

Association of National Advertisers Challenges ICANN Authority to Establish New Top Level Domains

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Options for Clients Facing the Prospect of Hundreds of New Top Level Domains

In a [letter](#) to the Internet Corporation for Assigned Names and Numbers ("ICANN"), the Association of National Advertisers ("ANA") detailed major flaws in the proposed ICANN program (Program) that would permit applicants to claim virtually any word, generic or branded, as Internet top-level domains ("TLDs") - the word to the right of the "dot" in an Internet address, e.g., .com, .net, or .org. In addition to the letter to ICANN, on July 29, 2011, the ANA filed [comments](#) with National Telecommunications & Information Administration (U.S. Department of Commerce) regarding ICANN's administration of the root server system for the Internet.

Fatally Flawed Program

Reed Smith, on behalf of ANA, is leading an initiative, with the support of other associations and organizations, to put ICANN on notice that the Program, which will permit up to 1,000 new TLDs, will be economically disastrous and is unjustified by the reports and experts relied upon by ICANN. ICANN anticipates it will add at least 200-300 new TLDs every year with an annual cap of up to 1,000 new TLDs in every year thereafter. The letter sets forth in detail that:

- ICANN failed to reach a consensus decision as required by its contract with the U.S. Department of Commerce and its Code of Conduct;
- The benefits espoused by ICANN - increased competition, innovation and more TLDs to address scarcity - were by their own experts' opinions speculative;
- The introduction in recent years of TLDs, e.g., .firm, .biz, .aero, .coop, .museum, etc. are the best evidence of the fallacy of ICANN's arguments for more TLDs. In truth, the TLDs introduced in the past

few years have fallen far short of expectations and added little competition or innovation to the marketplace;

- There is no scarcity of TLDs. Indeed, TLDs themselves are rarely used to locate a site. Instead, users go to directories and search engines, e.g., Google, Bing, Yahoo!, and type in a company's name. In nanoseconds, without having to remember any address, they are taken to a link to the company's site. While there may have been a scarcity of desired names when only .com, .net, and .org were available, search engine growth and technology supplanted the need for more TLDs;
- The cost to brands of the Program is staggering. By one estimate, it will cost a company \$2 million per brand over the next ten years. Multiply that by the hundreds of brands owned by global marketers and the cost is enormous and far outweighs any speculative benefits that might accrue if the Program is launched; and
- In addition to the financial costs, other risks include a less stable ecosystem where cyber squatters, hackers, privacy predators, ambush marketers, trademark infringers, trademark diluters, and more will ply their mischief, creating intangible losses that combined with the tangible financial costs will dwarf any justifications for the Program.

Objective

At a minimum, postponement of the application process and implementation of the Program until a more thorough and balanced evaluation can be undertaken or, if necessary permanently prevent implementation of the Program, noting that the costs, regardless of how the Program is revised, outweigh any speculative benefits.

Options for Brands

Given the uncertainty of the outcome as ICANN moves forward without due regard for brands, companies must also explore the options available to them if new TLD applications begin to flood the marketplace in 2012. Regrettably, this means companies may need to incur significant costs without knowing if the ICANN plan will see the light of day, but not having a plan is ill advised. As we see it, the options are as follows:

- Do nothing and react to changes in the marketplace in the same manner a company currently behaves when confronted with potential cybersquatting, trademark dilution or infringement, and other potential injury to brand equity.

- Individually file applications for new TLDs that correspond with the brands a company needs most to protect.
- Join with an industry association and apply for ownership of a generic TLD, e.g., .cars, and establish an infrastructure to administer the operations (or outsource the operations to a third party). Some industries have already begun to consider this option.

Obviously, each of these options poses challenges and is expensive. That is why ANA is vigorously supporting efforts to postpone the adoption of the ICANN Program until the concerns of brands are properly considered, even if that means leaving the current system as is. But clients need to be prepared for the worst.

For the ANA press release, click [here](#).

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