



4 February 2015

Mr. Fadi Chehade
President and CEO
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Dear Mr. Chehade:

I am writing on behalf of the members of the Internet Commerce Association (ICA) in regard to remarks that you recently made in a [video interview](#) while attending the World Economic Forum's annual meeting in Davos, Switzerland. In this interview, while discussing the new gTLD program, you stated:

The reality is, the more there are names, the less people will actually be **hogging names** in order to charge a lot for them. Because if somebody took your name on dot-x, you can go get another name on dot-y now." and "We went from twenty-something top-level domains ... to hundreds now... We think it will actually reduce **cybersquatting** eventually." (Emphasis added)

The ICA objects to your statement as it expresses a disdainful view towards the legitimate activity of domain investing, a hostile view of domain investors who are significant ICANN stakeholders who are deeply affected by its policies, a lack of awareness of the market realities of domains as an asset class, and an unwarranted promotion of new gTLD domains over those at legacy gTLDs.

The Internet Commerce Association (ICA) was established in 2006 to represent the interests of professional domain investors, developers and service providers. We have been a member of ICANN's Business Constituency (BC) since 2007, and our Counsel Philip Corwin was just elected to represent the BC on ICANN's GNSO Council. Mr. Corwin is also a member of the Internet Committee of the International Trademark Association (INTA) and its Internet Governance Subcommittee.

As has been [reported](#) in the press, many domain investors, including ICA members, took considerable offense at your remarks and viewed them as disrespectful and indicating a disturbing misunderstanding of domain name industry practices, as well as a lack of appreciation for the role that our industry plays in supporting ICANN and the new gTLD program.

ICA estimates that our members own and/or manage approximately ten percent of all registered domains. As domain registrants are the "taxpayers" of the domain name system, and the original source of all monies that are up-streamed to ICANN by registrars and registries, and as those funds constitute the major financial underpinnings of ICANN operations, that means that our members support about ten percent of ICANN's infrastructure and budget. Thus, for example, of the 197 trips that you [reported](#) taking during calendar year 2014, ICA members funded about 20.

ICA members have been major investors in domains offered at new gTLDs, and have provided consulting services and investment funds to some new gTLDs. Absent their substantial financial commitment to new gTLD domains, the program's total registrations would have been substantially lower than those recorded to date, and would have fallen even further below ICANN's own projections. ICANN had to reduce its FY15 budget by \$10 million due to the unanticipated shortfall in

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new gTLD registrations, but the cut could have been substantially larger absent significant domain registrations by professional registrants.

Your statement that “if somebody took your name on dot-x, you can go get another name on dot-y now” is true to a point, so long as one does not factor in affordability. You mischaracterize the price advantages of new gTLDs, ignoring that premium-priced registrations and premium-priced renewals are the norm among new gTLD registries. New gTLD registry operators are free to charge whatever they think the market will bear and they are not “hogs” for doing so, especially as the new gTLD program was intended to encourage a variety of registry business models.

If ICANN's objective in launching the new gTLD program was to create a name space where “hogging names” is not possible and where those who control the domain names are not able to “charge a lot for them”, it has failed. In the new gTLD program that ICANN created and whose rollout you have overseen, new gTLD registries play the role that domain investors have exercised in the legacy gTLD extensions, but with tremendously greater market power. Each new gTLD registry has a monopoly over its name space and solely determines the prices at which its domains can be purchased. Nearly all new gTLD registries are reserving portfolios of thousands of desirable domains that are only available at premium prices.

In the new gTLD space registration and renewal prices are typically much higher than in the legacy extensions. Some new gTLDs set a *minimum* registration price of thousands of dollars per domain. Most other new gTLD registries offer affordable minimum registration pricing yet have set premium prices on thousands of their most desirable domains - the more desirable the domain, the higher its price. Registration prices for certain desirable domains in the new gTLDs are priced at thousands, tens of thousands, and sometimes even in excess of one hundred thousand dollars for the rights to a single domain. For example, Wine.club was recently offered for public auction by the .Club registry and the winning bid was \$140,000. Certain .forsale domains were released with registration and *renewal* pricing of tens of thousands of dollars per domain per year, producing a present value of the cost of ownership for a single domain approaching one million dollars.

