



OFFICE OF THE
CHAIRWOMAN

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON D.C. 20580

May 27, 2015

John O. Jeffrey, General Counsel & Secretary
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Dear Mr. Jeffrey:

I write in response to your letter of April 9, 2015 regarding Vox Populi Registry Inc.'s rollout of the .SUCKS generic top-level domain (gTLD), one of the over 600 new gTLDs recently authorized by ICANN. You have forwarded a formal request sent to ICANN by Gregory S. Shatan, President of the Intellectual Property Constituency, describing on behalf of intellectual property owners serious concerns about Vox Populi's .SUCKS gTLD rollout and asking that ICANN halt it. As you note, Mr. Shatan describes Vox Populi's rollout strategy, including its pricing practices, as "predatory, coercive and exploitive." You state further that, through its registry agreement, ICANN "may seek remedies against Vox Populi if the registry's actions are determined to be illegal" and ask that the Federal Trade Commission (the "Commission" or "FTC") assess whether these actions by Vox Populi would violate any laws or regulations enforced by the FTC.

As you may know, the FTC has been actively engaged with respect to ICANN-related consumer protection issues for well over a decade, working with ICANN and other stakeholders to improve policies affecting consumers engaged in e-commerce.¹ Prior to the launch of its new gTLD program, the Commission provided ICANN with policy recommendations in which we highlighted a range of issues implicated by the impending rollout of new gTLDs, including the

¹ See, e.g., Letter from Comm'r Jon Leibowitz to Peter Dengate Thrush, (former) Chairman, ICANN Board of Directors, Dr. Paul Twomey, (former) President and CEO, ICANN, and Jonathan Nevett, (former) Chair, Registrar Constituency (Feb. 8, 2008); Hearing on Internet Governance: The Future of ICANN Before the Subcomm. on Trade, Tourism, and Econ. Dev. of the Senate Comm. on Commerce, Science, and Transp., 109th Cong. (2006) (Prepared Statement of the Federal Trade Commission, presented by Comm'r Leibowitz), available at <http://www.ftc.gov/os/testimony/P035302igovernancefutureicanncommissiontestsenate09202006.pdf>; OECD, Consumer Policy Considerations on the Importance of Accurate and Available Whois Data, at 8 (June 2, 2003), available at [http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=dsti/cp\(2003\)1/final&doclanguage=en](http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=dsti/cp(2003)1/final&doclanguage=en).

increased risk of consumer confusion.² In light of the FTC's longstanding interest in protecting the public from harms arising in connection with Internet activities, I understand and appreciate the importance of the concerns you and Mr. Shatan have conveyed about Vox Populi's .SUCKS gTLD rollout.

Although I cannot comment on the existence of any pending investigations, I can assure you that the FTC will monitor the actions of registries and other actors in this arena. The FTC will take action in appropriate cases if we have reason to believe an entity has engaged in deceptive or unfair practices in violation of Section 5 of the FTC Act, our principal consumer protection authority.³ We will also continue to work with our law enforcement partners in the United States and around the world to share information and perspectives about how best to protect consumers from deceptive or unfair activities associated with the domain name system.

At the same time, the questions you and Mr. Shatan have posed regarding Vox Populi's .SUCKS rollout raise important and broader consumer protection issues that the Commission previously highlighted prior to the launch of ICANN's new gTLD program. Indeed, Mr. Shatan observed that other registries have also engaged in troubling tactics, even if not as egregious as those of Vox Populi. In view of the exponential expansion of gTLDs, these are not issues that can be feasibly addressed on a case-by-case basis. I therefore urge ICANN to consider ways in which it can address the concerns raised with respect to .SUCKS, as well as consumer protection issues more generally, on a broader basis.

Let me make several specific recommendations. First, I believe ICANN needs to address the potential for consumer confusion regarding new gTLDs. For example, using the .SUCKS gTLD to illustrate the concern, the public may not be able to discern the real owner behind a .SUCKS site. Vox Populi has marketed this domain to both "activists," as a forum for consumers to vent complaints about businesses, and "executives," as a site for companies to improve customer satisfaction and market share.⁴ My hope is that ICANN will consider the potential for consumer confusion and encourage the best practice of having all gTLD domain holders, including .SUCKS holders, prominently identify themselves to the public on their individual websites so that people do not confuse an "activist" site with a company-owned site.

Second, I encourage ICANN to consider whether the current rights protection mechanisms adequately perform their intended function. The ICANN Board adopted rights protection mechanisms, such as the Trademark Clearinghouse, to protect intellectual property rights owners.⁵ As shown by Mr. Shatan's correspondence, it appears that Vox Populi (and

² See Letter from Fed. Trade Comm'n to Dr. Stephen D. Crocker, Chairman, ICANN Board of Directors, and Rod Beckstrom, (former) President and CEO, ICANN (Dec. 16, 2011), available at <http://www.ftc.gov/news-events/press-releases/2011/12/ftc-warns-rapid-expansion-internet-domain-name-system-could-leave>.

³ Section 5 of the FTC Act also prohibits "unfair methods of competition." 15 U.S.C. § 45.

⁴ See video featuring Ralph Nader and Dr. Martin Luther King: <https://www.youtube.com/watch?v=D-yP3cH25-k> and .SUCKS application, Section 18, Mission/Purpose: <https://gtldresult.icann.org/applicationstatus/applicationdetails/54>.

⁵ See <http://www.trademark-clearinghouse.com/content/what-trademark-clearinghouse> and Registry Agreement at Specification 7.

perhaps other registries) may be violating the spirit, even if not the letter, of those protections, which are incorporated in the Registry Agreement. It may very well be that stronger rights protection mechanisms or amendments to the Registry Agreements are needed to ensure that IP rights holders are adequately protected.

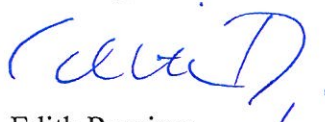
Third, and more generally, I urge ICANN to take steps to address the serious issues implicated by sensitive gTLDs in highly regulated industries, such as those relating to banks, pharmacies, and charities. I am particularly troubled by the ICANN Board's rejection of repeated Governmental Advisory Committee ("GAC") advice to verify the credentials of sensitive domains in highly regulated markets. For instance, the GAC recommended requiring the screening of owner credentials for these sensitive domains to ensure owners are what they purport to be *before* they do business with the public (*e.g.*, that they are a *bona fide* bank, insurer, pharmacy, etc.). Instead, ICANN adopted a far less stringent requirement – requiring only that gTLD owners "represent" that they possess the appropriate credentials. This more lax approach increases the risk of consumer fraud because bad actors will not hesitate to make false representations about their credentials. Moreover, problems will become apparent only after victims complain and will have to be handled individually in the absence of a more concerted approach. I encourage ICANN to reconsider implementing the important safeguards recommended by the GAC in this area.

Finally, the FTC is actively engaged in the GAC's newly established Public Safety Working Group, and I encourage you to consult this group as consumer protection issues arise. One of the Public Safety Working Group's key missions is to weigh in on policies that raise consumer protection issues related to use of the domain name system.

I believe it is imperative that ICANN consider all of these issues as it evaluates the strengths and weaknesses of the first round of new gTLDs in order to improve any future offerings of gTLDs.

I appreciate your efforts to respond to ICANN stakeholders, and your willingness to continue the ongoing and productive dialogue with the FTC about consumer protection issues. If you have any questions regarding the issues I have raised, please do not hesitate to contact me.

Sincerely,



Edith Ramirez
Chairwoman