phase II, *supra* note 33.

[43] Carlton I, *infra* note 31 paragraphs 23, 39 *passim*.

[44] *Id*. at paragraph 23.

[45] *Id*.

[46] Katz/Rosston Phase II, *supra* note 33, at paragraphs 75-76.

[47] Affirmation of Commitments, paragraph 9.3
http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm.

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

[49] These IDN ccTLDs represent 17 countries and territories. Due to language difference
in country, for example, India has IDN ccTLDs delegated in seven separate scripts.

[50] Information on DNSSEC deployment can be found at http://www.root-dnssec.org/.

[51] Between the 2003 and the last time ICANN appeared before the Subcommittee, 38
registrar accreditation agreements were terminated or not renewed.