The members of the ICA fail to see the distinction between a domain investor offering a .com domain for market value, and the .Club registry offering a .club domain for market value or the .forsale registry offering a .forsale domain for what the registry believes to be market value. In all these extensions, market realities mean that when domains have substantial inherent value it can lead to the domain owner or the registry being able to “charge a lot for them.” Indeed, some new gTLD registries have entered into bidding wars that raised tens of millions of dollars for ICANN specifically for the right to be able to “charge a lot” for domains in the new gTLD extensions involved in contention sets.

In contrast, in the original extensions including .com, registration and renewal prices are typically between \$8-\$10 per year. Renewal rates on .com domains are held fixed under the current registry contract with Verisign as a result of a U.S. government approval condition. Consequently, there is a two decade history of .com price discovery where the market has determined that meaningful, intuitive domains have substantial inherent commercial value. No participant in the legacy name spaces wields market power. A domain buyer in the legacy extensions enjoys the benefit of thousands of domain owners competing with each other to offer the most desirable domains at the most compelling prices.

Meaningful, intuitive domains are inherently valuable, whether in .com and other legacy extensions or in the new gTLDs. The “strings” for which applications were submitted and the substantial prices paid in contention set auctions, whether private or ICANN-run, are further evidence of perceived value. The absence of pricing controls in new gTLDs has in fact shifted pricing discretion away from portfolio registrants and toward registry operators. In .com and other legacy gTLDs with low annual registration

fees, domain investors price domains they offer for resale based upon their perceived market value. In the new gTLD program, the registries are pricing annual domain registration based upon on their perception of market value. In both instances, the marketplace is working.

The maintenance of a large domain portfolio does not make any organization or individual a “hog.” If it did then just about every major ICANN-accredited registrar would fall within that category, as they warehouse tens of millions of domains collectively and often join with our members in creating a liquid and dynamic secondary domain marketplace. Whether domains are “dark”, “parked”, developed, or resold on the secondary market at prices that buyers and sellers find mutually acceptable, all of these practices are legal and ethical so long as conducted in conformity with relevant law and policy.

Domain investors are not “hogs” and they most certainly are not deliberate trademark infringers, or “cybersquatters”. It is not clear what you intended by your reference to “cybersquatting”, though it is concerning that you used this pejorative term just after making disparaging remarks about domain investors. “Cybersquatting” is generally equated to engagement in intentional trademark infringement.

If you intended to apply the term “cybersquatting” to the domain industry practice of parking a portfolio of domain names, such use would be wholly inaccurate. Many domains held in portfolios are “parked” and monetized through relevant ad links much as Google and other search engines monetize search results (in fact, Google is a major provider of such ad services to domain investors). A June 2008 ICANN [Policy Issues Brief](#) on domain name monetization reported:

Pay-per-click (PPC) is when someone, a registrant, registers a domain name that might attract a large number of Internet users to it. The registrant then hosts revenue generating content or links to other websites at the domain name, which typically feature advertisements for products or services related to the name. Each time a user visits the website and clicks on the one of the links or advertisements, it creates revenue for the registrant...Domain parking is a practice used by registrars, individual registrants and Internet advertising publishers to monetize type-in traffic...**The practices of using *parking* and *PPC* to monetize domain names have not to date generated the same concerns as *tasting*.** (Emphasis added)

ICA subsequently supported actions proposed by the GNSO to curb abusive domain name tasting, a practice then engaged in primarily by registrars. That proposal was adopted and has resulted in the effective termination of abusive domain tasting.

While individual registry operators are free to determine whether domain parking is permitted at their registries, and while their pricing policies also influence the economics of domain monetization, ICANN heeded ICA [comments](#) that “New AG language that equates parked domains with negative social consequences and costs is unjustified, inappropriate, and at odds with prior ICANN findings and policy, proposed URS evaluation criteria, and WIPO guidance to UDRP examiners.” As a result, ICANN [deleted](#) proposed provisions from the final Applicant Guidebook (AG) that would have established a general policy against domain parking at all new gTLDs.

