

Testimony of Angela F. Williams, General Counsel, YMCA of the USA  
Before the U.S. Senate Committee on Commerce, Science and Transportation  
December 8, 2011

Good morning Chairman Rockefeller and Ranking Member Hutchison and Committee Members. I'm Angela Williams, General Counsel for the YMCA of the USA. As each of you know, the YMCA is the nation's leading nonprofit committed to strengthening communities through youth development, healthy living and social responsibility. We work side-by-side with our neighbors in more than 10,000 communities to make sure that everyone, regardless of age, income or background, has the opportunity to learn, grow and thrive. Last year, our Ys served 21 million people - about 9 million were youth - and we serve them in every congressional district in this great country. Thank you all for your many years of support of local Ys in your district. I know you all have a long history with the Y!

I'm here today to speak on behalf of the Not-for-Profit Operational Concerns Constituency known as NPOC, which is the newest constituency formed under ICANN to give not-for-profits and NGOs a voice in Internet governance. Our diverse membership includes groups within the United States such as American Red Cross, St. Jude's Children's Research Hospital, World Wildlife Federation, Church of God in Christ, Human Rights Campaign and Goodwill Industries International. Internationally, our members range from the Association of NGOs in Gambia to the International Baccalaureate Organization in Switzerland and many others.

The NPOC members, like most not-for-profits, increasingly rely on the Internet to fulfill our missions as well as to raise funds. We share a growing concern that our ability to carry out our collective missions due to the enormous cost and financial burdens of the proposed structure of the new Generic Top-Level Domain Name Program ("new gTLD Program) will pose severe hardship and burdens on each of us. We also share concern about the increased risk of public confusion, often unique to not-for-profit organizations, resulting from unauthorized use of organizational trademarks. I know firsthand at the Y that our local organizations have been hit hard in this economy. Our name and reputation are priceless, yet these additional costs to protect them are now out of financial reach.

The new gTLD Program compromises use of the Internet by increasing the risk of fraud, cybersquatting, and trademark infringement and by significantly escalating the cost to protect against such unlawful activities. The following are areas of particular concern:

- domain name registration
- the introduction of new top level and second level domain names into the DNS (Domain Name System)

- fraud and abuse, and
- using the Internet platform to distribute and collect mission-related information for our members and the communities we serve.

It is the goal of our organizations to educate all those responsible for implementation of the new gTLD program about unintended consequences. There is no doubt it will have a crippling effect upon my organization and most other not-for-profit organizations here and around the globe in its current form.

### **Budgetary Concerns**

I'd like to begin with our budgetary concerns.

The ultimate cost in proceeding through the entire application process alone could reach several hundred thousands of dollars. Currently, the ICANN website quotes costs for one new gTLD to be approximately \$185,000 to file an application, with an annual cost thereafter of at least \$25,000 for a required ten-year term. This does not include the legal fees required to prepare the application and certain amounts required to be in escrow. Moreover, there are many additional potential costs. For example, if an application is filed and then placed into an extended evaluation by ICANN, the applicant may have to pay an additional \$50,000. An applicant may be required to defend its application against objections, which range from \$1,000 to \$5,000 in filing fees per party per proceeding, and an additional \$3,000 to \$20,000 in costs per proceeding, which must be paid up front.

If the Y or another NPOC member chooses not to participate in the new gTLD program, it runs the risk that another entity will apply for use of its name or one that is confusingly similar. In the event another entity applies for a top-level domain that contains the organization's name, the costs for filing an objection are expected to be approximately \$30,000 - \$50,000.

While processes such as these may be useful in the commercial space, not-for-profits simply do not have the resources to participate, and will certainly not be able to compete against for-profit organizations with large budgets and reserves for intellectual property protection. Our sector not only prefers to, but must, use our monies to provide critical services to our communities. We simply cannot afford thousands of dollars to become a domain name registry solely to ensure brand protection. Becoming a domain name registry is not part of the mission of any not-for-profit organization, yet protection of its reputation is critical. ICANN's new gTLD Program does not provide special or discounted protection measures for not-for-profit organizations to protect their brands and avoid the public confusion that results from their unauthorized use. YMCA of the USA currently employs 1.5 full-time employees at a cost of \$225,000 annually, in addition to external legal expertise at a cost of over \$100,000 this year alone, in an effort to monitor and protect the use of its trademarks. Many other not-for-profits cannot

afford this expense to protect their name and goodwill. The increase of new gTLDs will further exacerbate this problem.

