



**Testimony of Joshua S. Bourne**  
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United States House Judiciary Committee  
Subcommittee on Intellectual Property, Competition and the Internet  
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I would like to thank Chairman Goodlatte, Ranking Member Watts, and members of the committee for the opportunity to submit testimony, and more importantly for convening this hearing on such an important topic, about which too few Americans and Internet users across the world have sufficient awareness or understanding. Your decision to convene this hearing is a continuation of your strong leadership on Internet issues and the protection of our intellectual property.

To begin I would like to provide background on the coalition I represent, the Coalition Against Domain Name Abuse (CADNA). I established CADNA three years ago along with ten companies when I recognized that there was no group dedicated to finding a more meaningful and lasting public policy solution to the problems of cybersquatting and online infringement. Through our efforts to find creative and effective solutions to these problems, our Coalition's attention was drawn to the Internet Corporation for Assigned Names and Numbers (ICANN), due to the commanding role it plays in the formation and implementation of domain name policy. More importantly, we learned of the even more influential and unchecked role ICANN has in the general direction of Internet regulation and policy.

Three years later, both the CADNA member companies and myself are much better educated in regards to the problems that Internet users around the world currently face, as well as the precarious power that ICANN wields, which could potentially help to resolve or further perpetuate these problems. CADNA has grown to a Coalition of over 20 companies based both here in the U.S. and abroad. We have members representing a broad range of commercial industries, including financial services, retail, hotel and leisure, pharmaceutical, and others. I am proud to say that we are a leading voice on domain name policy, ICANN-related issues, and on ICANN's proposed gTLD program.

Despite the prevalence of the Internet in the daily lives of most Americans, knowledge of Internet governance is decidedly scant. Very few people understand or care about how the Internet operates, or who has control over the domain name system. It is in this opaque context that ICANN operates, remaining free to develop policies without scrutiny from the general public, or even from most members of the government.

Let me state up front that CADNA agrees with the ICANN model. We support the "bottom up" concept behind ICANN governance. The problem is not ICANN itself. The problem is that ICANN has been captured by a constituency that stands to profit from ICANN actions. When



conceived in 1998, the “bottom up” concept failed to develop checks against capture. At the time nobody anticipated that any one constituency would develop strong economic interest in ICANN’s actions and stand to gain so much financially from ICANN-developed policy. Few could foresee how bad actors would eventually place familiar brand names in domains to confuse and engage their targets. The reality that has unfolded over the past 13 years shows that ICANN’s original mission of “bottom up” policy development in the interests of the entire Internet community has fallen short. At present there is the ICANN community and the Internet community, and unfortunately, the interests of the two communities are not aligned.

Instead of representing the true community of Internet users, ICANN’s community is predominantly comprised of those companies with vested interest in selling domain names; what better way to sell domain names than a mass introduction of new gTLDs. Brand owners will have no choice but to pay for the acquisition and maintenance of each defensive registration across as many of the 400 new gTLDs as possible to prevent infringement of their intellectual property. To this day, ICANN has not presented any convincing economic justification for the new gTLD program showing actual market demand for this mass rollout to the public. In fact, many small business owners and non-profit organizations (with the exception of ICANN) are deeply concerned about the negative impact new gTLDs will have on their business and cost of defensive registration. The International Olympic Committee is an excellent example of a non-profit that is concerned about the costs of this policy and the potential negative impact it will have on its brand.

For example, ironically, the recent roll out of .XXX has created a tremendous economic opportunity for those interested in selling domain names and, indirectly, ICANN for the fees it will receive. Not even the adult industry wanted .XXX. They had already established a brand under a separate extension, most likely .COM, but now were forced to consider defensive registration under .XXX. This challenge of defensive registrations also challenged all brand owners. Imagine Disney executives considering the prospect of Disney.XXX.

The new gTLD program will undoubtedly complicate intellectual property protection, cost brand owners scores if not hundreds of millions of dollars in enforcement of their trademark rights, and needlessly confuse and endanger consumers. This initiative, however, is only a single symptom of ICANN’s financial and structural capture by commercial interests. If ICANN’s current lack of accountability and transparency continues, the harm caused by the proposed gTLD program will not be the last.

Let me give you a second concrete example of poor ICANN governance that has created tremendous anxiety about a future with more than 400 potential new extensions. In May 2005, ICANN granted Employ Media a charter to act as the registry operator for .JOBS. The charter specifically defined that .JOBS was established to serve the needs of the international human resource management community. This changed when Employ Media, desperately in need of revenue, started selling second level domains for purposes outside of their charter. Months after learning of this, ICANN issued a strongly worded rebuke to Employ Media supposedly forcing them to take down sites that were outside of their charter. Employ Media has so far refused to



cease activities clearly outside the scope of the .JOBS charter, and ICANN has acquiesced to these delays. Today, ICANN is in negotiations with Employ Media to amend their charter. Unfortunately, there is no accountability in this process; ICANN's decision-making is arbitrary and may foreshadow similar developments when the new gTLDs are issued.

Finally, let me touch upon the interaction between the Government Advisory Committee and ICANN. The GAC is the only government body that has an official role within ICANN. Despite the GAC's official role, however, ICANN has no obligations to consider or implement GAC recommendations. Once again, ICANN accountability is missing. US Department of Commerce Assistant Secretary Strickling recently expressed his concerns about ICANN and the GAC, stating that "a weakness of the current model is that the ICANN bylaws and practices seem to envision that GAC advice often comes at the end of the policy development process. That should not be the case."

Before ICANN goes through with its plan to roll out up to 400 new gTLDs in the coming months, the United States government should leverage the upcoming renewal of the IANA contract to require an audit of ICANN. CADNA has long proposed the formation of a federal commission composed of Internet experts, private sector representatives, academic representatives, government officials, and foreign government observers to fully audit ICANN before renewing the IANA contract.

CADNA urges you and your committee to consider the implications of a flawed ICANN. ICANN is a California incorporated 501 (c)(3). Before it is too late and other questionable policies are pursued, consider the leverage of the IANA contract renewal and bring ICANN into the 21<sup>st</sup> century. Thank you for this opportunity.

