



name.space

the dot-everything people since 1996

<http://namespace.us>

212.979.0642

April 5, 2012

Dear Congresswoman Maloney:

This is a matter of great urgency. I own a startup tech business in your district called **name.space** that, since 1996, has been a pioneer in the Internet Top Level Domain (TLD) industry. We are now facing unfair competition and unreasonable barriers to entry in the TLD market that threaten to stifle competition in the industry and adversely affect our ability to conduct our business.

At stake is a potential billion-dollar business that is at risk of not being realized due to institutional and regulatory capture and conflicts of interest within the Internet Corporation for Assigned Names and Numbers (ICANN), a nonprofit corporation contracted to oversee the Internet TLD management for the National Telecommunications and Infrastructure Authority (NTIA). (<http://ntia.doc.gov>)

On April 12, 2012, ICANN will close its application process and begin to review and approve possibly hundreds of **new generic Top Level Domains** (gTLDs) that will be added to the Internet Domain Name System master database (the ROOT), making them available to the entire global Internet marketplace by 2013. Some of the proposed gTLDs being submitted by others infringe on my company's common law trademarks. The small business that I founded on the Lower East Side **seeks first-come status on its gTLD properties** (see Attachment) **that predate the formation of ICANN and any formal process for adding gTLDs to the ROOT, which we have been using in commerce since 1996 and for which we have been seeking global recognition since 1997.** (See attached index of references.)

The process for submitting applications in the 2012 Application Round appears to have been designed intentionally to preclude or at least impede the established **name.space** business model of operating hundreds of gTLDs. ICANN requires a separate, non-refundable application fee of \$185,000 for each gTLD for which an application has been submitted and has published a 360-page book of rules and regulations that essentially enables only incumbent operators (who pay over 90% of ICANN annual fees) to successfully operate new services.

Twelve years ago, **name.space** participated in ICANN's 2000 Application Round and paid \$50,000 to ICANN as part of **name.space's** application for delegation of 118 of its gTLDs. **name.space** followed ICANN's rules permitting an unlimited number of strings in a single application provided they conform to a single business model. Once this application was lodged, it remained under consideration until it was resolved. **name.space** has never, to this day, been told that the status of its application has been resolved, and the 2012 ICANN Application Round materials appear to reserve on this issue.

If **name.space** were to re-apply under the new rules, our application fees would cost a whopping \$21,830,000, effectively blocking our application while at the same time enabling others to seek nomination for the same gTLDs, with proceeds and future gTLD dues worth hundreds of millions going to ICANN in perpetuity.

In addition to the unreasonably high price per gTLD application, the uncertain ICANN award process also makes it essentially impossible to raise the needed funds toward what appears to be a gamble, given ICANN's past behavior as well as recent disclosures in the media and actions by the NTIA. Investors who are not insiders simply do not trust the ICANN process.

I seek your help in protecting our prior well-established rights to the gTLDs that my company originated as early as 1996, which are now threatened by well-financed large corporate interests and ICANN insiders who seek to claim them over us in the upcoming 2012 gTLD Application Round. As possible paths to a fair and reasonable remedy, I ask if you could help by raising the following issues:

1) The U.S. Patent and Trademark Office (USPTO) currently has a policy that deems any mark intended for use as a TLD registry to be incapable of receiving trademark registration in the U.S. This policy—which notably does not exist anywhere outside of the U.S.—has no place in the current TLD market. The world is finally being exposed to the reality that .COM is not the only TLD on the Internet, and non-.COM TLDs, such as those originated and maintained by **name.space**, have value. Unfortunately, **name.space** is presently unable to fully protect that value by registering its TLDs as trademarks. Instead, notwithstanding the substantial time and effort **name.space** has spent developing its TLD portfolio and servicing its customers, ICANN is essentially free to delegate **name.space**'s TLDs to other applicants because **name.space** may not have adequate trademark protection.

This needs to change. We ask that Congress direct the USPTO, either by letter or legislation, to grant trademark applications for TLD registries that otherwise meet the criteria for trademark registration. We simply ask that TLDs be treated in the same manner and provided the same protections as any other trademark, which is how every other country operates.

2) We seek a letter to the NTIA, House and Senate Commerce Committees, and the President, urging immediate review of the ICANN process and application fees that impose an unreasonable barrier to entry to small businesses and community organizations, and to clarify the outcome of the ICANN application process that has historically been unfair and uncertain. In addition, there should be restrictions on current and past ICANN members excluding them from this gTLD Application Round.

