Reply to Comments on An Economic Framework for the Analysis of the Expansion of Generic Top-Level Domain Names

prepared for ICANN

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I. INTRODUCTION

Twenty-one parties filed comments in response to our initial paper, which we refer to herein as our *Economic Framework:*[1]

1. American Apparel and Footwear Association (AAFA)
2. Asociacion PuntoGal (Asociacion PuntoGal)
3. AT&T (ATT)
4. K. Claffy (Claffy)
5. Coalition Against Domain Name Abuse (CADNA)
6. Coalition for Online Accountability (COA)
7. Olivier MJ Crepin-Leblond (Crepin-Leblond)
8. Paul Foody (Foody)
9. International Olympic Committee (IOC)
10. International Trademark Association Internet Committee (INTA)
11. George Kirikos (Kirikos)
12. Minds + Machines (M+M)
13. Jon Nevett (Nevett)
14. Michael Palage (Palage)
15. Constantine Giorgio Roussos (Roussos)
16. Dan Schindler (Schindler)
17. Alex Tajirian (Tajirian)
18. Paul Tattersfield (Tattersfield)
19. Time Warner Inc. (Time Warner)
20. Richard Tindal (Tindal)
21. Christopher Wilkinson (Wilkinson)[2]

In the present document, we summarize and respond to those comments that address economic issues.[3] To avoid repetition, the comment summaries and responses are grouped together by topic.

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1 Michael L. Katz, Gregory L. Rosston, and Theresa Sullivan, "An Economic Framework for the Analysis of the Expansion of Generic Top-Level Domain Names," June 2010 (hereinafter, *Economic Framework*), *available at* http://www.icann.org/en/topics/new-gtlds/economic-analysis-of-new-gtlds-16jun10-en.pdf.

2 Wilkinson's comments also endorse Crepin-Leblond's comments.

II. CONCERNS ABOUT THE REPORT

Several commenters raised general or specific concerns about the methodology or conclusions of the *Economic Framework*.

A. AUTHOR AFFILIATION.

Comment Summaries

The report has a co-author from the previous Carlton report. (*Kirikos)*

The report was co-authored by the same company as the first report. *(Claffy)*

The third author of the report is affiliated with the same organization behind the Carlton report regarding pricing and competition of new gTLDs, which CADNA and others dismissed for its lack of practical knowledge of the domain name system. *(CADNA)*

Response and Analysis

One of the three authors of the *Economic Framework* is an employee of Compass Lexecon, the same organization that provided staff support for Professor Dennis Carlton's earlier report regarding pricing and competition issues surrounding new gTLDs. However, none of the three authors of the *Economic Framework* nor any of the Compass Lexecon staff supporting the development of the *Economic Framework* were involved in the creation of the Carlton reports. Likewise, neither Professor Carlton nor any of the Compass Lexecon staff supporting his earlier reports were involved in the *Economic Framework*. Moreover, these apparent ad hominem attacks address no issues of substance.

B. THE ECONOMIC STUDY IS INADEQUATE.

Comment Summary

The new report is an improvement over previous efforts but is still too flawed to serve as the basis of an ICANN policy on new gTLDs.

- It does not adequately study how the proposed gTLD expansion may impact security and stability.
- There is no coherent logic for the report's conclusion that additional new gTLDs will have a benefit that exceeds their cost.

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[3] In some cases, the comment summaries are direct quotations. In others, the comments have been edited for clarity and brevity. The full text of the comments may be found at http://forum.icann.org/lists/economic-framework/.

- The report's emphasis on "innovative business models" begs the question of what kind of business models and who will pick winners, especially in light of the recommendation to "proceed incrementally."

- The report lacks sufficient cost-benefit analysis and specificity, seems to eschew scholarship by failing to cite related work and how it compares to the authors' own results, and avoids discussion of empirical data that sheds doubt on the wisdom of what ICANN has made clear it plans to do anyway. *(Claffy)*

<u>Response and Analysis</u>

Some of the issues raised in these comments are beyond the scope of our assignment. For example, issues concerning stability and security are addressed by a separate ICANN process.

We make no attempt to specify what innovative business models will be introduced precisely because they are *innovations*, *i.e.*, they are models that have yet to be created. Once an innovator has made a specific proposal, the ICANN application process for the delegation of new gTLDs will assess it. The process used for evaluating specific applications is outside the assigned scope of the economic study.

Contrary to Claffy's assertion, our report does not conclude that benefits will exceed costs for new gTLDs as a whole.

