

New gTLD Decision Points, ICANN Cartagena Recap, and Recent ICANN Board Resolutions

ICANN and the New Wild West of the Internet
The McCarthy Institute Goes to Redmond
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New gTLD Decision Points

- What role – applicant, objector, registrant?
- Who decides what role?
- How is decision made?

New gTLD Decision Points - Applicant

- What string (given character requirements)?
 - If generic term, join with any competitor?
 - If .brand, which one?
- What type of application?
- Registration open or restricted?
- How much willing to spend?

New gTLD Decision Points - Applicant

- What entity will be applicant? Where organized?
- Operate or retain back-end registry service provider?
- What rules and policies?
- How deal with requirements that use only ICANN-accredited registrars and those registrars must be given equal access to registry?
- If .brand, any third party with rights to launch objection?
- Is “permanent string preclusion” important?

New gTLD Decision Points - Objector

- What strings likely to be of concern and who monitors?
- Are evidence and documents readily available?
- Join with other objectors?
- If bypass objection process in favor of courts, where litigate?

New gTLD Decision Points - Registrant

- How adjust current registration and enforcement strategies?
- What marks placed in Clearinghouse?
- Prepared to defend decision not to apply?

What Didn't Happen In Cartagena?

- ICANN Board did not approve Proposed Final Applicant Guidebook (“PAG”) as final and did not set new gTLD application round launch date

What Did Happen in Cartagena?

- Government Advisory Committee (GAC) flexed its muscle
- ICANN Board resolution effectively closed further community work on trademark protection, root-scaling, and mitigating malicious conduct
 - left open further change through GAC advice

Setting the Stage

- Many business stakeholders objected to short comment period on PAG that ended on last day of Cartagena meeting
- ICANN released economic study – and did not open public comment period
- December 2 letter from NTIA to ICANN about ICANN failure to, with regard to new gTLD program, meet obligation in Affirmation of Commitments to provide “a thorough and reasoned explanation of decisions taken, the rationale thereof, and the sources of data and information on which ICANN relied”.

GAC Flexed Its Muscle: Meeting with Board

- UK: “We’re still not confident that the benefits to be derived from this [introduction of new gTLDs] are going to outweigh the costs. This is still a fundamental problem we have. . . We’re not there as regards to rights protection. The rights protection mechanisms are not effective enough. . . . You really ought to reconsider signing off on the Guidebook this week. . . . You’re not there.”
- Canada: “When you hear that the support [for introducing new gTLDs] is coming mainly from the registries and registrars who have a particular relationship to this organization and to the impacts that would follow from introducing the new gTLD program, I think that’s really given colleagues around this table pause.”

GAC Flexed Its Muscle: Communiqué

- GAC considers that there are outstanding issues regarding current procedure
 - Board intent to approve PAG on day comment period closes
 - Posting economic study the Friday before the meeting started
 - Absence of detailed explanation and rationale for decisions taken to date on new gTLD program
- GAC will provide Board with “scorecard” of issues which GAC feels are still outstanding and require additional discussion (“GAC Topics”)
 - protection of rights owners and consumer protection issues
 - market and economic impacts
 - registry-registrar separation
 - post-delegation disputes with governments
 - use and protection of geographical names

ICANN Board Resolution on New gTLDs

- “Whereas, ICANN considers that the solutions developed to address the overarching issues of trademark protection, mitigating malicious conduct, and root-zone scaling substantially reflect the negotiated position of the ICANN community, but ICANN will take into account public comment including the advice of GAC”
 - December 10, 2010

ICANN Board Resolution on New gTLDs – cont'd

- Referenced planned intercessional meeting with GAC to address outstanding GAC concerns
 - scheduled for February 28-March 1 in Brussels
- Directed staff to revise Applicant Guidebook as appropriate based on comments received during public comment period
- Committed to “provide a thorough and reasoned explanation of ICANN decisions, the rationale thereof and the sources of data and information on which ICANN relied.”

Six Weeks Later . . .

- January 25 Board resolutions: Board
 - determines that it intends to progress towards new gTLD launch “as close as practically possible” to PAG form
 - determines to take actions on GAC Topics that are, at present, not consistent with GAC advice
 - triggers consultation required under by-laws when Board “determines to take an action that is not consistent with” GAC advice
 - scheduled for Thursday, March 17

Recent Resolutions Raise Important Questions

- If intend to progress towards new gTLD launch “as close as practically possible” to PAG form, to what extent are public comments really being taken into account (as directed by December 10 resolution)?
- If primary reason for the GAC-Board intercessional meeting is to communicate GAC’s final advice on the GAC Topics, how can the Board “determine[] to take an action that is not consistent with GAC advice” before it’s even received the advice?

Recent Resolutions Raise Important Questions (cont'd)

- By-law consultation requires that Board and GAC “try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.”
 - Is Board acting in good faith by scheduling consultation for one day that is the day before the Board meeting?
 - Is consultation pretext to clear way for Board to approve PAG and set launch date for new gTLD application round?
- Will governments decide that the ICANN model does not work and can no longer be defended?

Questions?

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