

TESTIMONY OF PAUL STAHURA

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**SUBMITTED TO THE SUBCOMMITTEE ON TELECOMMUNICATIONS OF THE HOUSE
ENERGY AND COMMERCE COMMITTEE**

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Mr. Chairman and members of the committee, my name is Paul Stahura. I am the president of Group One Registry, Incorporated. I want to take this opportunity to share with you a vision for the future of the Internet and to express my views about the process used by the Internet Corporation for Assigned Names and Numbers (ICANN) to select new top level domains.

The creation of Group One Registry

I have been involved in the business of registering domain names for several years. As President of eNom, an accredited domain name registrar, I conceived of the Group One concept in response to a fundamental realization. The practical reality is that with the explosive growth of the Internet into consumer products there will have to be a domain name for every new consumer device connected to the World Wide Web (the Web).

To implement my idea, I worked with WebVision, the Internet consulting and hosting company that is the parent of eNom, and Internet Computer Bureau, an experienced operator of country code top level domains. We formed Group One to apply for and operate the new top level domain .ONE.

Our goal was that .ONE would serve as the domain for Internet-connected devices like game players, PDAs, security cameras, refrigerators, and wireless phones. The domain names would consist of digits, making them easier to access from a limited keyboard, using the name space more efficiently, and eliminating most of the intellectual property concerns raised by character-based domain names. A substantial additional benefit to the .ONE concept is that our system would eliminate many of the growing Internet privacy concerns that have developed since the last TLD selection process. Ours is a unique proposal in response to a practical reality.

New TLDs and ICANN's Role

As new applications for Internet services continue to develop, we will bring the Internet to consumers in new and exciting ways. This growth in the practical utilization of the Internet requires that we add new top level domains (TLDs). More TLDs will reduce the crowding in .com addresses and the thoughtful addition of new TLDs will increase competition in operating the Internet's technical services.

In the time since the last new TLDs were introduced, the Internet has grown beyond most expectations and also has become a critical medium of international commerce. Businesses and individuals now regularly rely on the Web for their daily activities. Changes in the Web's operation can create – or destroy – businesses, consumer services, and jobs.

The process by which we select the most appropriate TLDs requires consideration of a number of factors. Adding new TLDs can introduce the risk of technical failure and requires thorough consideration and oversight. Some TLD requests or applications are simply inappropriate for our contemporary commercial or social values. The allocation of new top level domains is more than a technical function. Social, economic, and political judgments on an international scale are required. ICANN has been carefully structured to receive input from a broad range of constituencies around the world. I support ICANN as the institution necessary to make decisions about new TLDs. However, the process used by ICANN must recognize the significance and complexity of the decisions and its processes for decision-making should reflect the critical nature of its function.

ICANN's New TLD Process

Despite the critical nature of TLD decision, the process followed by ICANN in the most recent selection of TLDs was, in many respects, deeply flawed. Rather than acknowledge that selecting new TLDs inherently involves value judgments and building a process to make those judgments as fair as possible, ICANN pretended those judgments didn't exist. ICANN has a history of creating "test beds" whose participants attain large profits and secure entrenched positions. The new TLD selection cannot be written off as a mere experiment; it, too, is an economically important act and should be made on the merits of the applications.

There were three main problems with ICANN's process: the time allowed was too short, ICANN selectively held discussions with some applicants but not others, and the process produced no clear record of the basis for the decision.

ICANN did not allow itself enough time to consider the applications. The initial schedule apparently was created based on the expectation that only fifteen to twenty applications would be submitted. When far more arrived, ICANN should have extended the time frame to allow for more careful consideration. Precisely because this was the first selection of new TLDs, the structure of the process was of paramount concern. ICANN seemed to value finishing the process on schedule above doing it right.

As events transpired, there were only six weeks from the application due date to the date of Board action on 44 applications totaling thousands of pages. The ICANN staff analysis (300-plus pages in length) was published only six days before the Board voted on the applications. This did not give adequate time for the Board members to review the analysis, or for applicants to respond to it. The three minutes allocated to each applicant for presentations to the Board were not a meaningful opportunity for response and comment, and it was unreasonable to believe that the Board members would review the vast amount of material on the public comment site. The only reasonable conclusion to be drawn was that Board members relied on something other than the written materials to make their decision.

