



# Trademark Protection

# ALERT

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## gTLDs - Application Process Derailed; ICANN Seeks Solutions From Internet Community at Prague Meeting

The Internet Corporation for Assigned Names and Numbers (ICANN) has quickly gone from resurgent “Little Engine That Could” to train wreck. Having just weathered an embarrassing six-week delay in its gTLD application process, it took ICANN less than a week to come off the rails again.

Over the past weekend, and just before its semi-annual meeting in Prague, ICANN announced that it was suspending digital archery, the “contest” by which it was to sequentially batch the gTLD applications for evaluation and launch. Further, ICANN made it clear during a press conference and meetings yesterday in Prague that it is no longer even sure whether to batch the applications and, if it does not, how it will organize the process. In fact, high-level staff repeatedly solicited input on these topics from the attending Internet community.

Prior to its June 23, 2012, announcement suspending the digital archery process, ICANN had received significant criticism regarding several aspects of the evaluation process, including a letter from the Governmental Advisory Committee (GAC) questioning both digital archery and batching. The [June 17, 2012 letter](#) also warned that GAC would not follow the expected timeframes for the early warning and string contentions and, in fact, would not be in a position to offer ICANN “any advice on new gTLDs applications in 2012” - if at all - and calling into question ICANN’s prediction that the first gTLDs could be live by early 2013. Only four days later and just before announcing the suspension, ICANN announced the resignation of its erstwhile new gTLD Program Director Michael Salazar, and that Kurt Pritz, Senior Vice President for Stakeholder Relations, as interim Program Director, would take over “direct oversight of the entire New Generic Top-level Domain Program in an interim capacity.”

The timing and substance of ICANN’s suspension of the digital archery process reveal the magnitude of ICANN’s predicament. On the date of the announcement, the digital archery system had already been open for 15 days, since June 8, 2012, and was set to close on June 28, 2012. At that time, approximately 20 percent of 1,930 applications had already entered. While ICANN blamed the suspension on technical issues (“applicants have reported that the timestamp system returns unexpected results depending on circumstances”), the problems inherent in relying on a computerized program to prioritize the applications seemed apparent to observers from the moment ICANN announced the process.

Response at the Prague meetings has been intense. Many applicants and country representatives expressed their approval of the suspension and re-iterated concerns about equity and fairness should the program be re-instated. Few supported reinstating digital archery.

The future of the batching has also been called into question, with applicants at various meetings in Prague advocating for a single-batch process. ICANN has stated that it “does not necessarily disagree” with the call for one batch, but will be considering a variety of proposals over the next few days to address concerns that the process is unmanageable and inefficient. Removing contentious applications, ICANN believes it will need to evaluate about 1,400 applications in total. During a call held on June, 25, 2012, a representative from ICANN explained that certain naturally occurring rate limiting mechanisms will make it unlikely that all 1,400 applications will be processed at once if the batching process is eliminated (e.g., some applications

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will be subject to clarifying questions or extended evaluations, some applicants will seek to negotiate the requisite contract, some applicants will decide to delay their domain's launch - called delegation). The question ICANN will be addressing over the next few days is whether this natural rate limiting will be enough to allow for an efficient process, or whether ICANN needs to implement batching or some other technique to further limit the rate at which applications move through the evaluation process.

Should some form of batching still be needed, some meeting participants have suggested dividing applications into two batches by merit: an easy pass for those applications that pass the evaluation as is and a second batch for all that raise questions. Within the second batch, applications with fewer questions/issues will be prioritized over those that require a more in-depth review. Others have advocated for leaving the batching process to the market by allowing applicants to buy/sell their positions, while others advocate for leaving the batching process to the applicants to prioritize among their multiple applications.

ICANN is meeting with stakeholders this week and has stated it will announce possible alternatives this Thursday at a Public Forum in Prague.

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