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Hearing on
ICANN's Expansion of Top Level Domains
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Introduction

Good morning Chairman Rockefeller and Members of the Committee. I appreciate the opportunity to talk to you today on behalf of the National Telecommunications and Information Administration (NTIA) regarding the planned expansion of the Internet's domain name system (DNS) by the Internet Corporation for Assigned Names and Numbers (ICANN). NTIA is the Executive Branch expert on issues relating to the DNS and supports a multi-stakeholder approach to the coordination of the DNS to ensure the long-term viability of the Internet as a force for innovation and economic growth. Working with other stakeholders, NTIA is developing policies to preserve an open, interconnected global Internet that supports continued innovation and economic growth, investment, and the trust of its users. This multi-stakeholder model of Internet policymaking – convening the private sector, civil society as well as governments to address issues in a timely and flexible manner – has been responsible for the past success of the Internet and is critical to its future.

I will begin today by providing context for the announced expansion of generic top level domains (gTLDs) used on the Internet, detail the specific efforts of NTIA as the U.S. Government representative to the Governmental Advisory Committee (GAC) to improve the

ICANN program, and then describe the tools available to NTIA and the global community to manage any challenges that may arise.

Context for Planned Expansion of the Domain Name System

ICANN is a not-for-profit corporation based in California that is responsible for coordinating the Internet's DNS. The DNS is a critical component of the Internet infrastructure. It works like a telephone directory, allowing users to reach websites using easy-to-understand domain names (e.g., <http://www.commerce.gov>) rather than the numeric network server addresses (e.g., <http://170.110.225.163>) necessary to retrieve information on the Internet. ICANN develops policies through a bottom-up, multi-stakeholder led process with an international community of stakeholders that mirrors the global nature of the Internet. On September 30, 2009, NTIA, on behalf of the Department of Commerce, entered into an *Affirmation of Commitments* (Affirmation) with ICANN that established ICANN's multi-stakeholder, private-sector led model as the long-lasting framework for the technical coordination of the Internet DNS.¹ The Affirmation completed the transition begun in 1998 by a Memorandum of Understanding (MOU) between the Department and ICANN that was amended several times.

Since its inception in 1998, ICANN has been charged with promoting competition in the registration of domain names, while ensuring the security and stability of the DNS. The goal to establish new gTLDs beyond .com, .edu, .gov, .int, .mil, .net, and .org began over a decade ago. In 2000 and 2003, ICANN conducted a limited expansion of generic top level domain names.

¹ See http://www.ntia.doc.gov/files/ntia/publications/affirmation_of_commitments_2009.pdf.

Resulting in the addition of .biz, .info, .name, .pro, .aero, .coop, .museum, .asia, .cat, .jobs, .mobi, .tel, and .travel gTLDs to the DNS. In 2005, it initiated a process to develop the policies and procedures necessary to introduce an unlimited number of new gTLDs. After six years of multi-stakeholder policy development and implementation planning, including input from governments through the GAC, the ICANN Board of Directors (Board) approved the rules for the new gTLD program in June 2011, publishing the rules in the form of an Applicant Guidebook.²

Expansion of the gTLD space is expected to provide a platform for city, geographic, and internationalized domain names, among other possible top level domain strings. Expansion of the new gTLD space has, since its inclusion in the original MOU with ICANN, been intended to allow new TLD operators to create and provide content in native languages and scripts, otherwise known as Internationalized Domain Names or IDN, in addition to new gTLDs in ASCII or Latin scripts. This type of change to the DNS is expected to enhance consumer trust and choice, and reinforce the global nature of the Internet. It is also expected that a portion of applications will be either generic words or brand-focused as part of business development, investment, and startup plans.

NTIA as a Member of the Governmental Advisory Committee (GAC)

The multi-stakeholder policymaking process seeks to involve all stakeholders, including governments, to achieve policy outcomes with greater speed and flexibility than traditional regulatory structures. Within ICANN, the GAC provides governments a meaningful opportunity to participate in the development of policies related to DNS issues. NTIA represents the U.S.

² See <http://newgtlds.icann.org/applicants/agb>.

Government in the GAC, which currently has over 100 members.

Over the last six years, NTIA has actively engaged with its counterparts in the GAC in developing consensus advice to inform ICANN's policy development and implementation program for the introduction of new gTLDs. This included the adoption by the GAC in March 2007 of "GAC Principles Regarding New gTLDs" that were intended to inform the on-going policy development process underway in ICANN's Generic Names Supporting Organization (GNSO).³ The GAC progressively refined its advice to the ICANN Board and community through a series of communiqués issued at the close of each of its meetings between March 2007 and December 2010. This occurred as the new gTLD program advanced from the GNSO policy recommendations that were adopted by the ICANN Board in June 2008 to the implementation proposals developed by ICANN staff and posted serially for public comment.