The primary enforcement mechanism of the new gTLD Program is the Trademark Clearinghouse, where trademark owners can protect their registered trademark rights. The new gTLD Program is due to be rolled out in less than 40 days. At this point, the cost of listing marks in the Clearinghouse has not been set, creating more uncertainty about the actual costs associated with the new gTLD Program.

This process will only apply to exact matches of trademarks, rather than common misspellings, etc. that fraudsters and cybersquatters often use to deceive and confuse Internet users attempting to locate a particular not-for-profit. Not-for-profits are not in a financial position to register their marks using hundreds of additional gTLDs, particularly at premium prices. Trademark owners will not be allowed to preemptively register marks that are nearly identical.

If not-for-profit organizations cannot afford to register the domain names in the first place, they certainly will not have the means to take legal action, nor should they, as these funds are better served fulfilling their humanitarian, philanthropic, education, academic, religious, community-based, promotion of the arts, public interest policy advocacy, health-related services and social inclusion missions.

### **Public Confusion and Cybersquatting Concerns**

Our ability to ensure that the public knows and trusts the public face of the Internet for all of our organizations is paramount. The public trusts the high-quality, reliable services they have come to associate with these organizations.

Bad actors in the domain name space such as cybersquatters, fraudsters, and others, who register and use domain names in bad faith to profit off of the goodwill of well-known entities, have existed for many years in the existing domain name space. Recently one of our organizations, a large and historic organization, learned that an unauthorized entity was using its name to fundraise online and in the community. The result was confusion by potential funders about which organization was seeking donations. This is a common example of how our organizations are impacted by trademark infringement.

The likely increased public confusion and fraud that will occur in the new gTLD space will be particularly devastating for not-for-profit organizations. If not-for-profit organizations are not able to adequately protect their names and trademarks in the new gTLDs, bad-faith domain name registrants will be able to register and make use of hundreds of domain names that are identical or similar, and to disseminate dangerously false information to

Internet users. This will greatly increase the likelihood that the public will be misled in a manner that is both financially devastating and dangerous to the reputation of those organizations – making it difficult for them to achieve their worthy missions.

Our country's diverse 1.5 million not-for-profits share one central commitment: improving lives. The ability to fund and focus on this important work will be diverted, and the public will suffer as a result of the new gTLD Program. Current protection mechanisms built into the new gTLD Program are not adequate and are expensive for those not-for-profits that wish to take advantage of them. The NPOC is understandably concerned about the impact on not-for-profit organizations that do not have the budget to enforce their rights in the current space, much less if that space were to increase ten-fold. The expense of the new gTLD Program would greatly divert funds from our central commitment to improve lives.

### **Recommendations**

Our fears are not alone. There has been a ground-swell of Internet stakeholders, including the largest for-profit companies that have repeatedly expressed concerns about the program beginning in January 2012 when so many vital issues remain unresolved.

Therefore, we ask that there continue to be input from stakeholders, and careful consideration of the impact of this program on the Internet, and particularly on not-for-profits. Among the numerous requests the NPOC has made to ICANN, we bring the following to your attention:

- That verified not-for-profit organizations be permitted to exempt their trademarks from any other applicant in the new gTLD Program at no cost, or if that is not possible, then at a drastically reduced fee;
- That the mechanisms for trademark protection be significantly strengthened, with the ability to proactively protect trademark owners before any application is accepted; and
- That the costs to participate in the new gTLD Program for verified not-for-profit organizations be eliminated, or if not possible, then at a drastically reduced fee.

In summary, thank you for your time and attention. I know that in Health Care Reform you heard the concerns of small not-for-profits and provided the same “claw back” for health insurance premiums for small not-for-profits as you have for small business. Time and again this committee has shown interest and common sense in protecting our precious not-for-profit sector from tremendous financial burden that will inhibit our ability to achieve our missions. I ask each of you to think about all the small and large not-for-profits that make our country and our world a better place to call home; our work alongside government; our work on most, if not all, of our nation’s

greatest problems. I ask you to look at this issue through the lens of the not-for-profit organizations in this country who are using limited resources to do much good.