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Six Key Topics to Track During ICANN 51 in Los Angeles

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The fifty-first international meeting of the Internet Corporation for Assigned Names and Numbers (ICANN) formally commences on Monday, October 13, 2014, in Los Angeles, marking what will likely be the most well-attended North American ICANN meeting. As always, several high-profile topics have emerged amidst community discussions leading up to this meeting, all of which are relevant to registry operators, new generic top-level domain (gTLD) applicants and brand owners alike.

1. Two-Character Names and Geographic Names

Several ongoing initiatives continue to percolate within ICANN with respect to geographic names. First, more and more new gTLD registry operators, including .Brand TLD operators, are applying to release two-character domain names through the Registry Services Evaluation Process (RSEP), some even including names that coincide with country codes, such as CA.TLD or UK.TLD, in order to offer geo-targeted content to consumers. All such RSEP requests have effectively been placed on hold by ICANN pending community discussions with, and advice from, the Governmental Advisory Committee (GAC) in Los Angeles.

Second, the first test case RSEP has already been filed to release full geographic and territory names, such as CANADA.TLD or UNITED-KINGDOM.TLD, which has also garnered the attention of the GAC, and, unlike two-character names, explicitly necessitates that registry operators “reach agreement with the applicable government(s).” See ICANN, Registry Agreement, Specification Five, ¶ 4 (November 20, 2013).

Third, and lastly with respect to geographic names, the government of Argentina and its supporters continue to work on the “Argentina proposal” to “adopt procedures for blocking, at no cost and on demand of governments, public authorities or IGOs ... terms with national, cultural, geographic and religious significance,” including “regions of countries, regions of continents, sub-regions of countries, rivers, mountains, among others....” The GAC will hold another public session to discuss the Argentina proposal on October 15, 2014, where community representatives, if given the opportunity, will no doubt oppose the proposal because it lacks a valid legal basis and mischaracterizes international legal norms with respect to trademarks.

2. String Confusion Objection Review, Indirect Contention and Auctions

The ICANN New gTLD Program Committee is once again scheduled to discuss an envisaged “string confusion objection review mechanism,” which would effectively permit parties to appeal seemingly inconsistent independent panel determinations regarding

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strings that are too visually, aurally and connotatively confusingly similar to each other, such as .CAM and .COM or .CAR and .CARS, as well as potentially other singular and plural TLD variations. At the same time, ICANN recently released additional guidance on how auctions to settle indirect contention sets for new gTLDs will be administered, advising that auctions will continue so long as a “single ‘feasible set’” remains, meaning “single or multiple applications within a contention set that are not in ‘direct’ contention with one another.” Parties potentially affected by both the review mechanism, as well as indirect contention sets, will surely want added clarity from ICANN in Los Angeles.

3. Domain Name Collision Mitigation and Trademark Sunrise Protections

In response to community outcry regarding an inconsistent application of rights protection mechanisms to domains reserved on name collision lists, ICANN published several questions designed to fine-tune a practical solution to achieve trademark sunrise-type protection while dropping trademark claims notice requirements as a compromise. The matter presently rests in a public comment period, yet discussions will no doubt take place in Los Angeles regarding the various proposals on the table, including a joint comment between the Business Constituency, Intellectual Property Constituency and Registry Stakeholder Group, which recommends *inter alia* proactive notification to trademark holders prior to sunrise periods, and two potential sunrise paths, either mirroring original sunrise requirements, or launching two batched waves of sunrise period start dates with ten days advance notice from each registry regarding its intent to join a wave.

4. Internet Governance and Accountability Mechanisms

Turmoil abounds everywhere one looks within ICANN lately. First, the Generic Names Supporting Organization (GNSO) continues to undergo a structural and effectiveness assessment, and all Internet stakeholders are encouraged to participate in an ongoing survey [available on the ICANN website](#) and help in shaping the future viability, reliability and accountability of ICANN. Second, a multitude of initiatives have been established in recent months to dissect and tackle all key elements of the Internet Assigned Numbers Authority (IANA) stewardship transition from the United States National Telecommunications and Information Administration (NTIA). These various initiatives include a cross-community working group on Internet Governance, an IANA Transition Coordination Group (ICG), and pending public comments on enhancing ICANN accountability, as well as a forthcoming cross-community working group and a coordination group on “ICANN Accountability and Governance”—all of which will be active during ICANN 51 in Los Angeles.

5. Abusive Registry Operator Practices Targeting Brand Owners

Brand owners continue to observe, with growing disdain, abusive practices perpetrated by certain new gTLD registry operators, including *inter alia* allocation of domain names corresponding to famous trademarks prior to sunrise periods, extortionate dynamic pricing targeting famous trademarks in sunrise periods and premium names programs, and premium name allocation to monetization platforms affiliated with registry operators. While it remains important throughout ICANN 51 for brand owners to catalog and volunteer evidence establishing such abusive practices, it is equally important for registry operators to consciously adhere to both the letter and, most importantly, the spirit of trademark rights protection in the new gTLD program.

6. Planning for Subsequent New gTLD Rounds

When this advisory was written, only about 420 out of a remaining 1,220 new gTLDs had been delegated and introduced into the Internet. Yet, the GNSO is already eager to examine the initial new gTLD round and recommend improvements for subsequent rounds. Early recommendations of interest for new gTLD applicants and registry operators concern the various dispute resolution rules established for the 2012 application round, such as the string confusion and community objection procedures. In addition, recommendations of interest to brand owners include improvements to various trademark rights protection mechanisms and ancillary constructs, such as the Uniform Rapid Suspension System and Trademark Clearinghouse. As always within ICANN, these reviews are being performed on multiple concurrent tracks, including an ongoing GNSO “discussion group” on subsequent new gTLD rounds—which will convene again in Los Angeles and feed into a formal policy development process—as well as a review of the Trademark Clearinghouse that will begin in the first quarter of 2015, and reviews mandated by the Affirmation of Commitments between ICANN and the U.S. NTIA, that will begin in the third quarter of 2015.

This high-level advisory is intended to provide unique insight into the major areas of impact and interest for applicants and brand owners that will receive attention during ICANN 51 in Los Angeles. We welcome the opportunity to discuss with you the ways in which we might structure or refine coverage of and advocacy at ICANN 51 in order to focus in on key issues or stakeholder groups. If you would like to discuss any of these subjects in detail, or if you would like assistance with ICANN advocacy or monitoring, please contact [Brian J. Winterfeldt](#).

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