

Hearing on ICANN's Expansion of Top Level Domains
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Senate Committee on Commerce, Science & Transportation

Testimony of Esther Dyson
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Thank you, Chairman Rockefeller, Ranking Member Hutchinson, esteemed Senators, Committee staff and others, for your attention to this important issue. As a private citizen with a variety of affiliations but beholden to no single employer or institution, I am honored to be here today.

My name is Esther Dyson. I assume that I was invited to testify before this Committee primarily because I was the founding chairman of ICANN's board, from its inception in September 1998 until late in 2000. I continued as a member of the ICANN At-Large Advisory Committee for a year or two after that, and subsequently went on with the rest of my life. I am a casual user of domain names; I have a couple registered that I don't use, and then I have owned and used edventure.com since before my ICANN tenure. As an investor, a board member of non-profit and for-profit companies and as a user of the Internet, I do have a substantial interest in freedom of speech and freedom to innovate.

Other than that, I have no particular business interests in the domain name system, and I paid my own way here today. Moreover, unlike most of the public, I have the private resources, the time and the insider knowledge to come here to give you what I hope you will find to be an informed and useful perspective.

I come as a loving critic to improve ICANN, not to bury it.

Some brief history

When I joined the board of ICANN back in 1998, the majority of its members had almost no experience with the Internet and attempted to serve the interests of a broad public. At the time, our primary mission was to break the monopoly of Network Solutions (which managed .com among other registries), first by separating the functions of registry (which manages the list of names in a particular top-level domain) and registrar (which resells second-level domain names to the public).

We succeeded in that, and we also managed to launch a few new TLDs, including .biz, .info, .museum and .coop. Of those, only .biz and .info have had much success. Separately, a number of creative people - whose initiative I sincerely applaud - made special-purpose TLDs out of country codes (ccTLDs) such as .tv (Tuvalu), .md (Moldova), .ly (Libya) and most recently .co (Colombia).

At the same time, it's fair to say that .com retained its first-mover advantage as by far the leading TLD. Users instinctively type COMPANYNAME.com into their browsers.

I myself was a big fan of the concept of new TLDs. I believed that it would broaden the market, encourage innovation (as with the repurposed ccTLDs I mentioned above)...and besides, why should ICANN enforce artificial scarcity?

But I have since changed my mind. Now I would like to explain why, and finally to suggest some paths forward.

Why I changed my mind – Confusing to the public

After my two-year term as chairman of ICANN expired in 2000, I joined the At-Large Advisory Committee. Our mission was to make sure the voice of the ultimate users – not just the sellers, resellers and buyers of domain names – was heard. That turned out to be an almost impossible task. Naturally enough, normal members of the public did not have the time or interest (or funds) to involve themselves in ICANN's business. Despite numerous attempts, we failed to attract more than a few thousand people at best to our various meetings, online conversations, requests for comment and the like. Our online message board was mostly painful to read. When I finally resigned from the ALAC, I too found ICANN too removed from my daily interests to pay much attention to its activities.

Why I changed my mind – Lack of oversight

Our premise for new TLDs was that we would select registry managers who would add value to their TLDs and monitor the behavior of their registrars, who would in turn make sure that the registrants followed whatever requirements the registries imposed. In fact, the business overall has become one of sleazy marketing practices, front-running (where registrars or related parties buy names for their own accounts, competing unfairly with their customers) and a high proportion of spammy domains. Unfortunately, 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. There's no reason to think the situation would be any better with the next set of new TLDs; there would simply be more of them.

And as the case of .xxx shows, many of the second-level domain-name purchasers who do have honest intentions will probably be more interested in defensive registrations rather than adding value to the system. (One such case is that of Meetup.com, out of whose office I work and on whose board I sit. Meetup has attempted to register Meetup.xxx, but has been told the name has been reserved on the "premium queue" to be auctioned off to the highest bidder. Even more perversely, Meetup cannot even bid at auction for its own trademarked name unless it somehow becomes registered as a member of the "adult community," which is at odds with the very nature of its business and the very reason it sought to reserve the name. Meetup's only remedy ultimately will be to file an expensive and time-consuming trademark lawsuit.)

