

International Trademark Association

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INTA Involvement with ICANN

- INTA has supported a multi-stakeholder, private sector led, bottom-up policy development model for DNS technical coordination that acts for the benefit of global Internet users
- Active in ICANN; founding member of the Intellectual Property Constituency (IPC) of the Generic Names Supporting Organization (GNSO)
- Active participants in ICANN Board Meetings
- More than 100 submissions to ICANN over the years, including Draft Applicant Guidebook 1,2,3,4 and purported final Applicant Guidebook
- Not opposed in theory to the orderly expansion of the number of gTLDs, but such expansion “must not be unlimited, but must be responsible, deliberate and justified.”



Two Roads

- Road 1: the scientific method -- a method of inquiry based on gathering observable, empirical and measurable evidence subject to specific principles of reasoning. A scientific method consists of the collection of data through observation and experimentation, and the formulation and testing of hypotheses
- Road 2: the a priori method – ICANN began with a conclusion: we want an unlimited expansion of gTLDs and then, having itself identified four “over-arching” issues, worked backwards to try to find sufficient justification and to demonstrate the lack of foreseeable harm so that the gTLD expansion could go forward

Foreseeable Harm

- Significant consumer confusion
- Redirection of consumers to undesirable sites
- Threats to public health and safety
- Propagation of malicious software
- Increase in business costs due to defensive registrations, Internet monitoring, legal actions and harm from misappropriations that are not stopped, e.g. lost profits
- Tarnishment of brands and damage to the reputation of legitimate businesses

ICANN Governance

- Board of Directors has never adequately reflected private sector interests
- Generic names Supporting Organization (GNSO)
 - Six constituencies: Registrars, Registries, IPC, Business, Internet Service Providers, Non-Commercial
 - Restructuring gave double votes to Registrars and Registries
 - Dilution of the other interests

Over-Arching Issues

- Trademark protection
- Potential for malicious conduct
- Internet security and stability
- Economic study to address the demand for top-level domains and the positive and negative costs associated with an unlimited expansion of gTLDs

Trademark Protection

- Formation of Implementation Recommendation Team (IRT)
- IRT Recommendations
 - Uniform Rapid Suspension System (URS)
 - Trademark Clearing House (CH)
 - Post Delegation Dispute Resolution (PDRP)
 - Globally Protected Marks List

Economic Study

- ICANN Board called for economic study on October 18, 2006, to address a variety of important issues
- On December 18, 2008, the US DOC wrote: “ICANN needs to complete this economic study and the results should be considered by the community before new gTLDs are introduced.”
- ICANN responded with an inadequate economic report that was widely and fairly criticized by stakeholders

Economic Study

- Phase I of the current effort issued in June of 2010
- INTA comments:
 - “[m]any of the potential benefits of new gTLDs cited in the analysis are speculative in nature, and are not based on analysis of the previous introductions of new gTLDs by ICANN in 2000 and 2003”
 - “It is essential that a market study and cost-benefit analysis be undertaken to determine the positive and negative impacts that the introduction of new gTLDs will have on the public, including trademark owners and consumers, in order to determine whether such new gTLDs should be introduced in the first place, and to determine the scope, manner, and pace of any introduction of new gTLDs”
- “Phase II Report: Case Studies” issued in December, 2010 and “Prepared for ICANN”

Alleged Benefits of New gTLDs are Non-Existent or Speculative

- New undifferentiated gTLDs are unlikely to improve competition
- Name scarcity does not exist
- “Psychic Benefits” from IDNs may benefit users but are speculative
- Benefits from restricting domain name function are speculative
- Benefits from restricting domain name ownership are speculative
- “Psychic Benefits” from domain name content restrictions are speculative and do not require the adoption of new top level domains

Costs to Trademark Owners and the Public of New gTLDs are Indisputable

- Misappropriation of intellectual property
- Domain navigation dilution
- Harm to Internet users from cybersquatting
- Reduced investment in IP
- Losses from failed gTLDs

ICANN Conclusion

- Board Meeting January 25, 2011
 - “Whereas, all economic studies have confirmed the overall benefits of continuing to open the domain name space, in terms of enabling innovation, increasing choice and fostering a healthier competitive environment”
 - “Resolved, the Board will not commission any further economic studies on new gTLDs in advance of making its decision on the launch of the new gTLD program as the Board has determined that no further commissioned economic studies could better inform the Board’s decision.”

Government Advisory Committee (GAC)

- GAC (Heather Dryden) to Peter Dengate Thrush, September 23, 2010
- GAC (Heather Dryden) to Peter Dengate Thrush, November 22, 2010
- Peter Dengate Thrush to GAC (Heather Dryden), November 23, 2010
- GAC Communiqué – Cartagena, December 9, 2010

GAC Communiqué

- Section III New gTLDs -- Whereas Clauses
 - “The GAC’s continuing concerns regarding the proposed approach to the introduction of new gTLDs and each version of the DAG have been repeatedly communicated to the Board”
 - “The GAC . . . remains very concerned that many of the original public policy issues raised remain unresolved in the latest version of the DAG”

GAC Communiqué

- Section III New gTLDs -- Whereas Clauses
 - “The most recent letter of the 23rd November from the Chair of the ICANN Board to the Chair of the GAC confirms that many of the concerns of the GAC remain unresolved and, in addition, the GAC notes that the Board has decided to explicitly reject GAC advice in several specific cases”
 - “The GAC is also mindful that major stakeholder groups within ICANN (such as the Business and Intellectual Property constituencies) do not believe the most recent version of the DAG reflects their advice and concerns.”

GAC Advice to ICANN

- Don't approve the DAG in Cartagena
- The intent of ICANN to approve current version of DAG on the day the public comment period expires and the posting of the economic study raise questions regarding ICANN's ability to take public comments into account
- Where is the justification for the Board's decision on vertical integration
- GAC will provide a "scorecard" of open issues (twelve of them, including protection of rights owners and consumers)
- The GAC assumes from the November 23 letter that ICANN is invoking the provisions of its Bylaws to seek a mutually acceptable resolution of the differences between ICANN and the GAC

ICANN Response

- **Board Meeting of January 25, 2011**
 - **Resolved** (2011.01.25.24), the ICANN Board hereby determines that it intends to progress toward launching the New gTLD Program, as close as practically possible to the form as set out in the Proposed Final Applicant Guidebook.
 - **Resolved** (2011.01.25.25), the Board hereby determines to take actions on the Topics listed above that, at present, are not consistent with GAC advice.
 - **Resolved** (2011.01.25.26), the ICANN Board hereby triggers the consultation as provided for in ICANN Bylaws



Hedgehog's Point of View

- Consider:
 - Economic study
 - IRT recommendations
 - GAC comments
 - US Department of Commerce comments
 - Studies on the stability of the Internet and the recent introduction of IDNs
 - INTA comments
- ICANN's proposal for the unlimited expansion of gTLDs is a bad idea or, at best, an idea that has not been justified, and which was not the ending point in an orderly decision-making process but the beginning point of a fatally flawed process

Two Upcoming Events

- ICANN Board Meeting with the GAC in Brussels – February 28–March 1
- ICANN Meeting in San Francisco – March 13-18 with the Board of Directors Meeting on March 18

RONALD
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JUSTICE FOR
HEDGEHOGS

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Thank you