C. THE *ECONOMIC FRAMEWORK* IS TOO THEORETICAL.

<u>Comment Summaries</u>

As with the Carlton report, the *Economic Framework* could have been improved had the authors consulted with an expert more familiar with how domain name registrants and Internet users use the DNS on a daily basis. The report is too focused on theory at times, such as its assumption that all gTLD registry operators will behave in an economically rational manner. This may not necessarily be the case and it is likely that some parties may apply for gTLDs simply to avoid being beaten out by others. The theoretical benefits of new gTLDs that the report proposes are largely uncorroborated by real events. *(CADNA)*

The economic report, while professional in appearance, says very little and its main message regarding the issues is "it depends." The report predicts various possible risks and benefits without quantifying any of them and lacks empirical evidence. (*Minds + Machines).*

<u>Response and Analysis</u>

The purpose of the *Economic Framework* is to lay out a structure within which to think about the benefits and costs of new gTLDs. The structure provides a means of identifying which facts are relevant and what their implications are. For example, the *Economic Framework* identifies the importance of external costs (which include costs associated with cybersquatting and consumer confusion). The *Phase II Report* provides empirical studies that shed light on actual behavior.

In addition to reviewing relevant literature, the authors have consulted with experts on how domain name registrants and Internet users use the DNS.

The *Economic Framework* creates a structure within which data relevant to the assessment of the costs and benefits of gTLD launches can be examined.

D. IS THE PAST PROLOGUE?

Comment Summaries

The case studies recommended by the authors based on historical data of how a new gTLD introduction has affected another gTLD are long overdue and it is difficult to understand why this work has not been undertaken by ICANN. (*Crepin-Leblond)*

The report emphasizes the 2001 round of gTLD introductions as a proxy for the likely results of the 2011 round, but 2001 would be a poor predictor due to very different factors and circumstances at that time. *(Tindal)*

Response and Analysis

We believe that experience can provide useful information for predicting the future. That said, it is important to account for the ways in which circumstances or incentives have changed and to recognize that predictions are necessarily subject to uncertainty.

E. EXISTING EMPIRICAL STUDIES ARE FLAWED.

Comment Summaries

Many of the studies referenced in the analysis are unscientific. The survey portion of the report is insufficiently critical of the lack of serious prior empirical studies. The report also cites biased resources generated by parties with a vested financial interest in the unfettered introduction of new gTLDs. (*INTA)*

The report improperly lends credence to a number of prior studies that made biased and unsubstantiated generalizations about defensive domain name registrations and grossly underestimated enforcement costs for brand owners in the domain name system. (*IOC*)

The survey of existing studies restates information, provides nothing new, and does not include any analysis or commentary from the authors, which was disappointing. *(Crepin-Leblond)*

Response and Analysis

The *Economic Framework* summarized prior studies on issues relevant to the introduction of new gTLDs. The report identified shortcomings of specific studies and concluded that existing studies were incomplete. The central finding was that additional information should be collected.

F. ANALYSES BASED ON THE *ECONOMIC FRAMEWORK* WILL OVERSTATE BENEFITS AND UNDERSTATE COSTS.

<u>Comment Summaries</u>

Regarding the report's recommendation to look at past gTLD launches for what to expect with the new gTLD rollout—*e.g.,* .biz and .info—those past launches' costs outweighed the benefit; they did not provide meaningful competition for .com but did increase the number of defensive registrations that brand owners needed in order to protect their trademarks. *(CADNA)*

Many of the potential benefits of new gTLDs that are cited in the economic paper are speculative in nature and not based on analysis of previous introductions of new gTLDs in 2000 and 2003. The paper does appropriately state that the potential for new gTLDs to provide competition to existing gTLDs, resulting in lower quality-adjusted prices, may not be large. A fact-based study of the domain name marketplace would shed light on whether new gTLDs have increased competition to the benefit of consumers or whether their impact has created harms that outweigh the competitive benefit.

- The report makes faulty assumptions about whether brand owners will apply for new gTLDs; *e.g.,* rather than being motivated to apply in pursuit of a for-profit business model, they may be pressured to apply to minimize economic harm from the dilution of their brand if another applicant obtains a new gTLD similar to their trademark.

- Contrary to the experience of INTA that costs to trademark owners in dealing with trademark protection online are increasing, the report states without substantiation that the costs to trademark owners of trademark protection may be decreasing over time.

- The report incorrectly concludes that only direct navigation users are affected by new gTLDs, since new gTLDs can make it more difficult for search engine users to find relevant content. (*INTA)*

As the *Economic Framework* notes, new gTLDs could create a great deal of consumer confusion in navigating the Internet, which could lead to driving up paid search fee costs for domain name registrants if consumers shift to search engines instead of directly navigating to websites. *(CADNA)*

The report improperly concludes that brand owners enjoy some "affirmative benefit" in defensively registering and maintaining portfolios of defensive registrations. Defensive domains are not always forwarded to a primary website, do not generally garner any Internet traffic, and when they are forwarded brand owners incur additional fees from registrars to do so. (*IOC*)

Brand owners do not normally employ a cost-benefit analysis in deciding to maintain defensive domain names. A significant portion of any defensive domain name portfolio includes those that a brand owner never chose to register but which were transferred pursuant to successful legal proceedings. (*IOC*)

Creating new TLDs does not improve the conditions of competition in the DNS industry, primarily because of the lack of portability of names. New TLDs increase the scope for choice in the initial registration of a domain name, which is an advantage worth having, but is not to be confused with improving the conditions of competition between registries. Consequently, ICANN will be permanently responsible for the regulation of the market for domain names, particularly regarding the larger for-profit registries. *(Wilkinson)*

