

**Prepared Testimony of Verizon Vice President and Associate
General Counsel Sarah Deutsch**

**U.S. House of Representatives Committee on Energy and Commerce
Subcommittee on Communications, Technology and the Internet,**

“Internet Corporation for Assigned Names and Numbers”

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Thank you for the opportunity to participate in this important hearing examining issues related to the Internet Corporation for Assigned Names and Numbers (ICANN). Verizon is among the world’s leading providers of communications and entertainment products and services. Verizon Wireless owns and operates the nation’s largest wireless network, serving more than 80 million voice and data customers. Verizon Business delivers innovative business solutions to customers over a global footprint covering 150 countries across six continents, serves over 70,000 customers, including 98 percent of the Fortune 500. Verizon Telecom brings customers the benefits of converged communications and entertainment products and services over the nation’s most advanced fiber-optic network.

Verizon applauds the Subcommittee for examining the issues arising from the upcoming expiration of the Joint Project Agreement (JPA) between the U.S. Department of Commerce and ICANN as well as ICANN’s proposed plan to expand the number of new generic top level domains (gTLDs). Our testimony today focuses primarily on the gTLD issue. We would like to make clear at the outset that we support ICANN and wish to see it succeed as an independent and accountable model of private sector leadership. ICANN must be given the time and support it needs to make that smooth transition. In the JPA, ICANN committed to maintaining the security and stability of the domain name system, including improving accountability and responsiveness to its multi-stakeholder community, ensuring contract compliance and root server security. This hearing comes at a critical time as businesses and consumers increasingly rely on domain names to provide certainty in conducting business and personal communications in the global online environment. In these challenging economic times, the stability of the Internet as a global platform for E-Commerce remains a critical concern for businesses worldwide.

Despite our strong support for ICANN and its future success, we are concerned that its current plans for the expansion of the domain name system may not be compatible with its larger goal of ensuring a stable transition to private sector management and leadership. ICANN must be able to avert the many major challenges it will face that threaten the domain name system and its internal operations while avoiding potential capture by third parties. The future of ICANN’s transition requires that it focus narrowly and effectively on its core functions, including administering the DNS in a manner that places priority on preserving the security and stability of the Internet over other interests.

ICANN has chosen to pursue one of the most controversial policy initiatives in its history. It intends to rapidly expand the existing domain name space, *accepting as many as 500*

applications for new gTLDs in its initial round. In subsequent rounds, it will expand to allow potentially unlimited new numbers of gTLDs. The existing domain name space includes 21 gTLDs such as .com, .net; .org, .edu, .info, and .biz and some 240 country-code TLDs (ccTLDs). ICANN explains that the expansion of gTLDs will allow for more innovation, choice and change to the Internet's addressing system. However, the many existing TLD choices, combined with over 175 million registered domain names confirm that consumers already benefit from significant competition in the domain name space.

Despite the financial challenges facing many companies and organizations today, ICANN has amassed more than adequate reserves beyond the “cost recovery principle” first espoused by ICANN’s Board ten years ago. See <http://www.icann.org/en/committees/tff/final-report-draft-30oct99.htm>. If its initial round of applications is successful, ICANN stands to bring in more than \$90 million. ICANN also will collect ongoing fees of \$75,000 per applicant from annual renewals of each new gTLD as well as a .25 cent transaction fee from every domain name registered in every gTLD.

The idea of dramatically expanding the domain name system has met with considerable resistance from hundreds of diverse commentators, including consumer groups, major business organizations (such as the National Association of Manufacturers, the International Trademark Association, U.S. Chamber of Commerce, Coalition against Domain Name Abuse, U.S. Council for International Business, and Internet Commerce Coalition to name a few), trademark owners like Verizon, and Internet security experts. ICANN released two versions of its “Draft Applicant Guidebook,” which acknowledged – but did not address adequately – the many fundamental concerns its stakeholders raised. ICANN recently confirmed that it still intends to proceed with the application process for new TLDs starting in early 2010.

Verizon believes that there are four fundamental concerns that ICANN needs to address fully *before* commencing any introduction of new gTLDs:

First, ICANN must complete an impartial and comprehensive economic study of the domain name marketplace which explores whether there is even a need for new gTLDs in the first place. The impartial study should examine the potential unintended consequences and costs to businesses, consumers and the safety and stability of the Internet from a rapid expansion of the domain name system. ICANN’s Board supported an empirical study in 2007, yet this kind of study was never undertaken. ICANN continues to move its process down the path toward accepting applications for new gTLDs. Verizon believes that even after such study is conducted, any roll-out of new gTLDs should be conducted in a responsible, slow and controlled manner. Rollout should initially be limited only to some sponsored gTLDs and perhaps a limited number of international domain names (IDNs) (*e.g.*, Chinese and Arabic scripts).

