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New Domain Name Registry Application Period Now Open Though Critics Urge Delay

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On Thursday, Jan. 12, 2012, the Internet Corporation for Assigned Names and Numbers (ICANN) began accepting applications from private- and public-sector entities and organizations to obtain nearly any combination of words as their own generic top-level domain name (gTLD) registry. ICANN will only accept applications for new gTLD registries for a 90-day period, concluding on April 12, 2012. The plan will drastically increase the number of available gTLDs from the currently available 22 gTLDs (e.g., .com, .net, and .org) to potentially thousands of gTLDs (e.g., .clothing, .sports, or .yourbrand). With the opening of the application period, public and private sector outcry and dissent concerning the program has started to bubble up to mainstream consciousness.

In particular, the U.S. Department of Commerce has been reviewing the pending expansion after recently obtaining input from numerous sectors of industry regarding the potential shortcomings of the program. In November 2011, an alliance of 87 business groups, organizations and companies wrote a letter to Commerce Secretary John Bryson requesting that the Department urge ICANN to postpone the opening of the gTLD expansion application period. In light of record high levels of domain name dispute filings in 2010, the coalition believes that ICANN should delay implementing the expansion until it can confidently demonstrate that the plan will enhance consumer trust, boost Internet security, create economic benefits across many sectors and show that the benefits outweigh the costs of the expansion. The coalition is led by the Association of National Advertisers and the letter's signatories include the Intellectual Property Owners Association and the American Intellectual Property Law Association.

In addition, last month, U.S. Representative Bob Goodlatte, Chairman of the House Judiciary Committee's Subcommittee on Intellectual Property, Competition and the Internet, along with Representative Howard Berman, ranking member of the House Committee on Foreign Affairs, wrote to the Department of Commerce and expressed serious concerns about the dramatic expansion of gTLDs and urged the Department to encourage ICANN to undertake additional evaluation and review before initiating the robust expansion. They relayed concerns that brand owners will be forced to assume significant legal expenses to monitor and protect their trademarks and to obtain defensive registrations in light of an unprecedented number of new top-level domain names. The Representatives argued that consumers will be harmed as many of the legal expenses will be passed on to consumers in the form of higher prices. In addition, they are concerned that, as a result of the expansion, counterfeiting and piracy rates will continue to rise. They encouraged the Department of Commerce to delay the rollout until a sufficient analysis and evaluation is conducted, and until the Department is satisfied the benefits of the rollout exceed the costs and risks to consumers and businesses and to Internet safety and security.

Four commissioners of the Federal Trade Commission (FTC) also sent a letter to ICANN in December urging the delay of the expansion and voicing consumer protection concerns regarding the new gTLDs. The FTC reminded ICANN that ICANN planned to ensure that consumer protection and malicious abuse issues would be adequately addressed. The FTC is particularly worried that the rapid and large-scale expansion will lead to a significant rise in the use of false Whois (domain name ownership) information by domain name registrants, slowing down the FTC's ability to identify and locate individuals behind fraudulent or counterfeit Web sites. The FTC has proposed a few immediate steps, including the implementation of a gTLD pilot program that would substantially reduce the number of gTLDs accepted in the first application round, and would require ICANN to hire additional compliance



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staff and impose registrant verification requirements.

Then three weeks ago, just before the Jan. 12 opening of the ICANN application process, a Commerce Department official, Lawrence Strickling, wrote to ICANN regarding some of these concerns. In his letter, Mr. Strickling recognized that the expansion has come after years of preparation and commentary from many stakeholders. However, Mr. Strickling stated that after meeting with industry stakeholders, there is tremendous concern about the expansion that could jeopardize its success. The Commerce Department requested that ICANN take three steps. First, develop a strategy to minimize defensive registrations so that a large number of organizations and entities, concerned about cybersquatting, do not feel forced to obtain defensive gTLD registries (e.g., .theirbrands) without any interest in actually operating a registry. Second, determine whether there is a need to phase in new gTLDs after the application window closes (on April 12th) and evaluate whether additional protection measures are necessary. And, third, better engage with and educate stakeholders as to the purpose and scope of the domain name expansion and available protective resources.

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