ICANN director Harald Alvestrand commented on a future vision of a root of a million names in connection with the new gTLD program at the 2009 Seoul ICANN meeting. The report authors failed to identify this possibility of a root zone of a million names and to address the impact of this on the Internet (although they did look at some studies about new gTLDs, some of which were biased and authored by those with vested interests in the introduction of new gTLDs). The announcement by Canon to apply for .canon in the first round (mentioned in ¶ 29 of the report) demonstrates that rather than complementing existing TLDs, the new gTLDs offer companies the single component DotBrand domain name envisioned by Mr. Alvestrand (provided they can afford one) and as such as a group of domains they have the potential to completely replace the existing TLD framework if steps are not taken to prevent it. Although today a top quality Internet presence can still be obtained in the dot com registry for a matter of dollars, the cost in the future will be around one million dollars for a TLD that will only enjoy the same level of exposure as that currently enjoyed by dotcom domains. This will create a massive barrier to entry and damage competition. *(Foody)*

ICANN's new gTLDs for corporations and brands will result in a brand to the right of the dot being perceived as a major player, and—by implication—a brand to the left of the dot being perceived as a lesser brand. This will destroy the level playing field of the Internet (*i.e.,* entry cost will be $185,000 + $25,000 + hosting costs per year). Serious economic concerns are raised by the creation of a single layer model to the right of the dot, and it actually offers less freedom for new domains. Certain two-letter brands (*e.g.,* "HP") will be disadvantaged—two letter TLDs are reserved for country codes. It is unclear what happens to brands that share a name with geographic areas, *e.g.,* "Amazon." A system where only one organization can be to the right of the dot is a step backwards and most importantly destroys the level playing field competition that has been the success of the Internet (*i.e.*, the ability to launch software to compete with Microsoft or Sun for $10 + hosting/year, and then compete on skill and innovation). *(Tattersfield)*

Response and Analysis

The *Economic Framework* incorporates the possibilities that brand owners will have both positive and defensive reasons for registering domains. Even a registration primarily for defensive purposes can also lead to some positive benefits to the registrant through incremental traffic.

The effect of additional gTLDs on consumer confusion is a relevant issue, but one on which evidence is scarce; the *Economic Framework* does not attempt to quantify the costs, not are we aware of any attempts by others to measure confusion or to quantify its costs. Although additional gTLDs could, in theory, increase consumer confusion, they might also reduce it. The net effect will depend, in part, on the specific gTLDs delegated.

In principle, there may be significant benefits from new gTLDs even if some consumers have high switching costs. As the *Economic Framework* notes, switching costs can limit the degree of competition among gTLDs, but it does not follow that such competition is eliminated entirely.

The *Economic Framework* does not explicitly address the million-name-root issue. First, it is our understanding that the number of new gTLDs would be at most several hundred or perhaps a few thousand over the next several years. Second, the *Economic Framework* is an appropriate one with which to assess the *economic* impacts of a much larger expansion; the technical impacts are being addressed by ICANN through a separate process.

Even if a large number of companies were delegated gTLDs associated with their company name (*i.e.,* was of the form .BRAND), gTLDs such as .biz and .com would be expected to continue offering low-cost options for maintaining a web presence.

The fact that some companies might not be able to obtain their most-preferred domain names does imply a lack of social benefits from the introduction of new gTLDs. Taken to the extreme, the logic that would deny gTLDs to any brand unless every brand could obtain a gTLD would also imply the absurd policy that retailers should not be allowed to have stores on the prestigious part of New York City's 5th Avenue because the number of available locations is smaller than the number of retailers that might wish to have retail outlets on 5th Avenue. Lack of a 5th Avenue address has not prevented other retailers—even luxury retailers—from competing with 5th Avenue retailers.

The *Economic Framework* was not intended to quantify costs and benefits. It provides a structure that can subsequently be used to make quantitative assessments.

As discussed above, even a "defensive" registration can lead to positive benefits as well, and we expect that brand owners will take those benefits into account when deciding whether and where to register.

Even when defensive domain names were transferred pursuant to successful legal proceedings, brand owners subsequently decide whether or not to renew the registrations. Such decisions are implicitly or explicitly based on a comparison of the costs and benefits of those registrations.

G. ANALYSES BASED ON THE *ECONOMIC FRAMEWORK* WILL UNDERSTATE BENEFITS AND OVERSTATE COSTS.

Comment Summaries

The big problem with user confusion is that society is not used to new TLDs and most assume that ".com is king." To change user behavior, new TLDs need to become widespread and used. The long-term benefits for society will be significant. Users already search using "keywords" and new TLDs can be the extension to that user behavior. User confusion will be only a short-term phenomenon, especially in the case of specialized community TLDs.