The second threshold issue is ensuring that consumers are adequately protected from online confusion and fraud. If, as predicted, there are more than 1000 new gTLDs in the next three years, consumers will inevitably be the victims of increased online confusion, malicious activity and fraud. Due to the unimpeded growth of cybersquatting activities, consumers already have difficulty today finding legitimate websites and the trusted brands they rely upon for quality products, services and information. How will consumers know that when they navigate to

www.verizon.phone, for example, whether they have reached an authorized Verizon website or one set up by a cybersquatter or an international phishing or spyware scam? Any large rollout of generic TLDs increases the opportunity for cybercrimes, such as phishing, malware and other online abuses. A study released by Gartner, Inc. in 2007 revealed that phishing attacks in the United States alone cost Internet users over \$3.2 billion. These numbers are only likely to escalate as new TLDs provide an easy platform for further abuse. We believe that the generic sounding gTLDs (e.g., .phone, .car, .bank or .health) may be particularly attractive places for cybersquatting and malicious activity.

Third, although the JPA requires ICANN to increase the long-term safety and stability of the domain name system, ICANN's rapid expansion may jeopardize Internet safety and stability. Some have noted that ICANN may not have the ability to manage such a rapid expansion of the gTLD space. NTIA, for example, has cautioned that ICANN ensure that introducing large numbers of domain names into the root system not jeopardize Internet stability and security. Similar concerns relate to how ICANN will deal with potential registry failure.

Fourth, trademark and brand protection remains a critical threshold concern. Trademark protection, of course, is integrally linked to consumer protection. Trademarks serve a critical role in helping consumers reach the websites, products and services they know and trust. When consumers navigate online, they can easily be confused or diverted from the true source of products or services they seek or from the source of reliable and accurate information. Verizon owns a globally famous and trusted brand. Unfortunately, household brands like Verizon have been targets for cybersquatters. Cybersquatters have registered tens of thousands of variations of our trademarks. It has now been ten years since the passage of the Anti-Cybersquatting Consumer Protection Act (ACPA). When Congress first enacted ACPA, it intended this law to protect consumers from confusion and fraud and to serve as a deterrent. In the late 1990's, cybersquatting involved small entities and individuals registering small numbers of domain names. In recent years, the practice rapidly grew into a large-scale, sophisticated business operation conducted principally by ICANN accredited registrars who used various shell companies to register variations of trademarks as domain names and monetize them.

Until its recent change in policy, ICANN permitted registrants to engage in "domain name tasting." Registrants would register variations on and misspellings of famous brands and other trademarks, park them on websites (known as "domain name parking"), serve up pay-per-click ads and measure the traffic in a five day period. If the website generated enough diverted traffic in the five day period to warrant paying the \$6 or \$7 registration fee, the registrant would keep the domain name. If the name did not generate enough traffic, the name would be dropped and the registrant would receive a full refund. Another cybersquatter would inevitably pick up the dropped domain name and the monetization process would begin again. Some ICANN registrars have earned millions of dollars a year from engaging in this illegal activity. Certain ICANN registrars also actively engage in domain name kiting (registering and dropping the same domain names again and again). Verizon has spent millions of dollars over the past several years to protect consumers from confusion, including suing many ICANN accredited registrars under the ACPA and filing proceedings under the Uniform Dispute Resolution Policy (UDRP). Our ACPA complaints typically contain an exhibit showing examples of infringing domain names in

the defendants' portfolios, which are usually an alphabet soup of infringements containing the domain names of famous global brands from A-Z.

Last December, Verizon received a \$33.15 million default judgment against OnlineNIC, a large ICANN accredited registrar who owned approximately 650 Verizon-related domain names in its portfolio. Verizon also recently sued an Indian accredited registrar, Lead Networks, who was cybersquatting on the Verizon brand and offering other cybersquatters the ability to hide valuable trademarked domain names in India. Because India has no specific law prohibiting cybersquatting, other U.S. companies have been forced to use the expensive and inefficient UDRP process to win back their domain names one at a time. When companies filed a UDRP against this Indian registrar for cybersquatting, the registrar would file a procedurally deficient complaint in a local Indian court. Because a UDRP proceeding is typically stayed if the defendant files a lawsuit in their local jurisdiction, Lead Networks could intentionally hold up (potentially for years) the pending UDRP actions against it. Trademark owners have been forced to pay thousands of dollars to win these valuable domain names back from this registrar, which to our knowledge is still ICANN accredited.

Because enforcement in the existing domain name system is already a significant challenge, we are concerned that existing remedies to protect consumers against cybersquatting will not scale in a future with unlimited numbers of new gTLDs. The Coalition Against Domain Name Abuse estimates that brand owners worldwide could suffer from over \$1 billion in losses as a result of diverted traffic and the loss of consumer trust and goodwill. In these uncertain economic times, companies cannot afford to expend unnecessary additional costs to register trademarks defensively across hundreds of new TLDs. Nor should they be forced to expend resources attempting to monitor and enforce across these new spaces. Verizon is concerned that U.S. companies will face significant jurisdictional barriers to future enforcement when ICANN approves registries and registrars located outside the United States. Many countries have no laws specifically prohibiting cybersquatting and offer no remedies, like ACPA, to deter cybersquatting. In cases where jurisdictional barriers arise, trademark owners can often file UDRP actions with dispute resolution providers, such as the World Intellectual Property Organization, but they will need to spend \$6000 or more per infringement in order to win back a single domain name. However, in some cases where the TLD registry is located in a foreign country that does not have laws prohibiting cybersquatting, there may be no remedy available to the trademark owner.

