

Opponents of New gTLDs Criticize ICANN at Senate Hearing

December 11, 2011 by [Joshua S. Jarvis](#)

As we [discussed](#), last week the Senate Committee on Commerce, Science, and Transportation held a full committee hearing on ICANN's domain name expansion, perhaps in part to address CRIDO's [recent actions](#) to stall the gTLD program. The following summary of the hearing was prepared for the American Bar Association by [James L. Bikoff](#), [David Heasley](#), and [Philip Marano](#) of [Silverberg, Goldman & Bikoff, LLP](#), and is reprinted with permission.

As you know, yesterday the U.S. Senate Committee on Commerce, Science and Transportation held a hearing to "examine the merits and implications of [the new gTLD] program and ICANN's continuing efforts to address concerns raised by the Internet community."

Witness Testimony

At the outset of the hearing, each witness read a written statement into the record.

Ms. Esther Dyson, the founding Chairman of ICANN from 1998-2000, testified as "a loving critic to improve ICANN, not to bury it." She explained that she used to be a "big fan of the concept of new TLDs." However, she has changed her mind because, among other reasons, the domain name "business overall has become one of sleazy marketing practices" where the "ease and lack of accountability with which someone can buy a domain name has led to a profusion of spam, phishing and other nefarious sites." "When you add, for example, .hotel, you are not creating new space; you are carving up the <hotel> space in people's heads into .com and .hotel ... In short, it's as if you owned a field, and you paid a border guard. Now the border guards want you to pay separately for each little chunk in your field; it's still the same field, but now it's carved into ever-smaller pieces," she added. In her conclusion, Ms. Dyson opined that "it is not the role of Congress to tell ICANN what to do." Rather, she recommended that ICANN rapidly re-launch its consultation process with much broader outreach" and "offer broader and easier protection to existing registrants, akin to what ICANN itself has and what the Red Cross is asking for."

Ms. Angela F. Williams, General Counsel for the YMCA of the USA, provided the Senate Committee with the point of view of non-profit entities. "ICANN's new gTLD program does not provide special or discounted protection measures for not-for-profit organizations to protect their brand and avoid the public confusion that results from their unauthorized use," explained Ms. Williams. Ultimately, Ms. Williams asked "that there continue to be input from stakeholders, and careful consideration of the impact of this program on the Internet, and particularly on not-for-profits." Ms. Williams testified to the financial burden the new gTLDs would place on nonprofits that seek to protect their marks. The YMCA could afford to buy YMCA.XXX, but could not afford a new .YMCA gTLD.

Ms. Fiona Alexander from the U.S. National Telecommunications and Information Administration (NTIA) confirmed that it "supports a [ICANN] multi-stakeholder approach to coordination of the domain name system to ensure the long-term viability of the Internet as a force for innovation and economic growth." And ultimately, the U.S. NTIA intends to rely on its Affirmation of Commitments

with ICANN, a contract that "sets up continuous multi-stakeholder review teams to evaluate ICANN's performance, including a review of the new gTLD program" and the effectiveness of the trademark rights protection mechanisms put in place to mitigate abuse.

Mr. Dan Jaffe, Executive Vice President of the Association of National Advertisers, and spokesman for the Coalition for Responsible Internet Domain Oversight, provided a strident written statement explaining that its objections against the new gTLD program have "fallen on deaf ears" within ICANN. As Mr. Jaffe contended : (1) ICANN's justification for the new gTLD program is flawed; (2) the economic costs of the new gTLD program outweigh any benefits; (3) the ICANN policy development process is flawed; (4) new gTLDs threaten to injure brand owners and benefit registration interests; and (5) ICANN is plagued by conflicts of interests. In closing, Mr. Jaffe "reject[ed] the argument of those who say that it is too late for ICANN to step back and reevaluate or for the NTIA, the Governmental Advisory Committee and other key Internet participants to try to make one last major effort to forestall this potentially severely damaging initiative" because "[t]here is absolutely nothing sacred about the January 2012 implementation date."

Mr. Kurt Pritz, Senior Vice President of Stakeholder Relations for ICANN, highlighted provisions in the Guidebook relating to "new trademark protections" and "measures to mitigate malicious conduct." According to Mr. Pritz, the introduction of new gTLDs is one of ICANN's founding mandates, and the ICANN multi-stakeholder model works by engaging a community that includes national governments, law enforcement agencies and brand owners. Mr. Pritz's testimony states that "intellectual property owners / brandholder experts have been involved at every step."

Questions and Answers

After the written statements were read into the record, a panel of U.S. Senators on the Committee for Commerce, Science & Transportation posed specific questions to the witnesses.

We were able to confirm two key facts from the questions and answers yesterday.

First, as both Esther Dyson and Senator Klobuchar aptly recognized, there is little if anything that the U.S. Congress can do at this point to slow or stop the new gTLD program. Indeed, Senator Klobuchar was resigned to requesting that ICANN "listen to our concerns as you go forward."

Second, Ms. Esther Dyson provides a unique perspective on the new gTLD program. She informed the Senators that "the ICANN process of consulting with the public has failed," because "billions of Internet users, who stand to gain nothing from being confused, have not been heard in ICANN's consensus." Moreover, according to Ms. Dyson, "by creating a whole new set of redundant names, it will lead to the introduction of more individuals and entities intent on stealing from brands on the Internet."

Conclusion

After monitoring this hearing, we believe that it will not have any impact on launch of the new gTLD program, although ICANN should expect to hear more from Congress down the road.

The committee record will be left open for a short time so that the witnesses may submit further responses to the questions raised at the hearing.

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