Brand owners will register their brands in TLDs that are associated with their line of business, which can even bring benefits to them if used appropriately and more than pay off the annual registration price. Cybersquatters registering trademarks in unrelated TLDs will not bring harm to trademark holders because the brand will have no association with the TLD in question, thus not causing user confusion. Most trademarked words are shared internationally by different companies doing business in different industries and there is no confusion there. Why should there be confusion in the domain space? Registering defensively across all new TLDs would make no sense since the likelihood of inflicted harm due to cybersquatting approaches zero. *(Roussos)*

Some of the report's conclusions appear inconsistent or inaccurate—*e.g.*, using the report's measures of potential market size and affinity, it does not seem logical that a generic ASCII TLD, such as .music, would be any less likely to succeed than a Cyrillic script TLD. Also, the report makes the erroneous assumption that .com cannot be adequately competed with, but this is easily refutable with facts (*e.g.*, AU and COM). It is clear that .com dominance can be replaced in some (and perhaps all) markets. Nationality is not the only identifier that holds powerful affinity for individuals and companies. *(Tindal)*

Response and Analysis

The comments regarding confusion offer an interesting theory but do not point to any existing data to support it. We are unaware of data available on either side of the consumer confusion issue, although representatives of trademark owners have asserted that consumer confusion would occur. Ultimately, the extent and duration of user confusion is an empirical question that will not be answered unless and until many new gTLDs are introduced.

One of the studies conducted in the follow-on report examines the extent to which trademark owners register in multiple gTLDs to try to address the question of whether trademark owners will be likely to register across many or all additional new gTLDs that are delegated.

There are sound theoretical reasons to believe that an undifferentiated new gTLD would not be a strong competitor to .com. There are, however, many ways in which a gTLD could differentiate itself. IDNs are one means of differentiation. The *Economic Framework* does not assert that nationality is the only identifier that holds powerful affinity for individuals and companies.

H. ISSUES FOR FURTHER CONSIDERATION.

Comment Summaries

The GNSO proposals for new gTLDs and the DAGs contain major and broad economic impacts for the Internet as a whole. It is vital that the second part of the Economic Analysis identify these wider economic impacts to enable ICANN and the wider community to begin to understand (as contracted parties have with their interests in the Vertical Integration of registries and registrars issue) just how involved and far reaching some of the seemingly innocuous concepts behind the GNSO proposal for new gTLDs actually are. Many of the implicit assumptions for implementing new gTLDs have been drawn up by committees dominated by contracted parties. Fundamental questions need to be addressed at a much higher level before delving into the details, such as the costs and benefits of defensive registrations. *(Tattersfield)*

The new report is insightful and analytic but the final report needs to consider certain theoretical and empirical issues such as:

- The advantages of using a signaling framework; without a signaling framework, the number of registrations of various existing TLDs cannot be used to estimate a TLD's demand and/or its market power.
- Identifying sources of domain name externalities so as to work on reducing them and taking a broad enough approach to externalities analysis (include upstream externality – *i.e.*, one produced by ICANN; consider trademark infringements and search costs; costs of potential rogue TLDs whose private benefits outweigh their social value);
- Narrowing the scope of analysis – *e.g.*, to search, navigation, companies and registries.
- Establishing a cooperative regime as a complement to any registry-level trademark solution.
- Distinguishing between defensive and offensive second-level domain registrations (the latter are value-adding and should not be automatically labeled as a net operating cost).
- Statistical pricing models can shed light on the value of keyword-based domain names, identify the factors that drive prices for different TLDs and be useful in estimating price-premium variations over time and cross-price elasticity of demand for purposes of determining market power and competition. *(Tajirian)*

The authors' recommended mathematical modeling of costs of increased registration, monitoring and enforcement of trademarks across multiple gTLDs is over-simplified, uses too many assumptions, and risks either wasting valuable time or will lead to incomplete and flawed results.

Some of the potential projects proposed by the authors were interesting but raise questions:

- The proposed analysis of domain name resale prices raises a concern—*i.e.,* are domain names supposed to be primarily used as unique identifiers on the Internet, or as a speculative trading stock?
- The authors' do not state clearly their rationale for concluding that a study of consumer costs and behavior regarding switching from one gTLD to another is unnecessary.
- The suggestion that ICANN should develop a methodology to measure consumer confusion as new gTLDs are rolled out over time is helpful. *(Crepin-Leblond)*

Regarding consumers, ICANN should study the present proliferation of consumer confusion to understand how large this public harm would be in the case of a wide-scale introduction of additional new gTLDs. (*INTA)*

<u>Response and Analysis</u>

These comments raise points to take into account in conducting and analyzing empirical studies and in designing policies. The *Economic Framework* provides an analytical foundation for those efforts.

Domain name resale prices reflect various parties' beliefs about the values of these names. As a general matter, an asset that can be bought and sold may generate speculative interest. But although there may be a speculative component of beliefs about domain name values, the values of domain names as "trading stock" ultimately derives from their value as unique identifiers on the Internet and/or—in the case of fully or semi-developed websites that are sold on the secondary market—the added value of the development.

