

Internet Commerce Association

1155 F Street, NW

Suite 1050

Washington, DC

January 16, 2017

Via email

Re: Proposed usTLD Premium Domain Name Plan and Privacy Service Plan

Dear Neustar and members of the usTLD Stakeholder Council:

I am writing on behalf of the members of the Internet Commerce Association (ICA). ICA is a not-for-profit trade association representing the domain name industry, including domain registrants, domain marketplaces, and direct search providers. Its membership is composed of domain name registrants who invest in domain names (DNs) and develop the associated websites, as well as the companies that serve them. Professional domain name registrants are a major source of the fees that support registrars, registries, and ICANN. ICA members own and operate approximately ten percent of all existing Internet domains on behalf of their own domain portfolios as well as those of thousands of customers.

We note that Philip Corwin of Virtualaw LLC serves as a member of the [usTLD Stakeholder Council](#). Mr. Corwin also serves as Counsel to the ICA, and we appreciate the fact that through his service the views of domain investors and developers are given voice within the Council.

This letter addresses the proposed usTLD [Premium Domain Name Plan](#) as well as the [Privacy Service Plan](#), both of which were published for public comment on December

15, 2016. ICA members have been fully briefed by our Counsel in order to gain a full understanding of the proposed plans that are the focus of this comment letter, and have engaged in vigorous and robust discussion of them. This comment letter represents the consensus views of our membership on these matters.

Executive Summary

- **ICA does not oppose the proposed release of premium 1 and 2 character .US domains so long as it is subject to two key conditions.**
- **ICA opposes the reclassification of currently authorized .US domains as it would set a dangerous precedent for all legacy TLDs, and is unnecessary given the existence of a robust and competitive secondary domain marketplace.**
- **ICA supports implementation of the proposed privacy service plan.**

Response to Stakeholder Council Questions

Response to questions regarding the Premium Domain Name Plan

The Stakeholder Council has posed three questions regarding the Premium Domain Name Plan. Our short answers are below, followed by narrative explanations of our position in the General Discussion section.

- Should the usTLD policy be revised to allow the release of 1 and 2 character domains? – **ICA does not oppose the release of 1 and 2 character .US domains, subject to the two conditions described below.**
- Should the usTLD registry operator include currently unregistered and registered name as premium names? (The premium plan will not affect existing registrants' domain names, nor will it affect transfers of existing names.) – **ICA opposes the re-characterization of approximately 100,000 existing or authorized .US domains, for the reasons set forth below.**
- What, if any, impact would the introduction of 2 character names at the second level have on the legacy city.state.us registrations in .US? Please explain any concerns you have in detail. – **ICA does not believe that the proposed introduction of 2 character domains at the second level would have any appreciable adverse effect upon legacy city.state.us registrations in the ccTLD.**

Response to questions regarding the Privacy Service Plan

The Stakeholder Council has posed three questions regarding the Privacy Service Plan. Our short answers are below, followed by narrative explanations of our position in the General Discussion section.

- Do you support the implementation of privacy services for .US domain name holders?—**ICA supports such implementation.**
- What issues, if any, will registrars have with implementing privacy services as set forth in the plan?—**ICA does not foresee registrars encountering any significant implementation difficulties for the proposed plan.**
- Does the plan adequately address the concerns of law enforcement while preserving the expected level of privacy of registrants who request the service?—**ICA believes that the proposed plan adequately addresses all legitimate concerns of law enforcement agencies.**

General Discussion

Release of 1 and 2 Character Domains

ICA does not oppose the release of presently reserved 1 and 2 character .US domains pursuant to the proposed plan as a means to generate press attention to the .US ccTLD, as well as to generate revenues that can fund public relations effort with the same goal. As proposed, this program should be of benefit to both current .US registrants and the registry operator if it drives greater public awareness of the .US namespace, strengthens the secondary market value of .US domains, and leads to an overall increase in .US domain registrations. While .US may never gain the market share of other prominent ccTLDs in their home markets, we nonetheless believe that there is considerable upside potential in overall .US registration totals.

