

## Make Way .com ... Here Come the New gTLDs!

### CHANGE IS COMING!

Major changes will be occurring to the Internet's domain name space within the next year. ICANN, the Internet Corporation for Assigned Names and Numbers, has launched an initiative to open up the domain name space to include a broad array of new *gTLDs*. A TLD is a *top-level domain*, and is the right-most character string suffix that appears at the end of an Internet domain name. Generic top-level domains (gTLDs) represent a special class of top-level domain that are overseen by ICANN and are generally available for registration and use worldwide. Top-level domains are crucial to the Internet's domain name system (DNS) since they not only aid in the routing of Internet traffic, but also are used to "identify specific types of organizations, associations, or activities."<sup>1</sup>

ICANN was created in 1998 to implement and oversee various Internet functions and institutions that had previously fallen under the jurisdiction of the US government. A not-for-profit, consensus-based organization "dedicated to preserving the operational stability of the Internet,"<sup>2</sup> ICANN relies on a community of supporting organizations and advisory committees to participate in its policy making processes. ICANN holds four public meetings per year, which are open to anyone who wishes to attend.

There are currently only twenty-one (21) generic top-level domains in existence, and ICANN is now overseeing the expansion of the domain name space in order to better serve the Internet community and further a core value to foster competition in the domain market. For several years, ICANN has been preparing to launch the new gTLD initiative. Working groups were created to contribute to the process, and their findings—combined with those of outside consultants as well as trial and error knowledge gained from previous gTLD launches—have better prepared ICANN to move forward. ICANN began to publicly promote the program in 2008, and anticipates that they will be ready to begin accepting applications in early 2010.

While the program is dubbed *new*, it is by no means untested. Karla Valente of ICANN explains, "This is not the first time ICANN has introduced new gTLDs. ICANN had 2 previous rounds: one in 2000 with *.aero*, *.biz*, *.coop*, *.info*, *.museum*, *.name*, and *.pro*, and another in 2003 when *.asia*, *.cat*, *.jobs*, *.mobi*, *.tel*, and *.travel* were added. We will soon see the introduction of *.post*, also part of the 2003 group. Some of the better known gTLDs—like *.com*, *.net*, *.org*, and *.edu*—predated the official creation of ICANN."<sup>3</sup> The successful launch of new gTLDs in the past serves as a notable proof point that the system in place works and yields results.

Historically, corporate and organizational domain names have been established as hierarchical *subdomains* subordinate to one of the limited handful of gTLDs, such as *.com*, *.org*, *.gov*, *.biz*, *.edu*, *etc.* In the near future corporations, organizations, special interest groups, communities, *etc.* will be able to create and operate

<sup>1</sup> <http://www.icann.org/en/topics/new-gtlds/strategy-faq.htm>

<sup>2</sup> <http://www.icann.org/en/general/glossary.htm#>

<sup>3</sup> <http://www.namesmash.com/?p=288>

their very own gTLDs. The gTLD application process will be open to the public, and if an applicant is able to meet ICANN's requirements they will be eligible to operate a new gTLD. While no one really knows for sure, industry experts forecast that several hundred applications will be submitted for new gTLDs in the initial round..

The new gTLD initiative has been the source of much discussion and debate within the domain name community, with broad implications for the Internet in general, and for corporate brands and trademarks in particular. As such, the initiative (referred to as 'dot-brand' by some) is highly controversial and has spawned a groundswell of heated debate across the Internet community and beyond.

Due to the complicated nature of the gTLD application process—coupled with the vast amount of information that an applicant must digest and master within a relatively short period of time—Iron Mountain has put together this navigational guide to help demystify some of the realities associated with new gTLDs. At this point in time the process is still taking shape and is subject to further additions and changes. The information contained in this paper is accurate as of its publication date, and will be updated periodically as future changes occur.

### **NEW gTLDs INSPIRE NEW BUSINESS OPPORTUNITY**

Fifteen years ago, most speculators could not have anticipated the advances that have occurred within the Internet community. As individuals and organizations conduct a growing portion of their affairs online, the user experience has become more inclusive. Internet-based social networking, banking, commerce, and search-based information services have changed the way people live. The technology has continued to progress without stagnation, even during uncertain economic times.

