

## How to (Unnecessarily) Encumber The Internet And The Economy

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By Bob Liodice

At this time of economic stagnation and high unemployment, the Internet represents an opportunity: It is the ultimate free-market stimulus for our economy - a vibrant source of innovation, business creation and investment.

Unfortunately, a major, ill-conceived program is about to seriously disrupt businesses and threaten consumers, causing significant and completely avoidable harm to the fragile U.S. economy.

The Internet Corporation for Assigned Names and Numbers (ICANN) is a non-profit organization responsible for coordinating the technical management of the Internet's domain name system and for ensuring its continued security, stability and integrity under a contract with the National Telecommunications and Information Administration (NTIA), an agency within the U.S. Department of Commerce. ICANN is scheduled to accept applications for a new program in January 2012 that will permit applicants to claim virtually any word, generic or branded, as an Internet top-level domain. Top-level domain names are the ones that appear to the right of the "dot" in Internet addresses, e.g., "com" as in .com. In the first year alone, ICANN estimates that its plan will allow up to several hundred new top-level domain names, with many more to follow in the years ahead. Thus, in addition to addresses that end with ".com," there could be new ones that end with generic terms like ".bank," geographic terms like ".paris," brand names such as ".hitachi" or whatever one's imagination can create.

While some might believe that such a plan would be appealing to brand marketers and benign to consumers, the opposite is actually the case. In fact, marketers, in virtual unison, led by the Association of National Advertisers and in concert with the American Association of Advertising Agencies, the American Advertising Federation, the Interactive Advertising Bureau, the Direct Marketing Association, the World Federation of Advertisers and a number of other international associations, are vehemently opposed to this plan, which will require excessive, unnecessary business expense, increase online confusion and diminish cybersecurity. These consequences will set back our nation's economic recovery - the last thing government policies should be doing at this troubling time in U.S. global economic health.

The potential harm from ICANN's new program is not simply theoretical. Online confusion, fraud and abuse concerns already exist on the Internet domain system in its present form. Many of us have personally given up our valuable, personally identifiable information to a spammer trying to impersonate a trusted credit-card brand. Or we have all received spam promoting websites where drugs are sold illegally to a vulnerable segment of the population. With ICANN doubling the number of potential top-level domains there will be many more Internet addresses, where a would-be spammer or online fraudster can hide. For example, take a spammer that would like to impersonate a national bank, in the new environment, that spammer might not be able to register citibank.bank or citibank.com, but perhaps citi.sanfrancisco, cbcredit.shopping, citi.retail or any other number of potential permutations and combinations could be imagined. We are particularly concerned with brands that are aimed at the elderly and children, where the consumers may not be as digitally literate and the potential for brand confusion is greater.

Recently, even ICANN itself has stepped back from its strong advocacy for this program. In a Sept. 13 press release, CEO Rod Beckstrom stated, "I want to make clear that ICANN is an organization that is not advocating new gTLDs for anyone. Our role is merely facilitation to implement the policy and the programs approved by our community, so we are here to educate, not to advocate." If ICANN is not advocating for this, then who is?

Here are five major reasons why ICANN's plan needs to be stopped now:

1. **Flawed justification.** ICANN's justification for its proposed program - increasing competition, promoting innovation, addressing an alleged shortage of Internet addresses and helping differentiate products and services - is deeply flawed. There is no demonstrable need to increase top-level domain names. A wide array of suffixes such as ".biz," ".info," ".jobs," ".travel," ".aero," and ".museum" currently exist, most of which are used little but nonetheless policed by brand owners concerned about trademark dilution and cybersquatting (or the act of an online speculator registering a name closely associated with a brand in hopes that the brand will buy the domain name). The ICANN-assumed gains via increased commerce, competition and innovation are completely unsubstantiated. In contrast, its program will throw the domain-name universe into widespread confusion while generating untold costs to domestic and international businesses and harm to consumers.
2. **Excessive cost.** Applying for a new top-level domain name will require an extraordinarily expensive registration fee of \$185,000, as well as a minimum cost of \$25,000 paid annually to ICANN over the 10-year contractual commitment that successful applicants must make. Costs will further escalate at the second level of naming - the word to the left of the "dot" - as brand owners will have to consider registering each of their brand-related terms, for either commercial or defensive purposes, just as they do today in many, if not all, of the new top-level domains. Of course, domain-name sellers can hardly wait for the new top-level domains to get approved.