We assigned a low priority to studies of consumer switching costs because there may be significant benefits from new gTLDs even if some consumers have high switching costs, *e.g.*, when new gTLDs serve previously underserved communities. In such a situation, determining the size of consumer switching costs does not tell us whether new gTLDs would have positive net benefits. Switching costs would be of greater importance if the primary intended benefit of new gTLDs were to provide price competition for .com, because in that situation, switching costs would have a direct impact on the willingness of consumers or website owners to move to the new gTLDs.

III. NEXT STEPS IN ECONOMIC ANALYSIS

Several parties offered views regarding the economic studies that should follow the *Economic Framework* and whether that framework was broad enough to incorporate all relevant issues.

A. MORE COMPREHENSIVE DATA AND STUDY ARE REQUIRED.

Comment Summaries

To facilitate a proper economic analysis of the costs and benefits of new gTLDs, AT&T fully supports the *Economic Framework*'s recommendations that ICANN gather much more comprehensive data about new and existing gTLDs, and conduct several types of studies, *before* new gTLDs are introduced. This information will also help in understanding the costs created by malicious conduct and inform the decision making on security, stability and resiliency issues. *(AT&T)*

It is essential that a comprehensive, independent study of the full domain name marketplace and a cost-benefit analysis be undertaken. This is needed to determine the positive and negative impacts that introduction of new gTLDs will have on the public, trademark owners and competition, in order to determine if they should be introduced in the first place, and to determine the scope, manner and pace of any new introduction of new gTLDs. Only by grounding its new gTLD program on an economic foundation based on the realities of the marketplace can ICANN resolve the key issue of whether and how introduction of new gTLDs will serve the public interest and how to structure any rollout of them in a way that will lead to net public benefits. *(INTA)*

The new economic study essentially calls for further study of whether the prospective economic benefits of new gTLDs outweigh their harm to consumers and trademark owners. IOC does not understand how ICANN can proceed with launch of new gTLDs while this vital issue remains uninvestigated. The new gTLD program must not be approved until the issue of trademark protection is adequately studied and resolved. *(IOC)*

Response and Analysis

The *Economic Framework* is one stage in a multi-stage process. A follow-on report examines several case studies in order to develop additional empirical information.

B. DRAWING CONCLUSIONS FROM EARLY ROUNDS IN A PROCESS OF DISCRETE, LIMITED ROUNDS FOR NEW gTLDS.

Comment Summaries

AT&T supports the *Economic Framework*'s recommendations that ICANN introduce new gTLDs in discrete, limited rounds with prioritization of IDNs. In this way, ICANN will be able to mitigate consumer confusion and make any necessary adjustments to the implementation plan based on learning from initial rounds. As the economic paper acknowledges, there is no way for ICANN to fully assess and understand all of the potential costs and implications of introducing new gTLDs. By prioritizing introduction of IDNs, ICANN will be facilitating new gTLDs that are likely to deliver new benefits to global Internet users. *(AT&T)*

Crepin-Leblond supports using the introduction of new gTLDs in discrete, limited rounds to generate additional information. *(Crepin-Leblond)*

Nothing in the study should cause further delay in introduction of new TLDs or change the implementation plan. ICANN is, in fact, recommending in DAGv4 that it introduce new TLDs in discrete, limited rounds: there will be a discrete window which will open and close; all applicants must pass a background check, meet qualifications, establish their technical ability and meet all financial criteria and will have to have about $1 million to file a new TLD application. This round will thus be limited in duration to a discrete group of entities that can meet very strict qualification requirements. Due to the nature of the evaluation, objection and approval processes, all of the names applied for in this round will, in practice, enter the root in batches or phases. ICANN could use the experience of this round and make any necessary adjustments prior to future rounds, as recommended in the economic study. *(Nevett)*

There will be a natural phasing of TLDs entering the market as the steps in the process are likely to be spread over a 20- to 30-month period. This is the same reason why root scaling issues will be manageable. The report's single reference that it "may" be wise for ICANN to introduce TLDs in limited, discrete rounds does not appear to be a strongly held view of the authors and has several flaws, including:

- There is no way of knowing if one round will produce results representative of others.
- There were discrete rounds in 2001 and 2003 but no reliable study that shows trademark or consumer confusion costs to be higher with those TLDs than with .com, .net, or .org. Available data tends to show the opposite.

- There is no fair or predictable way to decide which applications should be selected for a limited round. Various methods to do this almost all favor the well funded, technically sophisticated or politically connected applicants. A truly innovative application might be delayed years or never eventuate. *(R. Tindal)*

Response and Analysis

Although there can be differences across rounds, experience with one round almost surely provides some information regarding what is likely to happen in future rounds. The alternative is to ignore past experience and to rely on theoretical considerations alone.

The follow-on study examines several case studies and considers the effects of the introduction of gTLDs on trademark owners' costs.

Unless ICANN were to adopt a policy of approving *every* application submitted to it, ICANN will have to have a selection process in place.

