

# Holland & Knight

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Fadi Chehadé, President and CEO  
Cherine Chalaby, Chair, New gTLD Program Committee  
Heather Dryden, Chair, Government Advisory Committee  
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12025 East Waterfront Drive  
Los Angeles, CA 90094

Lawrence Strickling, Assistant Secretary for Communications and Information  
National Telecommunications and Information Administration  
Fiona Alexander, Associate Administrator of Office of International Affairs  
National Telecommunications and Information Administration  
Suzanne Radell, Representative from the United States to the  
ICANN Government Advisory Committee  
National Telecommunications and Information Administration  
US Department of Commerce  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230

Re: Failure of ICANN Personnel to Observe ICANN's Rules in the gTLD Process

Dear Dr. Crocker, et al.:

As a follow up to my letters to you dated July 28 and September 25, 2012, I write at this time to express alarm that the background screening panel has approved the continued participation of Donuts, Inc. ("**Donuts**") in the new gTLD program.

This alarm arises from the overwhelming evidence, as referenced below, that: (a) Donuts is a "front" for Demand Media, Inc. ("**Demand Media**"), and (b) Demand Media's status as precisely the kind of proven cybersquatter that ICANN's rules were designed to weed-out of the gTLD application process.

How ICANN's background screening panel could -- in the teeth of that evidence -- approve the continued participation of Donuts in the new gTLD program (the "**Donuts Decision**") requires justification. This letter formally requests that ICANN, pursuant to its obligations of accountability and transparency, provide an explanation of how, and on what basis, the Donuts Decision was made.

### Background

In a letter addressed to you and others dated July 28, 2012, the fact that there had been more than 20 UDRP rulings against Demand Media and its affiliates during the past 4 years was portrayed in great detail. Those UDRP panels made dozens of explicit findings of bad faith, cybersquatting and/or typosquatting against Demand Media and its affiliates. As a result of those rulings, it was clear that Demand Media would be ineligible for an award of new gTLDs under the Background Screening standards set forth in §§ 1.2.1 and 2.1 of the gTLD Applicant Guidebook.

That same July 28 letter (available at: <http://www.icann.org/en/news/correspondence/stoler-to-crocker-et-al-28jul12-en>) also detailed overwhelming evidence that Donuts, Inc. ("**Donuts**") was formed as a "front" for Demand Media. The evidence thereof was detailed with clarity, and has subsequently been admitted by Demand Media's management, and is not repeated here. Suffice it to note the most damning aspect of that evidence: Donuts's written agreement to give Demand Media equal rights to any or all of 107 of the gTLDs that Donuts might acquire in the gTLD process. Demand Media has admitted to the existence of that agreement.

In light of these facts, it is beyond question that Donuts is serving as a "backdoor" for Demand Media to acquire control over new gTLDs when Demand Media, itself, is barred by ICANN's rules from doing so.

Although it is possible that Demand Media's trick -- of forming a new entity to participate in the gTLD process to obscure its own indirect participation -- has simply deceived the ICANN personnel administering the gTLD program, that explanation would be troublesome. The alternative scenario would, however, be far uglier: that ICANN personnel made a thoughtful decision to ignore Donuts's relationship with Demand Media and to approve Donuts's continued participation in the gTLD process, knowing that -- in so doing -- they were approving Demand Media's acquisition of control of gTLDs in contradiction to ICANN's eligibility rules.

Either way, a full and reasoned explanation is necessary: not only to fulfill ICANN's obligation of transparency, but to address facts that -- left unexplained -- buttress the concerns of many that ICANN is not yet prepared to oversee the Internet without active supervision by governmental authorities, and particularly the US Department of Commerce.

### Conclusion

ICANN's Board approved rules requiring background checks for all gTLD applicants. ICANN also approved rules forbidding the award of gTLDs to applicants that did not pass those checks. ICANN did this in furtherance of its duty to protect the integrity of the Internet.

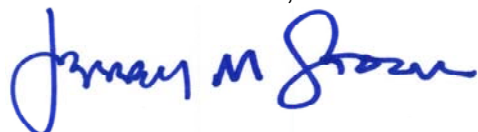
Where, as recited above, the evidence is so strong that ICANN's rules are being subverted, the failure of the Board or the GAC to assert their oversight responsibilities would be exactly the type of dereliction that governmental authorities have used as justification for their continued supervision of ICANN's operations.

Although this letter is formally making demand for a full accounting of how, and on what basis, ICANN made the Donuts Decision, we believe that ICANN owes such an explanation to its Board, to members of the GAC and to all interested parties. Failure to do so would stain ICANN, members of its Board and GAC, and anyone else who has been entrusted with defending the public interest that ICANN was established to protect. We are hopeful that the Board will take action, in Beijing and thereafter, to both explain and rectify the erroneous rulings of its administrative staff in this regard.

In closing, we are hopeful that this letter is useful to you, the Board and the ICANN community at large, and we invite you to be in touch if there are questions or concerns regarding the content of this letter.

Yours truly,

HOLLAND & KNIGHT, LLP



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