Some have estimated that, for a typical company, the cost of acquiring a single top-level domain and managing it over the initial commitment of 10 years could easily exceed \$2 million, including expenses for the application process, operations, disputes, legal services, trademark monitoring and protection. Brand owners will face a Hobson's choice of either being compelled to divert valuable marketing, legal, financial and technical resources to acquiring and managing these new top-level domains or risking brand harm that would occur if they take no action and another company with rights to the same brand applies for its own top-level domain. Each choice carries its own costs and harms. Furthermore, the incremental expenses relating to applying for and operating a top-level domain will divert scarce corporate resources that could otherwise be deployed for job creation and capital investment.

3. **Consumer harm.** As identified above, for consumers, adoption of the new program poses significant risks. The Internet will turn into a veritable minefield for criminal activity when the proliferation of top-level domains makes it easier for online felons to cloak themselves in the names of trusted brands. Indeed, the ICANN program will exacerbate the already challenging problem of protecting consumers from online confusion and unlawful invasion of their personal privacy, diminish cybersecurity and increase the likelihood of predatory cyber harm.
4. **Harm to non-profit charities.** Sadly, for each major natural disaster or security event that we have faced in the Internet age we have seen instances of online frauds. After Hurricane Katrina, it was reported by Charity Navigator that there were some 4,000 bogus websites for online donations. Following the 2005 Indonesian tsunami, fake charitable requests appeared online, for example a Portland, Oregon, man was arrested in January 2005 who falsely claimed to be an employee for the charitable organization Mercy Corps. In 2010, Forbes even reported on how to spot dubious online Haiti charity pleas.
5. **Lack of consensus.** The objections of governments, non-profits, and industry sectors most affected have not been adequately addressed. In seeking to implement a change in top-level domains, ICANN has not only failed to demonstrate the public benefit of its program or show that it is in the public interest, but ICANN has also failed to reach stakeholder consensus, all requirements of its contract with the NTIA. Decision-making regarding this program appears to have been unduly influenced by parties standing to directly benefit financially from an increase in domains, namely the commercial companies that charge fees to register new addresses and manage top-level

domains, security consultants who will profit from increased deployment of Domain Name System Security (DNSSEC) and other consultants who were hired right out of ICANN to assist with gaming (and profiting from) the application process. An entire for-profit and non-profit brand constituency - the one required to fund the new names and maintain the Internet's economic model - has been largely ignored.

The ICANN program acts like a lone cowboy with no oversight, only giving lip service to the U.S. Department of Commerce and other governments worldwide. In fact, in a letter to the U.S. Department of Commerce on Sept. 14, Senator Ron Wyden (D-Ore) raised concerns about ICANN's ethics and transparency rules, noting the "revolving door between Internet regulators and the multi-million dollar domain name industry they formerly regulated," and the need for their rules to be similar to those of federal officials. The brand industry should come together as one cohesive voice in opposition to this process that permits the hijacking of brands to the detriment of consumers.

If ICANN's new program proceeds, the full damage to brand equity and trust in Internet transactions will be incalculable. As security vulnerabilities and phishing spread across hundreds of new top-level domains, consumer confidence in online financial transactions will greatly diminish. A similar crisis of confidence will impact other sectors of the economy, such as the pharmaceutical and consumer products industries - all of which increasingly and efficiently interact with consumers electronically. The potential costs of this program, which will ultimately be passed on to consumers, are staggering and completely unnecessary. That's why the entire brand community is urging ICANN to reconsider and suspend this program before it causes irreparable harm. Brands are a proxy for consumer trust, and any system that undermines the brand-trust relationship could wreak havoc on Internet commerce.

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