Web 2.0 was born out of the *.com* implosion earlier this decade and has generated a raft of new online technologies as well as a dramatically enhanced user experience. Time and user activity have proven that the Internet and online business are both thriving. If businesses and brand owners intend to compete in today's global marketplace, a digital presence is imperative. Organizations and brand owners who participate in the new gTLD initiative will be at the forefront of the next digital revolution, and an expanded gTLD architecture is a logical next step in the progression of the Internet. While there is much to be gained from such an opportunity, there are equally as many risks. Owning a new gTLD may be a critical asset and valuable business opportunity, however the application process will be rigorous and there are many criteria that an applicant must satisfy in order to gain approval.

There are varied opinions about whether new gTLDs make sense at this time—or even at all. Some feel that they are the future of the Internet, while others are concerned that they might give certain institutions too much power. For instance, the pope of the Catholic Church has spoken out against religious gTLDs (*e.g., .catholic, .hindu, .islam, etc.*), claiming that ICANN's selection of a registry operator for a religious gTLD could be misconstrued as "recognizing to a particular group or to a specific organization the legitimacy to represent a given religious tradition."<sup>4</sup> Other special interest groups, like certain cities (*e.g., .berlin*), embrace the idea of new gTLDs as a potential asset. Regardless of opinion, new gTLDs can provide a digital universe for businesses—making brands more searchable and giving end users a broader and more advanced understanding of products and services.

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<sup>4</sup> <http://www.thedomains.com/2009/03/05/the-pope-tells-icann-to-say-no-to-new-gtld-religious-extension/>

By nature the domain name system is a malleable entity, and new gTLDs offer a way to make a fresh imprint on the Internet for business and brand owners. Operating a brand-based gTLD rather than relying on an existing gTLD (like *.com*) can assist in brand promotion and ecommerce by solidifying the brand in the mind of the consumer, especially if the brand is multifaceted. By using the brand as an extension of a particular product or service, it could anchor its relevance in the mind of the end user. Some new gTLDs may also represent opportunities for larger organizations to build out private intranets for internal use only, by not making certain domain names publicly accessible.

While gTLDs can be useful for existing business, they are also a long-term investment. The last few years of domain name sales have proven that Internet real estate is quite valuable. If a gTLD is marketed and utilized correctly, there is a lot to be gained financially through ownership and operation.

As with any new venture there are no guarantees of success, and an applicant who cannot afford to account for all possible outcomes should seek extensive counsel before applying for a new gTLD. If a new gTLD's concept is sound, if it has adequate financial backing, and if an applicant is well prepared, the application process should go smoothly. It is also important to have a solid, well-planned strategy for launch as well as ongoing operations.

### HOW TO GET INVOLVED

ICANN has stated, "Any established corporation, organization or institution in good standing may apply for a new gTLD."<sup>5</sup> However, ICANN also stipulates that, "Applications from individuals or sole proprietorships will not be considered."<sup>6</sup>

All new gTLD applicants must state whether the domain name will be open or community-based. A *community-based* gTLD is one that is "operated for the benefit of a defined community consisting of a restricted population."<sup>7</sup> An example of this would be *.city*, wherein registrations would be limited to those living, doing business, or providing a service within that community. If applying for a community-based gTLD, an applicant must:

- Demonstrate an ongoing relationship with that community,
- Have applied for a gTLD string obviously and directly related to that community,
- Have proposed dedicated registration and use policies for future registrants, and
- Be endorsed in writing by an established institution representing that community.

By contrast, an open gTLD is one that "can be used for any purpose consistent with the requirements of the application and evaluation criteria and with the registry agreement."<sup>8</sup> As such, open gTLDs are more flexible and available to all interested applicants. As an example, the most well-known open gTLD is *.com*.

### APPLICANT CRITERIA

Should an applicant choose to participate in the first round of new gTLDs, the process will be extensive. An applicant will have to satisfy numerous criteria for gTLD approval, and even more before implementation. ICANN has sound reasons for making the process so rigorous. It is imperative that an applicant (either directly or through their designated third-party registry service provider) be capable of operating the gTLD—not just at launch but for at least several years into the future. An applicant must also be financially secure, technically capable, and able to maintain DNS stability. As an aid to prospective applicants, ICANN has posted a *New gTLDs – Frequently Asked Questions*<sup>9</sup> page on its website summarizing key information about new gTLDs.

<sup>5</sup> <http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-18feb09-en.pdf>, section 1.2.1.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid, section 1.2.2.1.