ICA has respected trademark rights from its earliest days, while also advocating for reasonable balance between the rights of trademark owners and domain registrants. Shortly after its formation, ICA adopted a [Code of Conduct](#) that establishes best practices for the industry, including a strong stance against intentional trademark infringement (cybersquatting):

Protection of Intellectual Property Rights. A registrant shall follow accepted trademark law and respect the brands and trademarks of others. Members will not intentionally and in bad faith register and use a domain name that is identical or confusingly similar to a trademark or

service mark. Registrants shall respond promptly to legitimate disputes relating to alleged infringement of intellectual property rights.

Our members pride themselves on maintaining clean, non-infringing portfolios and on having an excellent record of success in UDRP or trademark litigation actions that might be brought against them by overzealous trademark owners. The World Intellectual Property Organization's "WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition (["WIPO Overview 2.0"](#))" is quite clear in stating that domain portfolio monetization does not automatically equate to trademark infringement, stating:

2.6 Do parking and landing pages or pay-per-click links generate rights or legitimate interests in the disputed domain name?

Panels have generally recognized that use of a domain name to post parking and landing pages or PPC links may be permissible in some circumstances, but would not *of itself* confer rights or legitimate interests arising from a "*bona fide* offering of goods or services" [see also paragraph 3.8 below] or from "legitimate noncommercial or fair use" of the domain name, especially where resulting in a connection to goods or services competitive with those of the rights holder. **As an example of such permissible use, where domain names consisting of dictionary or common words or phrases support posted PPC links genuinely related to the generic meaning of the domain name at issue, this may be permissible and indeed consistent with recognized sources of rights or legitimate interests under the UDRP, provided there is no capitalization on trademark value** (a result that PPC page operators can achieve by suppressing PPC advertising related to the trademark value of the word or phrase). By contrast, where such links are based on trademark value, UDRP panels have tended to consider such practices generally as unfair use resulting in misleading diversion. (Emphasis added)

ICA members are quite aware of this viewpoint relating to UDRP enforcement and avoid ad links that might be viewed as based upon "trademark value". Likewise, national cybersquatting statutes recognize the non-infringing nature of legitimate domain monetization methodologies employed by professional portfolio owners.

Respect for trademark law is of course directly tied to consumer protection. In this regard, we are aware that many in the trademark community are quite concerned that, while their names are available at new gTLDs for sunrise registration, the prices being asked by registry operators are often very high. Consumer protection is also at stake in the continuing debate over whether Public Interest Commitments (PICs) provide sufficient protection to the public against scams and other potentially abusive practices at new gTLDs – both the GAC and various ICANN constituencies have expressed strong skepticism on this point, especially in regard to strings associated with regulated industries and professions. ICANN collected about one-third of a billion dollars in first round new gTLD application fees, and has taken in more than \$30 million more from "last resort" contention set auctions, yet the New gTLD Program Committee has yet to establish a policy that effectively responds to these consumer protection concerns.

On behalf of ICA members, I hope that this letter makes you more aware of the high standards maintained by professional domain investors, and that both domain investors in legacy extensions and new gTLD operators price their domains subject to the same marketplace laws of supply and demand. We hope that in the future you will refrain from referring to domain portfolio owners as "hogging" domains or, worse, equate participants in our industry with those who engage in deliberate "cybersquatting" or other practices that are adverse to the public interest.

For the sake of more broadly informing the general public and ICANN community of the corrective facts cited in this letter, we would ask that it and any response you may care to provide be posted at ICANN's [correspondence page](#).

Sincerely,

A handwritten signature in black ink that reads "Jeremiah Johnston". The signature is written in a cursive, flowing style.

Jeremiah Johnston, President
Internet Commerce Association

Cc: Steve Crocker, Board Chairman
Bruce Tonkin, Board Vice-Chairman