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Despite Opposition, ICANN Is Not Inclined To Delay Launch Of New Generic Top-Level Domains

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On December 16, the Federal Trade Commission (FTC) joined a chorus of lawmakers and industry groups who have expressed opposition to ICANN's January 12 [roll-out of new generic top-level domains](#) (gTLDs). However, as recently as December 19, an ICANN representative [reportedly told](#) Online Media Daily that the organization intends to proceed with the rollout next month. Despite voicing their concerns, it seems that Congress and the FTC do not have the authority to stop ICANN from going forward with the new gTLD plan.

ICANN's proposal would allow an unlimited number of domain names created out of almost any word, including brand names and trademarks. The application fee is \$185,000 and total costs are likely to run many hundreds of thousands more.

Trademark owners and brands are particularly concerned that they will have to invest many hundreds of thousands of dollars to pre-emptively claim new gTLDs containing their name or marks, to prevent others from claiming them and with little hope of a real return on their investment.

In a 15-page [letter](#), the FTC warned that rapid expansion of the number of generic top-level domain names - the part of the domain name to the right of the dot, such as ".com," ".net" and ".org" - could create a "dramatically increased opportunity for consumer fraud," and make it easier for scam artists to manipulate the system to avoid being detected by law enforcement authorities. The Commission urged ICANN - before approving any new gTLD applications - to take additional steps to protect consumers, including starting with a pilot program to work out potential problems.

Lawmakers also expressed concern about the January 12 launch during a Senate Commerce, Science and Transportation Committee [hearing](#) on December 8 and a



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House Subcommittee on Communications and Technology [hearing](#) on December 14. "I don't think this is ready for prime time," Rep. Anna Eshoo, D-Calif., the ranking member of the House Subcommittee, said. "I think the suggestion that it be delayed and consensus be developed by stakeholders is a good one."

INTA has voiced its concern throughout the new gTLD launch process. Mei-Lan Stark, INTA Treasurer, [testified](#) in May before the [House Subcommittee on Intellectual Property, Competition and the Internet](#) and said "INTA is not against the expansion of the gTLD space...[however] INTA remains concerned that the current proposal for new gTLDs has not yet been refined to the point of being ready for launch."

The Association of National Advertisers (ANA) has been [particularly vocal](#) on this issue, testifying before Congress and writing letters to ICANN and the National Telecommunications and Information Administration (NTIA) of the U.S. Department of Commerce. ANA Vice President Daniel Jaffe testified at both recent Congressional hearings, urging that ICANN delay the launch of the program. Mr. Jaffe stated: "There is absolutely nothing sacred about the January 2012 implementation date. Given the serious concerns expressed by a broad and growing cross-section of the entire American and global business community, the companies which provide the economic foundation of the Internet, and the potential dangers to consumers, we believe it would be irresponsible for ICANN to proceed full-speed ahead with the roll-out next month." The ANA also sent a [letter](#) to ICANN stating "[T]he Program contravenes the legal rights of brand owners and jeopardizes the safety of consumers. By introducing confusion into the marketplace and increasing the likelihood of cybersquatting and other malicious conduct, the Program diminishes the power of trademarks to serve as strong, accurate and reliable symbols of source and quality in the marketplace. Brand confusion, dilution, and other abuse also poses risks of cyber predator harms, consumer privacy violations, identity theft, and cyber security breaches." In its [letter](#) to the NTIA, the ANA asserted that ICANN's contract to administer the domain name system should not be renewed.



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Both [ICANN](#) and [INTA](#) have provided some guidance for companies that are contemplating whether or not to participate in the gTLD launch.

If you have any questions regarding the content of this alert, please contact [Daniel Frohling](#) at 312.464.3122 or dfrohling@loeb.com.

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