Why I changed my mind – Misallocation of resources

Our initial assumption was that new TLDs would be relatively cheap. But ICANN's current plan envisions an expensive application process and expensive registrations.

The amount of money likely to be spent on these new TLDs - both by new applicants and registrants, and by incumbents protecting their names - is huge, at a time when businesses and consumers are just scraping by. I believe in innovation, but only if it adds value. In this case, most of the new domains would simply add friction.

As with .xxx, where many of the registrants are actually companies who want to make sure their name is *not* used in .xxx, I predict that many or most of the new registrations will be defensive. Marriott.com, for example, works fine; why do they need marriott.hotels except defensively? (Or why do they need to own .marriott?)

The rationale is that there's a shortage of domain names... but actually, there's a shortage of space in people's heads. 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. So was that Marriott.com or Marriott.hotel? or dyson.com or dyson.hotel? if I decide to rent out my apartment. Consumers will inevitably be confused, and the primary beneficiaries will be Google, trademark lawyers...and of course the registries and registrars.

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. To use my own small field as an example, the field was originally called edventure.com. Now the new chunks could be labeled edventure.angel, edventure.blog, edventure.nyc, edventure.post, edventure.fin and perhaps I'll also be solicited to buy the TLD .edventure so that some educational or editorial group won't get hold of it.

In the end, new domain names are somewhat like derivatives: They add complexity and transactions and lots of rights and obligations without actually creating anything of value.

Context: Innovation can happen without new TLDs

I have heard from people who say that the new TLDs will lead to great innovation. I once thought so too. I had visions of .fin for For example, there are people who want to launch .eco and .green as the foundation of a «green» marketing campaign that would purportedly do untold good for the world at large. But what's wrong with edventure.com/green?

Meanwhile, there is innovation in namespaces, but it comes with overall innovation. One of the best and simplest examples I can think of is twitter, where I am @edyson or <http://twitter.com/#!/edyson> - a fine use of an *existing* TLD.

Remedies

Of course, my task here does not end with complaining. What should be done? First of all, it is not the role of Congress to tell ICANN what to do. ICANN is accountable to the worldwide public, not to the US Government (except through one limited contract). But

it is the role of Congress to shed light on issues of public interest, and to suggest politely that ICANN follow through more fully on its acknowledged obligation to solicit public feedback. As I discovered during my time at ICANN, it's hard to get the public interested in these matters. (In that respect too, domain names are like derivatives.)

As I mentioned, ICANN has indeed followed the process of soliciting public opinion, but I do not believe they have obtained «informed consent,» in the sense that people actually understand the issues.

Much broader consultation with the public

Therefore, although personally I would like to see ICANN simply abandon this program, I have been told again and again that this is not «realistic.» If that is indeed the case, I would recommend that ICANN rapidly re-launch its consultation process with much broader outreach. Perhaps these hearings and the subsequent press coverage will help to inform the broader public and shade ICANN's approach to new TLDs.

Much stronger front-end protection

At the same time, ICANN could offer much broader and easier protection (from similar-sounding TLDs) to existing registrants, akin to what ICANN itself has and what the Red Cross is asking for. Of course, this would obviate much of the interest in the new domain names, but it is a proper obligation for ICANN to undertake, in my opinion.

Conclusion

The current domain name system in some ways is an accident of history. ICANN was created to regulate it, independently of any government and on behalf of the Internet – and world - community as a whole. Just as with fishing rights, communications spectra, taxi medallions and other «commons,» there's a delicate balance between too few and too many domain names, which this new initiative may well upset if it goes forward without more serious study. As the old saying goes: If it ain't broke, don't fix it!

I would welcome any questions.