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July 29, 2011

Fiona M. Alexander, Associate Administrator  
Office of International Affairs  
National Telecommunications & Information Administration  
U.S. Department of Commerce  
1401 Constitution Avenue, NW, Room 4701  
Washington, DC 20230  
IANAFunctionsFNOI@ntia.doc.gov

**Re: Further Notice of Inquiry on the Internet Assigned Numbers Authority Functions  
Docket No. 110207099-1319-02  
RIN 0660-XA23**

Dear Ms. Alexander:

I am the President and Chief Executive Officer of the Association of National Advertisers (“ANA”), a trade association whose membership includes more than 400 companies, representing in excess of 10,000 global brands which collectively spend over \$250 billion annually in marketing, communications and advertising. I am writing in response to the Further Notice of Inquiry (“FNOI”) issued by the National Telecommunications and Information Administration (“NTIA”) requesting additional public comment to inform the procurement process that will lead to the award by NTIA of a new Internet Assigned Numbers Authority (“IANA”) functions contract.<sup>1</sup>

Up until now, the Internet Corporation for Assigned Names and Numbers (“ICANN”) has performed the IANA functions on behalf of the United States government pursuant to an exclusive contract with NTIA that is set to expire on March 31, 2012. I am taking this opportunity to comment in the process currently underway to procure a contractor to perform the IANA functions after expiration of ICANN’s IANA contract because of the deep and abiding concerns of ANA and its members regarding the fashion in which ICANN has executed certain of its existing responsibilities, particularly with respect to consideration and adoption of the generic top level domain (“gTLD”) program that ICANN approved on June 20, 2011 (“Program”).

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<sup>1</sup> Further Notice of Inquiry, Request for Comments on the Internet Assigned Numbers Authority (IANA) Functions, 76 Fed. Reg. 34658 (June 14, 2011), available at [http://www.ntia.doc.gov/frnotices/2011/fr\\_iana\\_furthernoi\\_06142011.pdf](http://www.ntia.doc.gov/frnotices/2011/fr_iana_furthernoi_06142011.pdf).

We believe that ICANN has violated its own Code of Conduct and abrogated its Affirmation of Commitments with the Department of Commerce (“DOC”) by failing to act fairly, transparently and with a bottom up consensus driven approach to policy development relative to the Program.<sup>2</sup> ICANN’s Program, if allowed to proceed, is likely to cause irreparable injury to brand owners, such as ANA members, and materially diminish the power of trademarks to serve as strong, accurate and reliable symbols of source and quality in the marketplace. ICANN’s arbitrary decision to move forward with the Program even though it has failed to establish that the benefits of the Program outweigh its costs and even though the Program is likely to promote consumer confusion, dilution, cybersquatting, violations of online security, privacy, and a host of other malicious conduct, raises questions about ICANN’s fitness to make key policy decisions and to continue to perform the IANA functions, at least without a system of appropriate checks and balances on what increasingly seems to be ICANN’s unbridled power. ANA is not alone in noting these concerns, which have been raised by others in this very proceeding.<sup>3</sup>

It is for this reason that we are responding to the FNOI and NTIA’s request for comments on the proposed SOW. We note, specifically, Paragraph C.2.2.1.3.2 (referenced in question 5 of the Questions related to the Draft SOW), which provides as follows:

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<sup>2</sup> ICANN’s Code of Conduct at <http://www.icann.org/en/documents/code-of-conduct-10jan08-en.pdf>; see also, Affirmation of Commitments by the United States Department of Commerce and the Internet Corporation for Assigned Names and Numbers (September 30, 2009) at <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm> (“ICANN commits to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders by: . . . (c) continually assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof); (d) continually assessing the extent to which ICANN’s decisions are embraced, supported and accepted by the public and the Internet community; and (e) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development.”).