ICA endorses the proposal to hold an open 30-day solicitation period prior to the domain names being available on a first-come, first-served basis that would not include an exclusive access period specifically for registered marks, but would include messaging that would highlight the benefit for any company or companies with 1- or 2-character registered marks to acquire these names prior to the general 30-day first-come, first-serve launch; with this solicitation period open on an equal basis to both trademark holders and the public. Under the plan, any domain name that garners two or more interested purchasers goes to a closed auction and any domain name with a single applicant is registered at the listed price, without any additional application fees or increased registration fees during the Open Solicitation period.

We agree with Neustar's conclusion that there is no clear current standard or common practice for the release of such short domain names by a ccTLD, that a traditional Sunrise procedure would require significant additional resources, and that the names that could correspond to registered marks would generally be acronyms that could legitimately apply to a wide range of entities or individuals.

The equal access proposed to be provided to trademark owners and members of the general public, including domain investors/developers, is a key criterion for ICA's members. Trademark owners will of course be protected against any infringing misuse of the released domains by the [usTLD Dispute Resolution Policy](#), and the [usTLD Rapid Suspension Dispute Policy](#) – both of which are somewhat more stringent than corresponding ICANN rights protection mechanisms (RPM) policies – and by applicable trademark law.

ICA's non-opposition to the release on 1 and 2 character .US domains is conditioned upon two requirements to assure that the plan sets a positive precedent:

- 1. Retention in the final plan of equal access during the solicitation period by both trademark owners and the general public.**
- 2. NTIA requiring, as part of its approval of the plan, that substantially all of the revenues generated by the release of these 1 and 2 character domains be devoted to public relations efforts to raise awareness of the .US ccTLD and of the value and benefits of .US domain registrations, with such efforts undertaken within a reasonable period after receipt of those funds.**

In regard to that final condition, we note that even now, while Neustar is a public company, a review of Neustar's most recent 10-Q and 10-K [filings](#) with the SEC yields no broken out data concerning the revenue generated through acting as the .US registry operator. Now that Neustar has agreed to be [acquired](#) by Golden Gate Capital and is expected to become a private entity by the third quarter of 2017, even that level of financial transparency will soon be gone. Therefore, only NTIA will likely be in a position to have knowledge of the total revenues generated by the sale of 1 and 2 character .US domains, as well as the level of expenditures on .US public relations efforts. Based upon the market valuation of short domain names at major registries, we would anticipate that those revenues will aggregate in at least the millions of dollars. We further note that [part 2](#) of the 2014 .US registry agreement entered into by Neustar contemplates that, in the event of any future expansion of the usTLD space, the fees levied for services by Neustar as Contractor should consider "cost plus a fair and reasonable profit", but not a windfall profit.

Dedication of the realized revenues to such PR efforts would be consistent with Neustar's statement that a major objective of the release is to "Generate revenue from the sale of .US Premium Domains that will be directly used to fund future marketing, promotion and community-building campaigns to build and grow the .US namespace". While we trust that Neustar will undertake such efforts if the plan is approved, only NTIA will be in a position to verify that these campaigns are undertaken in a manner that substantially utilizes all of the revenues within a reasonable time period following their generation.

Premium General Availability "Tiered Pricing" Program

ICA is strongly opposed to this portion of the proposal, which would reclassify approximately 100,000 currently authorized .US domains as "premium" within the following categories:

- All three letter domain names (17,576) and all three number domains (1,000), excluding names on the restricted list (i.e. 888.us, 877.us, 866.us, etc.)
- All nouns under eight letters, excluding names with negative connotations or on the "7 Dirty Words" restricted list
- All verbs under eight letters, excluding names with negative connotations or on the "7 Dirty Words" restricted list
- Top 10,000 words in the English language, excluding names with negative connotations or on the "7 Dirty Words" restricted list (price varies)

We take this position notwithstanding the fact that, now that Neustar has identified the categories of domains it would reclassify as premium, sophisticated domain investors could readily seek to acquire both presently registered as well as unregistered .US domains within these categories in anticipation of implementation of the plan and a potential increase in secondary market value. We also recognize that the proposed high/low pricing model is less objectionable than domain reclassification programs we have seen proposed in the past, given that it would not affect current registrants or their renewal or transfer costs; that currently registered domain names identified as premium will incur a premium fee only if they expire, go through the redemption process and become available for re-registration again by new or different customers; and that the premium pricing would typically be a one-time event with annual renewal fees being the same as for non-premium domains.

