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IP: A defensive strategy for new gTLDs

Even if applying for a gTLD doesn't make sense for your organization, ignoring the application process would be a mistake

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ICANN's decision to expand the Internet to include new generic Top Level Domains (gTLDs), such as .Canon and .NYC, has been getting increased attention because applications are accepted beginning Jan. 12, 2012. Much of the discussion has, understandably, focused on whether a business or other organization ought to invest in a new gTLD. For some, this development presents terrific opportunities. Determining how best to take advantage of those opportunities calls for a solid offensive strategy. But too little has been said about the need for a defensive strategy, as well.

Even if applying for a new gTLD does not make sense for a particular organization, ignoring the gTLD application process would be a mistake. That process introduces new risks for every organization doing business on the Internet. Some of those risks come from potential infringements on intellectual property, but there are other risks too, such as unsupported competitive advantage.

ICANN has provided multiple procedures to reduce or remove those risks:

- **Public Comments.** ICANN will invite the public to submit written comments on gTLD applications beginning about two weeks after the application period ends on April 12, 2012. Public portions of the applications will be posted on ICANN's website. Anyone may submit comments and there is no fee. Comments submitted within 60 days of the date when they are first accepted will be taken into consideration by evaluation panels. To be considered, public comments should provide information about the applicant's *prima facie* case for getting a gTLD.

- **Formal Objections.** An application may be formally contested on four grounds. These include string confusion, legal rights, limited public interest and community. String confusion (as in linguistic string) occurs when the applied for gTLD is “confusingly similar” to an existing TLD or another gTLD applied for during the same round of applications. A legal rights objection occurs when the applied for gTLD “infringes the existing legal rights of the objector.” A limited public interest objection stands on the assertion that the applied for gTLD is “contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.” A community objection applies when a gTLD purports to serve a community but there is “substantial opposition” to that application from a “significant portion” of the community. Strict timing and standing rules apply, and there are costs (sometimes substantial) for filing and responding to a formal objection.
- **Government Objections.** Individual governments may raise concerns about a proposed gTLD by submitting public comments or contacting the applicant directly. ICANN’s Governmental Advisory Committee—an organization of nation-state representatives—also may issue an early warning notifying the applicant that the gTLD “is seen as potentially sensitive or problematic by one or more governments,” or it may advise the ICANN board of directors that an application has attracted a consensus against it. Such advice carries the presumption that the application should be denied.

Each of these procedures, alone or in combination, may form a critical defense against the risks created by the introduction of new gTLDs.

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