<sup>8</sup> Ibid.

<sup>9</sup> <http://www.icann.org/en/topics/new-gtlds/strategy-faq.htm>

Prior to the opening of the application period, ICANN will publish a definitive *Draft Applicant Guidebook* (DAG) with instructions on how and what will be needed to apply, as well as options for disputing infringing or controversial applications. To date, ICANN has published two preliminary drafts of the guidebook that were posted for public review and comment. The third and final version of the DAG is expected to be published in the fall of 2009.

### THE APPLICATION PROCESS

Once the final DAG is published, ICANN will begin a four-month campaign to raise global awareness of the new gTLD initiative and to attract applicants. At the end of those four months, the first application period will open. The first round is currently planned to be open for 45 days. To apply, an applicant must first pay a fee to access ICANN's online *TLD Application System* (TAS). A *TAS User Registration Fee* grants the applicant access to the TAS so an application may be submitted. An application must be submitted electronically and will not be considered if it is submitted after the application period has closed, is incomplete, or if the gTLD Evaluation Fee has not been paid. The *gTLD Evaluation Fee* is intended to recover costs associated with the new gTLD program, ensuring that the program is fully funded and not drawing resources from other ICANN funding sources. It is recommended that an applicant fill out the TAS with the aid of a consultant, as an application with errors will be rejected. If an application is rejected, the applicant may be eligible to apply for an *extended evaluation*, at which point additional fees will be incurred.

Once an application has been received by ICANN, it will be reviewed and checked against a variety of criteria. The gTLD character string for which an applicant applies (for instance, with *.com*, 'com' would be considered the character string) will be checked to ensure that it does not conflict with an existing TLD, other new TLD character strings for which applications have been submitted, geographical regions that have already been claimed, or cause *chaos* within the DNS. There will also be a formal review to ensure that an applicant is technically, operationally, and financially capable, and that there will be registry and DNS stability. After an applicant has been cleared, a contract will be signed by ICANN and the registry operator.

The application itself is projected to be a series of questions answerable by open text boxes, and is to be accompanied by proof of legal establishment, proof of good standing, a certified copy of the act establishing a government body or organization, audited financial statements, and documentary evidence of the ability to fund ongoing basic registry operations for a period of 3-5 years. If an application is community-based, a community endorsement will be required. If applying for a geographical term (which must not conflict with or be confusingly similar to any current TLD), proof of government support or non-objection must be provided. Applications indicating that outside funding will be used must include evidence of financial commitment from the funding party.

Once an application has been submitted, it will become public record and posted online for comment. ICANN has stated that there will be no confidentiality after an application has been received. Once an application has been posted for public comment, a formal objection may be filed. If a formal objection is filed, a dispute resolution service provider (DRSP) will review the objection and issue a decision. In order for a disputed application to proceed to the *transition to delegation* phase (meaning that a gTLD has passed evaluation and is eligible for implementation) the DRSP's decision must be in favor of the applicant.

### STRING CONTENTION, DISPUTE RESOLUTION, AND EXTENDED EVALUATION

In an application process designed to attract such a broad audience, it is likely that two or more parties will apply for the same gTLD character string. A situation in which two or more parties apply for the same character string, confusingly similar character strings, or character strings that are confusingly similar to those of a TLD that already exists is referred to as *string contention*. String contention can be resolved through *self-resolution* (in which one or more applicants may withdraw), a *comparative evaluation*, or through auction. Auction is currently considered to be a measure of ‘last resort.’

To deal with these matters when they arise, ICANN has appointed three institutions to resolve gTLD character string disputes: the ICC (International Chamber of Commerce) for morality- and community-based disputes, the ICDR (International Centre for Dispute Resolution) for string confusion objections, and the arbitration and mediation center of the World Intellectual Property Organization (WIPO) for legal rights.

In the event that an application fails—because it has scored low in technical, financial, or operational capabilities, or its proposed character string or registry services are perceived to threaten the stability of the DNS—the applicant has 15 days to request an extended evaluation. “The Extended Evaluation period allows for one additional round of questions and answers between the applicant and evaluators to clarify information contained in the application. ... If an application passes the Extended Evaluation, it can then proceed to the next stage. If the application does not pass the Extended Evaluation, it will proceed no further.”<sup>10</sup> After this point, there are no further appeal opportunities.