<sup>3</sup>For example, in its comments filed in response to NTIA’s original NOI, the Coalition for Online Accountability (“COA”), expressed strong disagreement with ICANN’s suggestion that DOC “evolve the IANA functions framework following the model set forth in the Affirmation of Commitments” because ICANN has yet to implement “a multi-stakeholder, private sector led, bottom-up policy development model for DNS technical coordination that acts for the benefit of global Internet users.” Coalition for Online Accountability Comments, NTIA Notice of Inquiry: Request for Comments on the Internet Assigned Numbers Authority (IANA) Functions, 76 Fed. Reg. 10,569 (submitted March 31, 2011), available at [http://www.ntia.doc.gov/comments/110207099-1099-01/attachments/COA%20NOI%20response%20re%20IANA%200331\\_111.pdf](http://www.ntia.doc.gov/comments/110207099-1099-01/attachments/COA%20NOI%20response%20re%20IANA%200331_111.pdf) (“COA Comments”). COA went on to state that “[f]or evidence, one need look no further than ICANN’s impending decision to launch an unlimited roll-out of new generic Top Level Domains (gTLDs). The new gTLD program ICANN is poised to implement is not an action being taken ‘for the benefit of global Internet users.’ It has been greeted with strong opposition from many of those users, and the fundamental questions being raised about it by governments around the world, who represent those users, remain unanswered. The new gTLD process, like so much of ICANN’s agenda, has been ‘led’ by only a small slice of the private sector, chiefly the registries and registrars who stand to profit from the introduction of new gTLDs. The voices of the broader business community have been largely marginalized in this process. In short, developments in the 18 months since the Affirmation of Commitments was adopted do not justify an ‘evolution’ of the USG position toward a ‘relinquish[ment] of its oversight role,’ as ICANN’s submission seems to suggest.” Id.

The comments of The Coalition Against Domain Name Abuse (“CADNA”), while less detailed, were in exactly the same vein: “Decisions made through ICANN’s internal policy-making process are directly inserted into the Internet root as ICANN sees fit. If ICANN truly operated in the best interests of the majority of Internet users, this would not present as great an issue. ICANN’s current policy-making process, however, relies disproportionately on input by domain name registries and registrars instead of the broader Internet community.” The Coalition Against Domain Name Abuse, NTIA Notice of Inquiry: Request for Comments on the Internet Assigned Numbers Authority (IANA) Functions, 76 Fed. Reg. 10,569 (submitted March 31, 2011), available at <http://www.ntia.doc.gov/comments/110207099-1099-01/attachments/CADNA%20Comments%20on%20the%20IANA%20Contract.pdf> (“CADNA Comments”).

**Responsibility and Respect for Stakeholders** - - The Contractor shall, in collaboration with all relevant stakeholders for this function, develop a process for documenting the source of the policies and procedures and how it has applied the relevant policies and procedures, such as RFC 1591, to process requests associated with TLDs. In addition, the Contractor shall act in accordance with the relevant national laws of the jurisdiction which the TLD registry serves. For delegation requests for new generic TLDs (gTLDs), the Contractor shall include documentation to demonstrate how the proposed string has received consensus support from relevant stakeholders and is supported by the global public interest.

In proposing this language, NTIA noted that “the comments [received in response to the initial NOI] were diverse, but contained a few common themes.”<sup>4</sup> NTIA then went on to elaborate: “One common theme related to how and who developed policies and procedures affecting ccTLDs, IDNccTLDs, and gTLDs.”<sup>5</sup> “In addition, some commenters were of the view that the introduction of new gTLDs should be carried out in the interest and for the benefit of the global Internet community.”<sup>6</sup> After then opining about the universally recognized importance of the bottom-up model that ICANN is supposed to employ in its decision making, and the pre-eminent significance of the Internet multi-stakeholder model, NTIA specifically stated that it supports “commenters’ views that it is critical that the introduction of individual new gTLDs reflects community consensus among relevant stakeholders and is supportive of the global public interest.”<sup>7</sup> Therefore, NTIA explained, it included in the draft SOW on which it seeks further comment, “in paragraph C.2.2.1.3.2., a requirement that delegation requests for new gTLDs include documentation demonstrating how the string proposed reflects consensus among relevant stakeholders and is supportive of the global public interest.”<sup>8</sup> “NTIA likewise supports commenters’ views that the IANA functions contractor be required to document the source of relevant policies and procedures when processing requests for delegation and redelegation of a TLD in such a manner as to be consistent with relevant national laws of the jurisdiction which the registry serves.”<sup>9</sup>

