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ICANN hunkers down on two-character second-level domains

gTLDs

International - Hogan Lovells LLP

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In 2014 ICANN voted to implement an efficient procedure for the release of two-character second-level domains by new gTLD registries, a move that came in light of an apparent lack of opposition from governments and the Government Advisory Committee (GAC). However, in something of a back down from its earlier position, ICANN has raised the ire of a number of gTLD registries by sitting on over 350 two-character release requests it has received pursuant to last-minute concerns being raised by governments and the GAC.

Under ICANN's streamlined approval procedure, each request for the release of two-character second-level domain names was supposed to be subject to a 30-day comment period followed by approval (or not) within seven to 10 days. However, the earliest of the requests that were filed in December 2014 are still awaiting approval in spite of no formal resolution to halt approvals having been issued by the ICANN board.

The procedure appears to have ground to a halt as a result of concerns being raised by a smattering of governments and voiced in a letter to ICANN from the GAC in late January. The letter claims that "the new process has been implemented very quickly and without any formal consultation with affected/interested members of the GAC" and, among the measures it calls for is extension of the comment period for each request beyond the allocated 30 days as well as an improved alert process, particularly for affected governments outside of the GAC membership.

Spain ('.es'), Italy ('.it') and the Ivory Coast ('.ci') are among the countries to have expressed concerns about the release of two-character second-level domains that match their own national TLDs. Spain, for example, filed objections against the release of 'es.casino' and 'es.abogado', pointing out that casinos and lawyers are regulated in Spain and that such domain names should be issued only to registrants who have the necessary credentials. It is not unreasonable to expect, however, that these countries should be free to object to such release requests on a case-by-case basis via the comment mechanism without this having to hold up the release of all two-character new gTLDs.

In a market that has proved to be not quite the *el dorado* that many new gTLD registries had hoped for, the delay in the release of two-character domain names, which generally fetch premium prices, is at best annoying and at worst a threat to the registries' business model and survival. It also, once again, calls into question whether the multi-stakeholder internet governance model is working as it should.

In a letter to ICANN Chairman Steve Crocker, the Registries Stakeholder Group accused ICANN of having taken "what appears to be a… closed-door, unilateral decision" to stall approval of the two-character domains. In its letter, the group calls upon ICANN to reverse this situation so that "contracted parties can rely on predictable, transparent processes without the risk of future interference and/or potential content control by a handful of stakeholders".

The GAC reacted to heat over the situation at the 52nd ICANN meeting in Singapore by issuing formal advice, which was subsequently adopted wholesale by the ICANN board. Pursuant to this advice, the comment period for each request will be extended to 60 days (including for those requests made back in December) and a system to alert governments of new requests. Given that not all countries are GAC members, it will be interesting to see how quickly ICANN can put the necessary procedures in place.

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