In an extended evaluation in which the character string is in question, a panel of three persons will conduct the review. In the event that operational stability is the concern, the evaluation will be handled by the Registry Services Technical Evaluation Panel (RSTEP). Once an application has passed evaluation and extended evaluation, it moves on to *transition to delegation*. This means that the applied for gTLD will be eligible to launch pending the execution of a registry agreement, the successful completion of technical tests, proof of the applicant’s ability to fund ongoing basic registry operations for at least three years, and a launch date is set (ICANN prefers a date within one year of applying).

### WHAT ARE THE COSTS OF APPLICATION?

The application fees for new gTLDs are quite high. This is intentional since the process to review, prepare, and implement new gTLDs is projected to be costly. It is also intended as a barrier to entry for entities that are ill prepared for the challenges of operating a new gTLD or are not financially and technically capable.

- The fee to access the TLD Application System (TAS): US\$100.
- The application fee: US\$185,000.
- Dispute resolution filing fees for an objection: US\$1,000 - US\$5,000.
- A legal rights challenge administered by WIPO: US\$2,000 - US\$8,000, depending on the number of panelists.
- Extended evaluation and Registry Services Technical Evaluation Panel (RSTEP): up to US\$120,000.
- Consultant fees: US\$60 to US\$200 per hour (and beyond).
- Registry service provider fees: vary from provider to provider.

There will also be other costs associated with operating a gTLD such as staffing, legal retention, and data escrow services, as well as yearly operational and ICANN fees that have yet to be determined.

<sup>10</sup><http://www.icann.org/en/topics/new-gtlds/draft-rfp-24oct08-en.pdf>, section 1.1.2.5

## CHOOSING A CONSULTANT

The gTLD application process is extensive and can be off-putting for applicants who are not active in the domain community. If an applicant chooses to seek the services of a consultant to complete the application and/or to assist in the launch, there are several factors to consider.

With respect to the application process itself, it is important to pick a consultant that has experience with as many aspects of the domain industry as possible (intellectual property, marketing, registry/registrar operation, *etc.*). While it is important to pick a company that is aligned with and understands the applicant's interests, working with consultants who bring varying experiences to the table is an invaluable asset. For professional assistance in planning the launch of a new gTLD, an applicant will want to select a *creative* consultant who can assist in identifying imaginative uses for the new gTLD. As this is relatively uncharted territory, those who create value for users by developing new, inventive ways to use the Internet and gTLDs increase the odds that their gTLD will be a success.

Since marketing initiatives are going to be critical to the successful launch of a new gTLD, an applicant will want to find a consultant who either has expertise in the applicant's market as well as with Internet marketing, or one who can assist in identifying resources to support a strong marketing campaign. Clever, creative marketing programs are key to ensuring a new gTLD's success. If an applicant is not directly active in the domain community, they would be well advised to secure the services of a launch and/or application consultant who is. An ideal consultant likely attends ICANN meetings, INTA conferences, and industry events related to the market the applicant's gTLD is targeting. A consulting firm armed with this knowledge will provide valuable insight into what colleagues, competitors, and policy makers are doing so their clients can adapt accordingly.

## BRAND PROTECTION AND NEW gTLDs

A sizable proportion of the opposition generated around ICANN's new gTLD initiative comes from intellectual property (IP) rights holders, who are concerned that a flood of new gTLDs will make it increasingly difficult to police the misuse of their brands and marks online. ICANN recognizes this as a growing concern, and accordingly has mandated that Rights Protection Mechanisms (RPM) must be included in the launch of new gTLDs. Historically, the RPM proven to be most effective thus far has been the implementation of a pre-launch *sunrise* period preceding the *landrush* phase of a new TLD.

A pre-launch sunrise is an initial period of domain registration for a new TLD in which IP rights holders are able to submit domain registrations for their marks before general registrations are opened to the public. Sunrises are effective at providing a front line of protection for a brand owner against cybersquatting. Sunrise periods are also good for the registries themselves as they provide a simple, organized, and cost-effective way to deliver rights protection. A guide to pre-launch sunrises, titled *The Perfect Sunrise*, has been created by an ICANN constituency and is available for download.<sup>11</sup>

It is becoming increasingly crucial to the success of online businesses to implement brand protection. However, brand protection can become quite expensive since it involves not only registering primary domain names, but also defensive domain name registrations for related terms and, in some cases, paying large sums of money to purchase domains from cybersquatters or on the open domain market. As the digital marketplace has grown in both size and legitimacy, it is now equally important to protect brands digitally as it is physically.