We think that ICANN and its entire approach to gTLDs, is sorely in need of oversight. Paragraph C.2.2.1.3.2 provides a layer, however thin, of contractual protection that gTLDs will not be deposited to the authoritative root zone without appropriate justification. While the ANA believes that these protections are marginal at best, and that a more secure, safe and permanent solution must be found to prevent the harms to brand owners and consumers described above; nonetheless, “something is better than nothing” and, to that extent, the ANA and its members support the quoted language.

In reply comments filed July 22, 2011, ICANN scoffs at this added protection and dismisses these concerns out of hand. On the subject of documentation requirements for new gTLDs, ICANN proclaims that “[t]his proposal is inconsistent with the community-approved process for the introduction of new gTLDs as embodied in the Applicant Guidebook (AGB). The AGB was

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<sup>4</sup> The Internet Assigned Numbers Authority (IANA) Functions, 76 Fed. Reg. 34658, 34661 (June 14, 2011).

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Id. at 34662.

<sup>8</sup> Id.

<sup>9</sup> Id.

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approved in Singapore after intensive multi-stakeholder deliberation that included substantial contributions from virtually all stakeholders, including governments through the GAC. The process for the introduction of new gTLDs is based on a comprehensive set of procedures to address any potential objections from relevant stakeholders. The proposed SOW text seems to replace the process laid out in the AGB with new requirements to demonstrate that each string has explicit consensus support and is consistent with the global public interest.”<sup>10</sup>

ICANN continues: “[t]he IANA functions contract should not be used to rewrite the policy and implementation process adopted through the bottom-up decision-making process. Not only would this undermine the very principle of the multi-stakeholder model, it would be inconsistent with the objective of more clearly distinguishing policy development from operational implementation by the IANA functions operator. Instead, the requirement for the IANA functions operator should be limited to forwarding documentation published by the ICANN Board regarding the approval of each new gTLD delegation request.”<sup>11</sup>

Given ICANN’s unyielding commitment to its own agenda, one that threatens to clutter the root with a host of unnecessary new TLDs, ICANN’s response is perhaps not surprising. Though ICANN purports to applaud the open and transparent manner in which NTIA has sought input from the Internet community regarding potential enhancements to the performance of the IANA functions, ICANN’s comment in response to the FNOI reveals the superficiality of its praise. In particular, ICANN’s comment demonstrates its arrogance and its belief that: (1) no additional government oversight is necessary; (2) that it will automatically be awarded a new contract to continue overseeing the IANA functions; and (3) that it is performing the IANA functions optimally.

But it is far from certain that ICANN *will* be awarded the IANA contract, or a contract for all of the IANA functions, in March, or that it will be awarded the contract in subsequent procurement processes. For now, at least, it is an important first step to add into the SOW whatever protections possible to make the root zone, the DNS system and ultimately brand owners, consumers and our markets safe and secure. One might think, too, as long as ICANN is the contractor, it would welcome the opportunity to demonstrate that the applicable TLDs meet the consensus standard set forth in Paragraph C.2.2.1.3.2. After all, ICANN purports to be built on a consensus model.

For the reasons stated, ANA supports the proposed language and we thank you for your kind consideration of our comments.

Best regards,



Robert D. Liodice  
President and Chief Executive Officer  
Association of National Advertisers

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<sup>10</sup> ICANN Files Comments on IANA Functions Contract in Response to US Department of Commerce Further Notice of Inquiry (July 22, 2011), available at <http://www.icann.org/en/correspondence/beckstrom-to-alexander-22jul11-en.pdf>.

<sup>11</sup> Id.