We urge ICANN to continue to improve on its JPA commitments to increase contractual compliance. Part of that compliance program should include greater enforcement against ICANN's noncompliant registrars and registries. Although ICANN has recently beefed up its compliance office, we are not aware that it has taken significant action against any accredited registrar for cybersquatting, including those found by federal courts to have violated U.S. laws. Accredited registrars specifically agree in their Registrar Accreditation Agreement to comply with *all laws*. Yet we have observed little if any enforcement against registrars who are found to violate ACPA or those repeatedly found to have acted in bad faith in UDRP proceedings. If ICANN cannot adequately police and enforce the problems of today, Verizon remains concerned about its ability to enforce against the larger problems of the future. How will ICANN effectively police not only for trademark violations but for the myriad of problems that will

inevitably arise in the expanded domain name space? Administration of Internet enforcement and cybersecurity are inversely related. Less oversight means more security problems for consumers and businesses. Too much is at stake to allow the release of new gTLDs without significant commitment to enforcement.

We are pleased that ICANN acknowledged the concerns raised by trademark owners by convening a small group of trademark experts (the IRT group) to offer solutions (“rights protections mechanisms”) to address trademark infringements in an expanding gTLD space. The IRT group deserves commendation for their hard work, detailed proposals and thoughtfulness. They developed a complex set of recommendations in an unrealistically tight deadline. The IRT acknowledged, however, that by agreeing to engage in this process, their suggestions should not be viewed in any way as an acknowledgment by the trademark community that the widespread introduction of new gTLDs are either necessary or desirable. Regardless, if new gTLDs move forward, these recommendations represent a comprehensive set of solutions that must be adopted as a whole. We are troubled, however, by ICANN’s recent comment that it may not adopt the full set of IRT recommendations. ICANN may ultimately adopt a few solutions that fail to provide a comprehensive or effective set of remedies for trademark owners.

Verizon strongly supports many of the ideas the IRT has proposed for trademark protections in the new TLDs including: a low cost mechanism to obtain a rapid suspension of infringing domain names, a clearinghouse that would enable companies to notify others of their rights and obtain information necessary to enforce their rights, a globally protected marks list to protect global brands, a standard sunrise provision allowing early registration of valuable domain names, a dispute mechanism that allows parties to raise complaints against registries and registrars and thick access to WHOIS data. We believe, however, that there is still room for improvement in implementation of the details. We question how much these mechanisms will cost trademark owners to administer and how effective they will be in practice. For example, as part of any rapid suspension mechanism, trademark owners should be offered the ability, at their option, to obtain a transfer of valuable domain names back into their portfolios. Verizon owns thousands of valuable domain names, including many won back from cybersquatters. Through these enforcement efforts, formerly infringing domain names now take customers to the correct Verizon websites. This year, Verizon is on target to help 9 million visitors, including those who were intentionally diverted by cybersquatters, navigate back to our websites. Any new remedies to address trademark concerns must avoid an outcome that results in trademark owners filing many more lawsuits and UDRP actions to address the theft of their valuable domain names across potentially thousands of new gTLDs.

Verizon also endorses the idea of a Globally Protected Marks List, which prevents third parties from registering globally protected marks either as the name of a new gTLDs or as a domain names within each new gTLD. Although global brands like Verizon could ultimately qualify for a proposed Globally Protected Marks List, this proposal currently only allows the registration of one’s exact brand (*e.g.*, Verizon) but would not permit the inclusion of the other common extensions of that brand (*e.g.*, Verizon Communications, Verizon Wireless, Verizon Business). Trademark owners should not being forced to register the many variations of their trademarks preemptively (for pure defensive reasons) in the riskier new gTLDs or by spending extensive sums afterward on enforcement efforts.

We believe we speak for many in the business community, including trademark owners, in reiterating our strong preference for the delay of this gTLD plan until all threshold concerns are fully addressed. While we have not testified today on the JPA, we note that numerous thoughtful suggestions have been made for ways that the structure and processes of ICANN can be improved while still preserving the fundamentally sound model of private sector leadership. It is important to allow sufficient time to consider and implement these suggestions as well as the views Verizon is presenting today. Even assuming all threshold issues concerning the new gTLD rollout are eventually addressed and resolved, ICANN should proceed slowly and cautiously in expanding the domain name space to protect the Internet and its users.

We commend the Subcommittee again for taking on this important subject and thank you for the opportunity to testify today.