<sup>11</sup> <http://www.icann.org/en/topics/new-gtlds/perfect-sunrise-jun08-en.pdf>

## REGISTRY SERVICES AND REGISTRY DATA ESCROW

While their names sound similar, Registrars and Registries provide very different functions. A *registrar* is the organization through which a domain name can be registered. A *registry* is “the authoritative, master database of all domain names registered in each top-level domain. The registry operator keeps the master database and also generates the *zone file* which allows computers to route Internet traffic to and from top-level domains anywhere in the world. Internet users don’t interact directly with the registry operator.”<sup>11</sup> A new gTLD applicant will be expected to become a registry provider (or outsource those duties to a qualified third-party partner).

One of the conditions of the *transition to delegation* phase is for an applicant to sign a registry services agreement with ICANN. A gTLD operator is responsible for operating the registry for their gTLD. If registry operations are not a core competency of the gTLD operator they have the option of outsourcing to a third-party *registry services provider* (RSP). If a new gTLD applicant intends to outsource registry services, it is crucial to choose an RSP that best fits their needs. It is also critical to choose an RSP that understands all aspects of operating a registry. There is much more to successfully operating a registry than allocating names and collecting fees!

An applicant will want to select an RSP that has experience in running a registry and understands the operational, financial, technical, and political aspects of providing registry services. It is also imperative that an RSP has well-established processes and protocols, metrics, reputable customer service, and service level agreements. Look for a provider that is innovative and able to develop new products to make registry ownership less costly or more profitable. To ensure success, align with a company that can demonstrate professional and reliable back-end services.

Registry service providers are also required to participate in periodically depositing their registry data in *registry data escrow* accounts. Registry data escrow is a requirement that ICANN places on registries to escrow specific information from their *WHOIS* database with a neutral, third party escrow agent (such as Iron Mountain). The escrow agent holds the escrowed data for a period of time as stipulated in the registry data escrow contract. The registry data escrow contract describes certain trigger conditions under which the escrowed data can be released to ICANN in order to reconstitute the registry in the event of a business or chronic operational failure. This is very important because should a registry fail, there is an escrowed copy of the *WHOIS* database that ICANN can access in an effort to recreate the ownership and contact details for domains registered in that gTLD.

The importance of registry data escrow can’t be overemphasized, and ICANN vigorously enforces registry provider compliance with this requirement. Non-compliance indicators can involve more than just not having a registry data escrow agreement in place with an escrow agent. It can also be due to the registry provider’s poor adherence to mandated escrow deposit frequencies (*e.g.*, full deposits weekly, incremental deposits daily) or determination that the deposits are either corrupt or incomplete.

In any of these situations, ICANN will take necessary steps—as outlined in the data escrow agreement—to bring the registry back into compliance. If compliance isn’t achieved—or if the risk to registrants is significant enough—ICANN will work in a fair and transparent manner to ensure that domain name owners are protected. It is therefore crucial to choose a trusted and experienced registry data escrow provider to ensure that DNS will not be irreparably upset in the event of a registry failure.

<sup>11</sup> <http://www.icann.org/en/general/glossary.htm#R>

## SUMMARY AND CONCLUSIONS

The Internet is poised to continue to grow, and the incorporation of new gTLDs will provide businesses, communities, and brand owners with the opportunity to develop their online presence in ways that were previously not possible. Operating a new gTLD may become the preferred way to catapult business and brand owners to the forefront of the new digital marketplace.

The gTLD application process, while daunting, is necessary for ICANN to determine whether an applicant is financially, operationally, and technically fit to run a new gTLD. There are numerous rigorous criteria that must be addressed in the application process, and it is imperative that an applicant be prepared to navigate all possible outcomes and be financially capable of meeting any additional fees that could arise due to contention. Choosing the right consultant and registry services provider will make all the difference in a smooth application process and transition to launch.

Providing a solid registry services foundation for a new gTLD is crucial to smooth gTLD operation and customer confidence. Participating in registry data escrow helps to ensure the stability of the DNS and allows for successful long-term gTLD operation.

The introduction of new gTLDs is a major leap toward shaping the future of the Internet user experience and can provide a competitive advantage to businesses and trademark holders who choose to participate.

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