3) We request delegation by the NTIA of the 118 gTLDs contained in our application submitted to ICANN and paid for in the 2000 Application Round. We have already sent requests directly to ICANN to delegate these names from our existing application—which has been pending resolution since 2000—but to date we have received no response to our latest request. (See attached letter from Morrison and Foerster.)

name.space and other innovators in the TLD field deserve their right to do business and need equal protection and fair terms to enter the marketplace. The current system is anything but fair, and that needs to change. If the barrier to entry and level of bureaucracy for registering a second-level domain under .COM were as expensive, convoluted and uncertain as it is to bring a gTLD to market, the Internet would have failed and would have never become the enormous social and economic phenomenon that it is today.

To be frank, ICANN itself is tragically flawed. ICANN is marred with conflicts of interest that prevent it from operating in an unbiased and independent way regarding the delegation of TLDs, the management of registry contracts and the way in which it conducts its business. The NTIA has cited such conflicts within ICANN and in response has put ICANN on notice and only temporarily extended its contract through September 2012. ICANN's own outgoing CEO, Rod Beckstrom, and its past CEO, Mike Roberts, have come out openly on the subject of insider deals and corruption within the ICANN organization and among dominant industry players.

(See <http://www.reuters.com/article/2012/03/23/internet-icann-ethics-idUSL6E8EL9QM20120323>)

Adding a TLD to the ROOT in reality costs NOTHING. It is a simple matter of a text edit, a “copy and paste” of appropriate data if you will, into the DNS ROOT.ZONE, which is a plaintext file that looks like this: (see: <http://namespace.org/root.zone>). The real costs are what **name.space** needs to spend on personnel and data center resources. But instead, of spending the funds where they really count—on **operating our TLD business and creating jobs in New York City**—we are being forced to gamble with precious capital (\$21,830,000) to an unaccountable ICANN. In essence, a simple copy and paste has been depriving New York City and one of its own innovative startups perhaps billions of dollars over the past 15 years, as dominant industry players acted to crush any competition

—especially extremely early-movers and outsiders like **name.space** and our potentially lucrative business.

Professor Milton Mueller of Syracuse University wrote in his book **RULING THE ROOT** (MIT Press) the following about **name.space**:

"Adding the **name.space** TLDs to the Network Solutions-operated root.zone would have transformed the commercial environment of the DNS. As the only established registry for hundreds of new top level domains, **name.space** would have quickly been elevated to the status of peer of Network Solutions." At the time this was written, in 2002, Network Solutions (NSI) was valued at over half a billion dollars. Today, Verisign, now in the role NSI had then, operates .COM and .NET and is worth over \$5.5 Billion.

name.space seeks to establish a public good from profits earned from its gTLDs through its "Social Enterprise" business model, helping to fill the void where ICANN and commercial domain name providers now fail to do so. Our mission, focused on community reinvestment, affordable broadband, digital literacy and adoption, and bridging the digital divide, can be realized quickly and sustainably once our gTLDs are delegated, enabling us to operate freely in the global marketplace.

History has proven that the Internet domain name industry is one of the most profitable in the realm of Internet businesses, and a small group of dominant players who have influence within ICANN want to maintain their control over it.

The high barrier to entry of \$21,830,000 that ICANN imposes on us for 118 gTLDs is unreasonable given that the cost of adding a TLD to the ROOT is essentially FREE, and that the cost to process an application should be no more than that for a commercial loan or home mortgage. **name.space** has already paid \$50,000 for its 2000 application and should not be forced into paying an additional \$21,830,000 for property that it already owns.

The ICANN application fee needs to be scaled to become reasonable to small businesses and community organizations. Moreover, the intellectual property rights established on our TLDs need protection.

It is about time that New York City realize the enormous social benefit and economic impact that **name.space**, with its Social Enterprise business model, will have on New York City and beyond through its offering of its entire portfolio of gTLD properties and related online services.

I am committed to helping our community, but my hands are tied and options are limited as long as our gTLDs are excluded from the ROOT and we are unable to realize the potential revenues from our New York-based gTLD business.

Please help us find a solution so that our "packet-ready" Internet business can thrive in the way that it deserves, and so that I can become a better contributor to my community and local economy by providing jobs, education, opportunities and tax revenues to New York.