C. IMPLICATIONS OF MACROECONOMIC CONDITIONS FOR ASSESSMENT OF THE COSTS AND BENEFITS OF LAUNCHING NEW gTLDS.

Comment Summary

If there is an approximate relationship between the business cycle and successful investment in new TLD registries and registrations in new domain names, then that relationship is probably accentuated during the current economic crisis. In the present situation, in all the principal markets, it is perhaps the worst possible moment to launch new TLDs and expect them to succeed. *(Wilkinson)*

Response and Analysis

The *Economic Framework* makes the reasonable assumption that private parties will act to maximize their private benefits. As long as there are multiple opportunities for parties to submit applications for new gTLDs, prospective new gLTD operators can choose to apply when they believe the expected benefits of launch are greatest.

D. UNCERTAINTY WILL BE RESOLVED LATE IN THE PROCESS.

Comment Summary

The innovative new business models that the report cites as a major benefit from new gTLDs will not be clear until after the application process begins, at which point it will be too late because ICANN will have had to establish an approval process for applications. *(CADNA)*

Response and Analysis

Although the existence of innovative new business models might not be clear until after the application process begins, in principle ICANN could choose to design in advance an approval process that allowed for various contingent actions.

E. NOT-FOR-PROFIT TLD REGISTRIES.

Comment Summary

The DNS manages resources primarily in the public domain, so that the most appropriate model for DNS Registries is as not-for-profit organizations operating in the public interest. ICANN should look for ways to disassociate itself from the consequences of the for-profit model particularly as the globalization of the DNS, including through IDNs, will lead to circumstances where the for-profit model becomes quite unacceptable to the internet communities and public authorities concerned. *(Wilkinson)*

Response and Analysis

The *Economic Framework* is applicable to the analysis of not-for-profit applicants as well as for-profit applicants. Even for not-for-profit applicants, it will still be the case that net social benefits will depend on private costs and benefits as well as external costs and benefits. Not-for-profit status is no guarantee than an entity will not impose negative externalities on other parties.

F. "BEAUTY CONTEST" APPROACH TO NEW GTLD APPLICATIONS.

Comment Summary

The GNSO rejected the "beauty contest" approach to accepting applications based on categories of applicants. The economic report does not recommend that ICANN go back to that rejected concept. *(Nevett)*

Response and Analysis

The *Economic Framework* does not make any recommendation one way or the other regarding the use of "beauty contests" to evaluate applications. Coupled with empirical data, the analytical approach laid out in the *Economic Framework* can shed light on the welfare effects of alternative application-review processes.

G. INTELLECTUAL PROPERTY PROTECTIONS.

Comment Summaries

AT&T urges ICANN to consider a comprehensive set of safeguards to address the related issues of trademark infringement, consumer confusion and malicious conduct. *(AT&T)*

AAFA requests that ICANN reevaluate and revise the current rights protection mechanisms proposed for both the application process and post-delegation to ensure that brand owners' legitimate concerns and rights are properly protected and assured in the new gTLD space. Without requisite mechanisms in place to protect brand owners in the application process and post-delegation, AAFA is concerned that the new gTLD program could provide a vehicle for an exponential increase in rampant abuses and exploitation of its apparel and footwear members' valuable marks and brands. The apparel and footwear industry is concerned that the proposed high costs of registering a new gTLD will not deter the often well-funded and highly organized counterfeiting operations that are prevalent online. Therefore, the rights protection mechanisms (RPMs) need to be stronger, less costly and more efficient than the RPMs currently proposed in the DAGv4 for protecting trademarks. The overwhelming burden still falls substantially on brand owners to stop infringement, and the proposed processes to do so remain overly cumbersome, expensive and time intensive for brand owners. *(AAFA)*

<u>Response and Analysis</u>

These issues can be analyzed within the structure described by the *Economic Framework*. Where external costs primarily stem from the need for extensive defensive registrations and costly enforcement of brand owners' rights, well-designed rights protection mechanisms can significantly reduce those external costs.

H. MARKET POWER AND PRICE CAPS.

<u>Comment Summaries</u>

The report does not explain why .com prices are far higher than U.S. toll-free numbers and why they have been increasing; or why tenders for a small number of public-selected new TLDs would not be the most beneficial to consumers, as opposed to handing over new monopolies to registry operators. The report fails to address the "equitable treatment" clause of the .com agreement and associated risks or harm for registrants in existing TLDs like .com. (*Kirikos)*

A basic tenet of the existing framework is that all contracted parties should be treated equally. If new gTLDs are launched without price caps on the principle that they do not have market power, then given that all existing registries do not enjoy the same level of market power, smaller existing registries are likely to have their price caps lifted. This has the potential to introduce massive externalities for existing innocent third parties. Removal of price caps also raises the issue of differential pricing by existing registries. Even if restrictions on differential pricing are introduced in the live periods, substantial economic impacts can occur during sunrise launches, increasing the magnitude of these externalities. *(Tattersfield)*

<u>Response and Analysis</u>

We do not see the relevance to new gTLDs of the prices set for U.S. toll-free telephone services.

