

ICANN's New gTLD Program

ICANN has proposed a program that would allow the creation of new Generic Top-Level Domains, enabling registration of potentially hundreds of new domain names. The first of two public comment periods of 45 days each began October 24, 2008 and ran through December 15, 2008. The second comment period will be for languages other than English (Russian, Chinese, Spanish, Arabic and French) and has yet to be announced. Summary and analysis of public comments received to date is expected in February 2009. ICANN's next public meeting will be held in Mexico City on March 1 – 6, 2009.

New gTLD Program Proposed

On June 26, 2008, at the 32nd Internet Corporation for Assigned Names and Numbers (“ICANN”) meeting in Paris, the ICANN Board unanimously approved the recommendation of a new Generic Top-Level Domain (“gTLD”) program. This proposed program will result in “a massive increase in the ‘real estate’ of the Internet,” according to Dr. Paul Twomey, President and CEO of ICANN. Any organization will be able to apply to reserve for registration any string of letters as a gTLD, including non-Roman characters, resulting in potentially hundreds of new gTLDs and significantly altering the Internet landscape.

On October 24, 2008, ICANN released several documents relating to the proposed program: the Applicant Guidebook, Module 1: Introduction to New gTLDs Application Process, Module 2: Evaluation Procedures,

Module 3: Dispute Resolution Procedures, Module 4: String Contention Procedures, Module 5: Transition to Delegation, Module 6: Application Terms and Conditions, and supporting memoranda for the Guidebook and each of the Modules, including one entitled “Protection of Rights of Others in New gTLDs.” All documents are available on ICANN’s web site at <http://www.icann.org/en/topics/new-gtld-program.htm>. The Guidebook, Modules and supporting memoranda are currently only available in English. ICANN encouraged comments on these documents from the Internet community and is making changes to the program as currently drafted based on comments received.

The first of two public comment periods of 45 days each began October 24, 2008 and ran through December 15, 2008 (original closing date was December 8, 2008). The second comment period will be for languages other than English (Russian, Chinese, Spanish, Arabic and French) and has yet to be announced. Summary and analysis of public comments received to date is expected in February 2009. It is anticipated that applications will begin to be accepted by ICANN in June 2009.

Potential Impact

The finite size of the internet is the alleged concern behind the proposed program. Currently, there are twenty-one (21) gTLDs (.aero, .arpa, .asia, .biz, .cat, .com, .coop, .edu, .gov, .info, .int, .jobs, .mil, .mobi, .museum, .name, .net, .org, .pro, .tel, and .travel). Each gTLD was originally intended for a specific type of organization, service or web site. Over time, these restrictions have been adhered to less and less for some gTLDs, such as .com and .org. Additionally, there has

been growing concern that web space availability is dwindling due to the limited number of gTLDs and the restrictions of use that remain on some of them, such as .edu and .mil. This limited virtual real estate has become both highly competitive in securing space, and, anti-competitive with limited choices.

Proponents envision a wide open field of possibilities for the new gTLDs. One of those possibilities is the launch of “GeoTLDs,” such as .berlin, .paris, and .nyc. For the last several years, one company has been working towards the realization of a geographic TLD. DotBerlin GmbH has invested substantial resources in the belief that this new internet landscape will become a reality and is poised to become one of the first GeoTLDs.

Another possibility is the invention of new uses for the Domain Name System (“DNS”), such as the one created with the .tel TLD. This is a unique TLD that does not provide web site hosting but uses the DNS as an “interactive and dynamic business card for individuals.” While the .tel has been around for some time, this type of imaginative “outside-the-box” use for the DNS is what proponents of the proposed program envision and hope will result from the new program.

Yet another possibility envisioned for the proposed gTLD program is that companies will register their brands as gTLDs. Proponents of the program anticipate that corporations who register their brands as gTLDs will benefit, for instance, by providing a backbone for a more structured web presence, both internally and externally, providing cutting-edge brand promotion, and reducing phishing and fraud with additional options for enhanced security. Critics of the proposed program point out that this will require companies to undertake the business of being a registrar with all the incumbent costs associated with that undertaking. The application cost alone for a new gTLD is currently set at US \$185,000. An additional US \$75,000 per year for

a minimum of three years will be required to keep the gTLD active. Additional anticipated costs will be incurred with staffing and maintenance required to run a registry once the gTLD is up and running.

A practical problem that has been pointed out is that of the competing interests in a new gTLD. For instance, how will it be decided who has the rights to .apple? Apple Records, Apple Computers, or Apple Vacations? Is it first come, first serve? Bloggers have commented that the land rush for potential gTLDs are not addressed in the published guidelines, nor in the comments received by ICANN so far. It remains to be seen how these issues will be resolved, and at what cost.

Trademark and Brand Protection Costs to Increase

Critics further point out that the program does not “expand” the Internet, as ICANN claims, but is merely duplicative of “real estate” that is already available on the web and will only serve to make it much more difficult and expensive to monitor the Internet and protect intellectual property. In anticipation of trademark disputes arising, ICANN’s supporting memorandum on intellectual property rights proposes that:

- An objection process will enable rights holders to assert that proposed gTLD strings would infringe their trademark and other legal rights.
- The new gTLD registry agreements will provide for post-delegation dispute mechanisms to deal with claims of infringement that might arise after a new gTLD is delegated and begins operation.
- At the second-level, applicants for new gTLDs will be required to describe in their applications a proposed rights protection mechanism, which will be published when its agreement is made public.
- All new gTLDs must ensure that all second-level registrations will be subject to ICANN’s Uniform Domain Name Dispute Resolution Policy (UDRP).

Public comments are welcomed and encouraged by ICANN, and both critics and proponents of the proposed program say that community input is vital to the success or failure of the program. ICANN's next open meeting, the 34th International Public Meeting, is scheduled for March 1 – 6, 2009 in Mexico City.

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