During the application review process, ICANN instructed applicants not to contact the Board or staff. However, ICANN contacted several applicants to request additional information or seek answers to questions. This provided opportunities for only a select group of applicants to clarify, explain, or augment their applications. The applicants who were not contacted were clearly put at a competitive disadvantage in the process. While applicants were free to post additional material on the public comment site, only those who received questions from ICANN knew what additional material would be helpful or informative. It appeared that ICANN asked questions of applicants it had already decided to select. This method of decision-making, suggests Board pre-selection, and undermines the credibility of the process.

The ICANN procedures need to be standardized and all potential applicants need to be advised of the procedures in advance of submitting their applications. In addition, all applicants should play and be judged by the same set of rules. Although the application process produced voluminous public documents and comment, there was no statement of the basis for the Board's decisions. Absent such a statement, it is unclear how the stated criteria were applied and how the Board distinguished among the applications. The only extant record evidencing Board intent is the brief discussion at the public Board meeting. For example, ICANN stated that elements such as the staff evaluation and public comments were only part of the process and not the full basis for the final decision. However, it is unclear whether these factors were considered at all and if so, what weight was attributed to them. This lack of clarity regarding the process itself as well as the absence of a clear record of review leaves applicants unsure whether they were treated fairly. Furthermore, it gives future applicants little guidance about the criteria upon which they will be judged.

To its credit, ICANN has in place a process to reconsider Board decisions. However, that process clearly was not designed for decisions as significant and complex as TLD allocations. The reconsideration process suffers from many of the same flaws as the initial consideration process, and once again does not provide applicants with a meaningful assurance of fair and equal treatment.

Finally, ICANN has insulated itself from accountability for its decisions by forcing applicants to sign a broad waiver as a condition to submitting an application. If these waivers are upheld, they permit ICANN to make arbitrary decisions without explanation – and leave aggrieved parties with no appeal or recourse. The assumption of such final and absolute power is contrary to ICANN's ideals as an open, fair, and accountable body.

Group One as a Case Study

Group One's experience illustrates many of the problems described above. The .ONE application is technically sound and is backed by substantial financial resources. Our solution is innovative, and promises to increase competition in Internet registries while providing new services to consumers. On its merits, the .ONE application is very strong.

The first hint that ICANN was not inclined to approve the Group One application, despite its clear merit, was that we were not among the applicants contacted by ICANN during the review process. A second indication came when the staff analysis was released on the Friday before the Board meeting. The publication of the staff analysis was the first indication Group One received that ICANN considered its application "telephony related." Three days after the analysis was released, Group One sent a letter to ICANN and raised several of the concerns about the ICANN process that I bring to your attention today. We also asked ICANN to remove .ONE from the "telephony-related" category and to keep the application open for three months to provide time to consider the complicated issues presented by ENUM and the International Telecommunication Union (ITU). ICANN summarily refused this request.

When the Board considered Group One's application Board members consistently spoke favorably of it. Nonetheless, the concerns raised about the "telephony" aspects caused the Board to decide there was "enough uncertainty" not to proceed. The source of ICANN's confusion appears to be a belief that .ONE would conflict with the ongoing ENUM project by the ITU and others to integrate the telephone numbering system with the domain name system. Given the opportunity, we could have explained that .ONE is not targeted at telephones and telephony applications. In fact, many of the devices that might be served by .ONE would never be served by a telephony numbering system. In addition, we could have pointed out that ENUM's proposal raises substantial privacy concerns which .ONE avoids. Indeed, .ONE could be used in conjunction with ENUM to eliminate the problem that a phone number as a domain name means that one's phone number is published to the world. Unfortunately, we were not given any meaningful opportunity to present these points to the Board, and Group One's very strong application was rejected.

Conclusion

It is not settled whether ICANN is or should be subject to the Administrative Procedures Act that governs decision-making by government bodies. However, to secure its credibility and exercise its authority responsibly, ICANN should carefully consider the spirit of the APA when it makes decisions on broad policy issues like the allocation of new TLDs. It is not enough for ICANN to say that it seeks consensus, for in contested processes like the granting of TLDs there

always will be disputes. ICANN should instead follow a process that allows its decisions to be scrutinized and, if unfair or improper, corrected.