Whether existing price caps will be removed is a legal question turning on the interpretation of the registry agreements. The .com contract states "ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry

Operator for disparate treatment unless justified by substantial and reasonable cause." We have not attempted to offer a legal interpretation of "substantial and reasonable cause."

I. ONE-SIZE-FITS-ALL APPROACH.

Comment Summaries

It is clear that applications for new gTLDs are likely to be clustered around several distinct purposes; however, by continuing to adopt a one-size-fits-all approach for all new TLDs, ICANN is missing a huge opportunity to shape the proposed introduction of new gTLDs for the public interest. Without categorization of new gTLDs, the new gTLD framework has to be far more constrained to cover for eventualities many of which have no bearing on all but one category and therefore introduce needless regulation and complexity for other categories. *(Tattersfield)*

In the current economic downturn, ICANN should be encouraging and facilitating new TLDs that address new market segments, economic and social niches, underserved languages and local regional identifiers. To achieve this, the one-size-fits-all approach and related financial charges are inappropriate. Also, a realistic business threshold needs to be established for registry-registrar separation. *(Wilkinson)*

Response and Analysis

The *Economic Framework* allows for the possibility that costs and benefits will differ by gTLD or by category of gTLD, and it does not adopt a one-size-fits-all approach.

J. THE SOCIAL COSTS OF CREATING PRIVATE MONOPOLIES.

Comment Summary

If corporate brands to the right of the dot enjoy competitive advantage then generic names to the right of the dot will come to enjoy a similar branding advantage. Generic names such as .news and .shop will be seen as superior and their existence will allow the creation of a series of individual worldwide monopolies awarded primarily for the benefit of the most economically advantaged. Very few gTLDs will compete with each other but will rather provide a monopoly advantage to single entities (and mixed entities) to compete with businesses operating from the second level in existing open generic gTLDs like .com. As a case study, the .jobs registry's request to amend its ICANN contract to allow registering of generic names (*e.g.,* engineering.jobs) raises serious questions about the ethics of allowing ICANN to provide its own contracted parties with advantage in their competition with all other entities in their industry simply because of their contractual arrangements with ICANN. Awarding a generic gTLD in any industry to an applicant based in or controlled by someone in that same industry is game changing compared with the current system which allows numerous individual entities to compete equitably in the second level of open gTLDs and ccTLDs. Trademark law does not allow this advantage to be conferred nor should ICANN. *(Tattersfield)*

Response and Analysis

The *Economic Framework* is broad enough to account for the social costs of monopolies. We also note that, in principle, there might be many different competing job sites with gTLDs such as .jobs, .hire, and .work. Experience with second-level domain names is interesting in this regard: jobs.com is not currently the largest job site. The top three job sites by Alexa ranking are indeed.com, careerbuilder.com, and monster.com, and jobs.com ranks 16th in user traffic among sites devoted to "business employment."[4]

K. AUCTIONS AND THE NET SOCIAL BENEFIT CONCEPT.

Comment Summary

Would the staff provide a basis for reconciling the default auction mechanism currently contained in the DAG with the net social benefit concept set forth in the economic report? *(Palage)*

Response and Analysis

Auctions are proposed for situations in which multiple entities apply for delegation of a single new gTLD. To the extent that the competing proposals give rise to comparable levels of external costs and benefits, then an auction mechanism—which can be expected to delegate to the entity with the highest private value of the new gTLD—will lead to delegation to the entity whose proposal would create the highest net social value from the new gTLD.

IV. SUPPORT FOR THE APPROACH OF THE *ECONOMIC FRAMEWORK*

We summarize below comments that expressed support for portions of the *Economic Framework*, in whole or in part.

Comment Summaries

Asociacion PuntoGal agrees with the proposal to structure ICANN's approval process to favor applications which offer positive social benefits. New gTLDs should benefit Internet users and the Internet itself as a social tool. (*Asociacion PuntoGal).*

Roussos agrees with the *Economic Framework*'s statement about promoting gTLDs with high net social benefits. To assess net social benefits, ICANN would have to dig deeper into the business plans of new gTLDs. Appropriate mechanisms are needed to spur social benefits (*e.g.,* innovation and leveling the competitive playing field).

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4 Alexa, Search of top sites for "business employment," *available at* http://www.alexa.com/topsites/category/Top/Business/Employment, *site visited* February 21, 2011.