In December 2010, the GAC developed a "Scorecard" of these outstanding issues governments had with the pending Draft Applicant Guidebook and requested direct discussions between the GAC and the ICANN Board to resolve them.⁴ Among these issues were:

- objection procedures for governments,
- procedures for the review of sensitive strings,
- root zone scaling,
- market and economic impacts,
- registry-registrar separation,
- protection of trademark rights and other intellectual property owners,

³ See <http://www.icann.org/en/topics/new-gtlds/gac-principles-regarding-new-gtlds-28mar07-en.pdf>.

⁴ See <http://www.icann.org/en/topics/new-gtlds/gac-scorecard-23feb11-en.pdf>.

- consumer protection issues,
- post-delegation disputes with governments,
- use and protection of geographic names,
- legal recourse for applicants,
- providing opportunities for stakeholders from developing countries,
- law enforcement due diligence recommendations, and
- the need for an early warning mechanism for applicants to identify whether a proposed string would be considered controversial or to raise sensitivities.

Between February 2011 and June 2011, GAC representatives from around the world met with the ICANN Board in extended face-to-face discussions to review the GAC Scorecard and to identify specific differences between GAC advice and the existing version of the Applicant Guidebook. The purposes of the sessions were to promote joint understanding of the issues and arrive at an agreed-upon resolution of those differences wherever possible. These unprecedented GAC-ICANN Board exchanges resulted in the adoption by the ICANN Board of a significant number of GAC recommendations in the final Applicant Guidebook. Equally importantly, the GAC's advice established a solid foundation for the subsequent review of the new gTLD program by identifying markers or guideposts of government expectations that the benefits must not be outweighed by risks to users of the DNS.

NTIA believes that ICANN improved the new gTLD program by incorporating a significant number of proposals from the GAC. ICANN's new gTLD program also now provides law enforcement and consumer protection authorities with significantly more tools than those

available in existing gTLDs to address malicious conduct. The fact that not all of the GAC's proposals were adopted as originally offered does not represent a failure of the process or a setback to governments; rather, it reflects the reality of a multi-stakeholder model.

Going Forward

As a member of the GAC, NTIA will continue to actively monitor and participate in discussions related to the expansion of new gTLDs within the ICANN process. NTIA appreciates that certain trademark owners and other stakeholders have expressed concerns regarding the new gTLD program. Safeguarding the rights of trademark owners and ensuring appropriate consumer protections as this process moves forward remains a priority. As applications for strings that are identifiable brands, products, or companies are introduced it will be important to ensure that trademark owners are properly protected. NTIA is committed to working with the U.S. industry and other stakeholders as the new gTLD program unfolds to mitigate any unintended consequences. The Affirmation sets up continuous multi-stakeholder review teams to evaluate ICANN's performance, including a review of the new gTLD program. This review 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 the application and evaluation process, and the safeguards put in place to mitigate issues involved in the introduction or expansion. NTIA believes the review provides an opportunity for stakeholders to further refine the new gTLD program and make adjustments, as needed.

In addition, NTIA intends to collaborate with U.S. Government agencies responsible for consumer and intellectual property protection, competition policy, and law enforcement to track their experiences and to coordinate the collection of data regarding the effects on consumers and

business users of the domain name system. In particular, NTIA, working with other agencies, will focus on ensuring that law enforcement concerns are addressed through strengthened Registry and Registrar Accreditation Agreements and enhanced contract compliance. NTIA will also be encouraging all interested parties to collaborate in the development of metrics to facilitate the review of the new gTLD program to which ICANN has committed. We feel strongly that the review must be informed by fact-based, real-time experiences that can be captured by data from a variety of sources.

Conclusion

NTIA is dedicated to maintaining an open, global Internet that remains a valuable tool for economic growth, innovation, and the free flow of information, goods, and services online. We believe the best way to achieve this goal is to continue to actively support and participate in multi-stakeholder Internet governance processes such as ICANN. This is in stark contrast to some countries that are actively seeking to move Internet policy to the United Nations. If we are to combat the proposals put forward by others we need to ensure that our multi-stakeholder institutions have provided a meaningful role for governments as stakeholders. NTIA believes that the strength of the multi-stakeholder approach to Internet policy-making is that it allows for speed, flexibility, and decentralized problem-solving and stands in stark contrast to a more traditional, top-down regulatory model characterized by rigid processes, political capture by incumbents, and in so many cases, impasse or stalemate.

Thank you again, Mr. Chairman for the opportunity to testify this morning. NTIA looks forward to working with Congress, U.S. business, individuals, and other stakeholders to preserve

and enhance the multistakeholder model that has been a hallmark feature of global Internet institutions that have been responsible for the success of the Internet.

I will be happy to answer any questions.