Nonetheless, we believe that implementation of such a plan by a "legacy TLD" would set a worrisome precedent. Other registry operators might well cite approval of this

portion of the .US proposal as basis for similar plans by legacy gTLDs, including more radical versions featuring tiered pricing of both acquisitions and renewals.

While new gTLDs established via ICANN's recently implemented program have complete latitude to adopt any premium pricing model they wish to, these gTLDs are entrepreneurial efforts risking private capital; and domain registrants who choose to acquire their domains do so with full knowledge of the present registry rules, and that they can change at any time. .US, by contrast, is a long-established ccTLD – indeed, it is the Internet's first ccTLD, created in 1985 and originally administered by Jon Postel; and has been administered [under NTIA contract](#) by Neustar since 2001. Reclassification of .US domains should not be permitted 32 years after the registry's creation and 16 years after Neustar was selected as registry operator. That is particularly true when the registry is a governmental resource that should broadly benefit the general public.

As a general proposition, we believe that the prices of existing and authorized domains, especially those of legacy TLDs, should be set in the robust, competitive and efficient secondary domain marketplace and not unilaterally imposed by registry operators. We have also received informed feedback that even the proposed high/low program could present substantial administrative difficulties for registrars.

Further, the proposal would appear to clash with certain provisions of [part 1](#) of the 2014 .US registry agreement between Neustar and NTIA. These include requirements that registry fees be “fair and reasonable”; as well as conflict of interest provisions that require Neustar to “take measures to avoid any activity or situation that could compromise, or give the appearance of compromising, the impartial and objective performance of the Contract”, with the resulting conflicts policy required to address “possible direct or indirect financial gain from Contractor's policy decisions”.

We also substantially oppose the breadth of the related proposal that .US Premium Names may also be allocated on a non-cash or discount-cash basis, to support organizations or activities that will help to spread awareness, growth and use of the .US domain through a .US Premium Development Program open to big brands, individuals, commercial or non-commercial businesses and government entities. While .US is charged with advancing certain public purposes as a ccTLD, any domain discounting program should be narrowly restricted to charitable non-profit and governmental entities, with all others required to pay market prices and standard annual fees.

Privacy Service Plan

ICA agrees with the view of the .US Stakeholder Council that identifies “the lack of privacy and proxy services as a key issue suppressing registration in the .US TLD”. The lack of privacy services is a strong deterrent to potential registrants with legitimate privacy objectives, including the avoidance of spam and harassment.

We also agree that “In the absence of privacy services, risk-averse registrants may choose to attempt to submit false or inaccurate information into WHOIS’ and that with “the implementation of privacy services, the WHOIS database may be more accurate and allow law enforcement to obtain the information it needs”. And we concur that the availability of privacy protections will likely boost .US registrations by “international corporations, global media publications, global nonprofit organizations, churches, sports teams, families, small businesses, blogs, home businesses, retail stores, social media messaging sites, and gaming sites – the demographic of registrants who are most likely to be affected by the existing prohibition on privacy and proxy services”.

Therefore, we support a change of registry policy in this regard, and believe that the privacy plan meets the goal of providing “registrants with the protection they demand ensuring to also address the concerns of law enforcement”.

The positive aspects of the proposed registry level plan are that it will allow the registry operator to maintain firm control of the centralized authoritative database of WHOIS information; be built into the registry software, compliant with all .US policy and security standards; and enable Neustar to provide one-stop access to law enforcement agencies, rights holders, and others with lawful requests in near real time. This approach will also cause the least disruption to registrar business models.

We also agree that such privacy service should be available to commercial entities. This is consistent with recently adopted, carefully developed ICANN policy in this area; ICA’s Counsel participated in development of the policy and is now part of its implementation group. Barring such a service for commercial entities would negate much of its potential benefit for no justifiable reason, given that legitimate requests for registrant data will be honored. Such an unnecessary carve out would also raise administrative burdens and associated costs.

By remaining the privacy provider, Neustar will be best positioned to both ensure registrant privacy while assuring that the authoritative contact information can be accessed by law enforcement and other authorized parties with a lawful request.

Conclusion

We appreciate the opportunity to provide these comments on the proposed .US Premium Domain Name and Privacy Service Plans. We hope they are helpful to the further consideration of this matter by Neustar and the usTLD Stakeholder Council.

Sincerely,

Jeremiah Johnston

President and Member of the Board, Internet Commerce Association