- There will likely not be any direct competition to .com by one sole TLD. However, new TLDs will bring significant value to specialized communities.
- New business models could also expand the domain space and bring significant social benefits.
- Some new TLDs will lower search costs through improved technologies and methodologies.
- The main issue that should be addressed is whether new gTLDs create more social benefits in the aggregate, taking into consideration any social harm in the equation (*e.g.,* user confusion and trademark abuse). *(Roussos)*

The *Economic Framework*'s formulae support a proposal of two basic categories of new gTLDs: gTLDs with private benefits only and gTLDs which bring social benefit, something which the At-Large Advisory Committee has been emphasizing for a long time. *(Crepin-Leblond)*

The *Economic Framework* fundamentally recognizes the inability to accurately predict costs and benefits for internet innovation. This is why ICANN wisely included in its new TLD strategy a focus on mitigation mechanisms for potential harms, none of which are required in current gTLDs. These mechanisms will make new TLDs safer places for consumers than our current domain environment. *(Tindal)*

The *Economic Framework* effectively challenges ICANN's "open entry" approach to new gTLD applications, which if implemented would result in an abdication of ICANN's public interest obligations. The report's identification of the most likely sources of potential benefits from creating new gTLDs leads to the point that ICANN can best carry out its responsibilities by giving preferences to certain categories of applications (*e.g.,* community applications, IDN TLDs). The report also recommends that ICANN exercise judgment in order to maximize net social benefits and minimize negative net social impacts from new gTLDs and recommends studies (*e.g.,* on the potential for consumer confusion, on external costs imposed by new gTLDs on third parties such as rights owners) to aid in achieving this goal. ICANN should look to the *Economic Framework* as the main roadmap for the path ahead, giving top priority to analyzing the expected costs and benefits of various types of new gTLDs and then focusing on those types that offer the greatest promise. Whether to take up this roadmap now is the most important choice the Board faces when it meets on September 24 on the topic of new gTLDs. *(COA)*

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COMMENTS ON ISSUES OUTSIDE THE SCOPE OF THE ECONOMIC FRAMEWORK

Some comments submitted regarding the Economic Framework concerned topics that fall outside the assignment of developing a framework in which to assess the costs and benefits of delegating additional gTLDs.

I. THERE SHOULD BE NO SECONDARY MARKET FOR DOMAIN NAMES.

Domain names that have been discontinued, abandoned or renounced should revert to the registry and return to the pool of available names. If there is a rent to be had in re-selling a name, it should revert to the registry and to ICANN and not to any intermediary or speculator in domain names. A secondary market in names protected under trademark law would be illegitimate. Consequently, the current secondary market is trading in names, words and strings in the public domain, which is not appropriate. *(Wilkinson)*

A. BASE REGISTRY FEE INCREASE.

What is the economic basis for ICANN's 500% increase in the base registry fee in the new template registry agreement? *(Palage)*

B. TRANSPARENCY AND PUBLIC INPUT

ICANN has already decided what it is going to do and is only seeking to "validate" those plans. A proper study would find that ICANN's new TLD plans are against the public interest. A truly independent study is needed with economists not hand-picked by ICANN. There should be multiple independent research teams, preferably university researchers producing peer-reviewed academic research, selected by NTIA, DOC, DOJ and the GAC. *(Kirikos)*

The INTA Internet Committee is deeply concerned with ICANN's lack of transparency and community involvement in addressing the overarching issue of a lack of economic foundation in the new gTLD program. Posting pre-arranged material for public comment without adequate public input into the process for the economic analysis does not satisfy ICANN's obligations to act in the public interest and this approach has inevitably produced flawed results. *(INTA Internet Committee)*

C. TIMING OF THE ICANN PROCESS

CADNA agrees with the report's emphasis on caution and prudence by ICANN before moving forward with the new gTLD rollout. This 64-page analysis could not fully address all the issues surrounding new gTLDs and therefore ICANN should slow the process down until it can ensure that the costs of new gTLDs to registrants and Internet users do not surpass the benefits. *(CADNA)*

Nothing in the report suggests halting the TLD process and much in the report suggests significant consumer benefit could accrue from new TLDs in the form of more choice, lower prices and increased services. ICANN should move forward with opening the window and letting the consumer be the judge. *(Schindler)*

D. Fundamental economic issues still unaddressed.

The latest economic report is an improvement over the 2009 Carlton reports but still has not touched on fundamental issues and concerns which are likely to bedevil the proposed GNSO new gTLD process if there is an attempt to implement it in its current form. The following structural economic concerns should be addressed in the second part of the report:

E. Length of contract terms for registries.

The GNSO approach is to award gTLDs to registries in perpetuity and then to try to generate competition by awarding new additional gTLDs to competing registries. There are serious questions about the likely success of this approach given first mover advantage and other factors (and potential monopoly implications) especially when compared with the much less complex approach involving fixed term, competitive tendering of any new and existing registries. Many of these concerns stem from a failure to clearly and publicly articulate the fundamental principles of domain ownership and registry function. *(Tattersfield)*

F. Economic function of a registry.

Is a registry more like a librarian or more like a book business? The market will recognize the librarian model even if ICANN does not, ensuring that the actual work of registrations will in the main be contracted out to a handful of specialist registry companies like VeriSign, Afilias and NeuStar. Part of the process will almost certainly lead to further consolidation (e.g., VeriSign acquisition of .name and Afilias acquisition of .mobi). Rather than introducing competition, the GNSO proposal could be more akin to licensing contracted parties rights to sell more product lines. *(Tattersfield)*