December 20, 2010

Mr. Rod Beckstrom, President
Mr. Peter Dengate-Thrush, Chairman
ICANN
4676 Admiralty Way, Suite 330
Marina Del Ray, California 90292-6601

VIA EMAIL ONLY

Re: ICANN Board Resolution Nos. 2010.03.12.17 and 2010.03.12.18 on Vertical Integration dated March 12, 2010.

Dear Sirs:

We write to highlight the disturbing and inconsistent procedural precedent the ICANN Board set with its recent resolution regarding vertical integration. The many comments we have received clearly indicate that this precedent threatens ICANN's remaining credibility in the global business community the IPC represents, including multinational Fortune 500 companies, many tens of thousands of small businesses, individuals around the world, and, all those trade mark owners in between. We encourage ICANN to avoid continuing this precedent as it resolves the remaining overarching concerns with the new gTLD program. To avoid any doubt, we do not intend this letter to address the ultimate substantive outcome of the Board's most recent action on the issue of vertical integration.

You both attended the breakfast for the ICANN Board hosted by the Commercial Stakeholders' Group ("CSG") during the 38th ICANN Meeting. During his address to the CSG, Mr. Dengate-Thrush specifically instructed members of the Internet Service and Connectivity Providers Constituency ("ISPCP"), Business Constituency ("BC") and the Intellectual Property Constituency ("IPC") not to communicate with the Board on policy issues. Specifically, he stated communications to effectuate and/or influence policy issues should be focused on the Generic Names Supporting Organization ("GNSO") Council and clarified that he and the ICANN Board believed that, under the ICANN bylaws, the ICANN Board is authorized to only implement the policies developed by the GNSO. In short, he emphatically stated that the ICANN Board does not "make policy," but merely implements policy developed in the bottom up, multi-stakeholder ICANN model.

Further, in subsequent conversations with ISPCP, BC and IPC members and at a presentation to the European Internet Foundation while in Brussels, Mr. Dengate-Thrush repeatedly stated that the work on Rights Protection Mechanisms ("RPMs") for new gTLDs had gone through this process, and that the ICANN Board had fulfilled its limited

mandate by listening closely to the community and merely implementing the RPMs formulated by the Implementation Recommendation Team (as later modified by the Special Trademark Issues working group).

Notwithstanding the asserted complete reliance of the ICANN Board on its alleged limited mandate of merely implementing recommendations developed in the bottom up, consensus based, multi-stakeholder model in the context of RPMs, the Board's actions on the vertical integration issue contradict that claimed reliance. The ICANN Board effectively ignored the report of the Vertical Integration Working Group, its own resolution passed during the Nairobi meeting, and the staff implementation proposal embodied in DAG4. Its about-face on this issue has never been adequately explained, including in the minutes of the unannounced November 5 board meeting at which the decision was taken.

This abrupt foray into policy development by the Board has deepened the mistrust of ICANN in the portion of the business community that the IPC represents. Specifically, many in our community are asking why the ICANN Board insisted on following its alleged mandate regarding solutions to well-recognized and documented abuses of the DNS, yet completely disregarded that very mandate when it ignored the lack of community consensus on vertical integration.

Many in the intellectual property community now question and distrust ICANN's commitment to manage the DNS in a manner that is equitable to all Internet stakeholders, not just its contracted business partners such as Registrars and Registries. This questioning and distrust directly result from the ICANN Board's inconsistency in policy development process and implementation and its history of ignoring hundreds of public comments and eleven separate Government Advisory Council ("GAC") communiqués on the numerous inadequacies of rights protection mechanisms in the Applicant Guidebook

As representatives of the IPC have repeatedly stated, this lack of credibility impacts ICANN's very legitimacy to the broader community of those impacted by ICANN's policies. ICANN must rectify this fundamental flaw if ICANN is to maintain any semblance of independence. We raise these concerns in the hope that the Board will act more responsibly in future work with the GAC to resolve, among other issues, the overarching concerns of consumer protection and the economic and market impact and analysis of new gTLDs. These issues have been consistently identified by intellectual property owners, global businesses and the GAC as issues requiring resolution before new gTLDs can be introduced.

In closing, the IPC welcomes the Board's recent renewed commitment to provide, in the words of its resolution adopted at Cartagena, "a thorough and reasoned explanation of ICANN decisions… including the sources of data and information on which ICANN

relied." This commitment has not been fulfilled in the case of the vertical integration decision. .

If you or any member of the ICANN Board wishes to discuss this matter with me or other representatives of the IPC, please do not hesitate to contact me directly.

Thank you in advance for your consideration.

Very truly yours,

THE INTELLECTUAL PROPERTY CONSTITUENCY

By: J. Scott Evans, President

Cc: Heather Dryden, Chair, Governmental Advisory Committee