I look forward to meeting with you on this issue and I welcome any questions and comments you may have. A favorable outcome is meaningful especially in this time of economic crisis as **name.space will create jobs and opportunities, and bring cash and data economy to New York City that would otherwise go to Australia, U.K., Virginia, California or elsewhere.**

Sincerely,

Paul Garrin
Founder **name.space**
<http://namespace.us>

Appendix:

name.space has testimony on the record from hearings held by both Senate and House Commerce Committees on the subject of Top Level Domains submitted between 1997 – 2011. **name.space** is an early advocate of the shared registry system, and an advocate of a neutral non-profit organization to oversee the framework for introducing new gTLDs to the Internet, and was a participant in the IFWP process initiated by the NTIA in 1998 from which ICANN emerged.

Brief history:

- 1996** - **name.space** launched real-time domain name registry service publishing its original generic TLDs
- 1997** - March 11, **name.space** requested Network Solutions add our gTLD data to the global root.zone file
- 1997** - March 12, Network Solutions refuses to add our gTLDs to root.zone
- 1997** - March 20, Name.Space files antitrust suit against Network Solutions in federal court, Southern District of New York
- 1997** - September 25, House Commerce Committee hearing on Internet Domains Pt 1 (**name.space** testimony on record)
- 1997** - September 30, House Commerce Committee hearing on Internet Domains Pt 2 (**name.space** testimony on record)
- 1997** - National Science Foundation joined lawsuit on First Amendment grounds
- 1998** - Commerce Dept. NTIA releases "Green Paper" (**name.space** comments on record)
- 1998** - Commerce Dept. NTIA releases "White Paper" (**name.space** comments on record)
- 1998** - Commerce Dept. NTIA IFWP process (**name.space** participates)
- 1998** - NTIA takes over contract between NSF and NSI, and amends it (amendment 11)
- 1998** - Commerce Dept. NTIA contracts Internet Corporation for Assigned Names and Numbers (ICANN)
- 1999** - NTIA creates separation of TLD "registry" (wholesale) and domain name "registrar" (retail) using shared registry system. Prices drop from \$100 per 2 year registration to \$30 per year.
- 1999** - ICANN accredits 30 companies to serve as domain name registrars (reselling .COM); **name.space** accredited
- 2000** - February, Second Circuit Court of Appeals decision – antitrust immunity for Network Solutions
- 2000** - November, **name.space** participates in ICANN gTLD round, submits 118 gTLDs, pays \$50,000 application fee; is picked in top-10 strong applicants; support from chair Esther Dyson, opposed by other board members; application unresolved, still pending. *several ICANN board members recused themselves in connection with TLD applications that were selected.
- 2001** - February 8. House Commerce Committee ICANN hearing (**name.space** testimony on record)
- 2001** - February 14. Senate Commerce Committee ICANN hearing (**name.space** testimony on record)
- 2000 – present** - **name.space** business severely impacted by non-global access for its gTLDs, struggles to stay afloat. New investment enables **name.space** to participate in the 2012 Application Round with its standing application from 2000.
- 2011** – Senate Commerce Committee ICANN hearing (**name.space** testimony on record)

Links to view video from ICANN's 2000 gTLD round:

Paul Garrin presents Name.Space to ICANN board, answers board's questions (Nov. 15, 2000):

<http://namespace.us/vid/2000-icann1115-pg-presents.mov> (approx. 8 min.)

ICANN board (sans recused members) discusses the Name.Space gTLD application:

<http://namespace.us/vid/2000-icann1116-pt02-ns-discussion.mov> (approx. 28 min.)

For more information, history, press highlights links, please see:

<http://namespace.us/about.php>

<http://namespace.us/press.php>

select press links:

<http://www.nytimes.com/library/cyber/week/032297domain.html> (**name.space** formerly known as PGP Media)

<http://timeto.freethe.net/pg/media/washpost19970706.txt>

<http://news.cnet.com/2100-1023-203408.html> (**name.space** formerly known as PG Media)

<http://timeto.freethe.net/pg/media/dot-monopoly1.jpg>

<http://timeto.freethe.net/pg/media/dot-monopoly2.jpg>

<http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2000/12/03/BU113071.DTL>

http://www.thevillager.com/villager_314/thebattleofnyc.html

<http://www.reuters.com/article/2012/03/23/internet-icann-ethics-idUSL6E8EL9QM20120323>

<http://www.domainnews.com/en/namespace-claims-trademark-protection-over-118-gtlds.html>

<http://domainincite.com/company-claims-ownership-of-482-new-gtlds/>

Enclosures:

- 1) **name.space CompleteTLDList.pdf**
- 2) **name.space written statement to Senate Commerce Committee, December 2012**
- 3) **Letter to Jones Day from Morrison Foerster**