

Comments of the Internet Committee of the International Trademark Association (INTA) on the ICANN New gTLDs Communication Plan

July 15, 2011

Introduction

The Internet Committee of the International Trademark Association (INTA) welcomes the opportunity to present its comments on ICANN’s proposed “New gTLDs Communication Plan.” INTA is a not-for-profit membership association dedicated to the support and advancement of trademarks and related intellectual property as elements of fair and effective commerce. Today, 5,700 trademark owners, professionals and academics from more than 190 countries make INTA an influential network of powerful brands. INTA has been heavily involved in the deliberations surrounding the development and implementation of ICANN’s new gTLD program.

Comments

While the Internet Committee supports ICANN’s efforts to educate the public about the new gTLD program, we propose to improve the communication plan in several respects.

At the outset, a problem is created by the tension between the desire to create “buzz” about the new gTLDs and the promise that ICANN will be “neutral” in discussing them. Comparing ICANN to a sportscaster who is neutral but loves the sport misses the mark because ICANN is no mere observer. Rather, as the communication plan acknowledges, it is a steward with a direct financial and political stake in the outcome of the game.

The tension can be seen in the proposal to direct the initial campaign to “marketing minded potential applicants” rather than end-users because the new gTLDs “must first be available before end-users can reap the benefits.” (Plan p. 3). Presentations to the audience most disposed to invest in new gTLDs makes financial sense for ICANN, but hardly exhibits neutrality or support for the premise that new gTLDs are being launched to benefit consumers – e.g., the end-user. Absent are mentions of the *obligations* that accompany operation of a new gTLD, such as the requirement to comply with various measures designed to protect consumers from confusion as to the affiliation or approval of any domain name by recognized trademark owners. Discussions around obligations tend to diminish “buzz,” but are necessary to ensure that a balanced and neutral communications plan is carried out.

The Committee is also concerned by the apparent methods ICANN plans to use to determine what information will be presented to particular audiences. For example, p. 4 of the plan suggests that only trademark attorneys should be presented information about trademark protections. This overlooks the extent to which trademark protections may be of interest to audiences other than trademark attorneys. Marketing professionals, who are charged with both developing and protecting their brands in a cost-effective manner, might well be interested in information about available trademark protections. Indeed, when making a decision as to whether to apply or not, a marketing professional would benefit from knowing that they could instead object to an application that may cause confusion with their company name or brand. Small business owners and end-user would also benefit from communication about the various new trademark protections, so that they do not feel the only choice is a “mad dash” to defensively register domains in new gTLDs. The fact that ICANN’s plan seems to pigeonhole trademark rights protection mechanisms as a topic of interest only to trademark attorneys further undermines a neutral message. After all, potential applicants and end-users of new gTLDs should know of the obligations and limitations on new gTLDs, not just the potential for innovation.

As is evident, the Committee believes that some of the “Key Messages” of the communications plan should be revised. For instance, statement 3 that new gTLDs are a platform for innovation is too strong a declaration in light of the economic study¹, and should be toned down to reflect a potential for innovation only. Whether innovation actually occurs is yet to be seen. Statements 5 and 6 concerning the development of the new gTLD program itself appear misplaced, and are also debatable statements that many stakeholders do not agree with. Since these statements deal with the process by which the gTLD program was designed, not the issues raised by gTLDs now being implemented, Statements 5 and 6 in the communication plan should be deleted.

Conclusion

We hope these comments help ICANN with developing a fair, balanced and neutral communications plan that can truly inform and prepare the Internet community for the coming introduction of new gTLDs. To prepare a communications plan that simply promotes would be a great disservice and contrary to what ICANN has promised to deliver.

¹ See <http://www.icann.org/en/topics/new-gtlds/phase-two-economic-considerations-03dec10-en.pdf>

Thank you for considering our views on these important issues. Should you have any questions regarding our submission, please contact INTA's External Relations Manager, Claudio DiGangi at: cdigangi@inta.org

About INTA & The Internet Committee

The International Trademark Association (INTA) is a more than 131-year-old global organization with members in over 190 countries. One of INTA's key goals is the promotion and protection of trademarks as a primary means for consumers to make informed choices regarding the products and services they purchase. During the last decade, INTA has served as a leading voice for trademark owners in the development of cyberspace, including as a founding member of ICANN's Intellectual Property Constituency (IPC).

INTA's Internet Committee is a group of over two hundred trademark owners and professionals from around the world charged with evaluating treaties, laws, regulations and procedures relating to domain name assignment, use of trademarks on the Internet, and unfair competition on the Internet, whose mission is to advance the balanced protection of trademarks on the Internet.