

Com Laude New gTLD Briefing Note November 2008



To accompany Version One of ICANN Draft
Applicant Guidebook

Part One: Understanding the ICANN New gTLD process

ICANN, the Internet Corporation for Assigned Names & Numbers, has embarked on a programme of change that will significantly expand the domain name system year on year by introducing hundreds of new generic Top Level Domains (gTLDs). This expansion will fundamentally change the business of the protection of IP in the domain name system.

In the first two or three years of this expansion, it is unlikely that there will be any other development in the trade mark world that will make such onerous demands on professionals or so polarise opinion.

In the preface to the "Draft Applicant Guidebook for the New gTLD Program", published on 24 October 2008, Paul Twomey, President and CEO of ICANN, sets out his vision of a domain name system no longer "constrained by only 21 gTLDs". He says, "In a world with 1.5 billion internet users – and growing – diversity, choice and competition are key to continued success".

ICANN's cure for this "constraint" is to implement a programme of applications, open to anyone, anywhere in the world with the cash and conviction that they can run a successful registry, including registries that feature only Internationalised Domain Names (IDNs – in non-Ascii characters). In the first application round which opens in the early Summer of 2009, ICANN anticipates that there will be applications from geographical communities including cities and local language speakers, from special interest groups, from entrepreneurs who want to build a business around a dictionary term, even from trade mark owners who want .brand.

After the first round of applications in 2009, the process could become a rolling programme. In five years time, once application for a new gTLD becomes a formality understood by the world's businesses, the c.250 country code registries will be overshadowed by maybe 1,000, perhaps 2,000 new

gTLD registries. To cope with this change, IP professionals will need new strategies and greater resources. Current best practice in the prosecution and protection of trade marks in the domain name system will no longer be adequate.

That no-one outside the ICANN community has called for this expansion of the domain name system is not relevant, says ICANN, which points to 18 months of "robust discussion and consultation". Nor is it relevant that its budgets show that it anticipates receiving \$92 million in application fees in the first year – enough to secure its financial future and to decrease its dependency upon the US government, though it maintains that the new gTLD process "is designed to be cost/revenue neutral".

The new gTLD programme, says Twomey, is quite simply about "The future of the internet and opportunities for its 1.5 billion users".

There are trade mark owners who hate the idea of facing Sunrise after Sunrise and the significant increase in the cost of protecting a mark in the domain name system from year-round monitoring to the filing of Objections. There are others who welcome the opportunity to break away from unreliable, unresponsive third-party registries and to raise their brands to the top level in the domain name hierarchy. If the first round of applications succeeds, we believe that most IP owners will eventually need to apply for their own gTLD, though this could be several years away when the costs have reduced. For the time being, we are monitoring the process whilst developing services for a few for whom early application makes strategic sense and the majority who need to preserve the integrity of their marks from the sidelines.

How are new gTLDs to be introduced? What is the timetable?

ICANN is launching the new gTLD process with an initial application round which will commence in May or June 2009 and run for 45 days. The proposed schedule – published with a health warning that "The program remains subject to further consultation and revision" – features the following stages:

October 2008: Launch of Version One of the Draft Applicant Guidebook

To read all 200 pages, go to:

www.icann.org/en/topics/new-gtld-program.htm.

A 45 day comment period is currently open. To contribute, go to <http://icann.org/en/topics/new-gtld-comments-en.htm>.

Every government in the world is being sent a letter to draw their attention to the process.

December/January 2009: Version Two of the Draft Applicant Guidebook to be published

This will take account of the comments submitted on Version One. Further comment will be solicited. Like the first version, it will be published in English, Arabic, Chinese, French, Russian and Spanish.

February/March 2009: Final Applicant Guidebook to be published

This will require the approval of the ICANN Board. It will be called the ICANN Request for Proposals (RFP) for New gTLDs. It will feature the base contract between registry operators and ICANN.

March/June 2009: Four Month Communication Period

ICANN is planning an extensive campaign to ensure that the new gTLD process is publicised around the world.

June/July 2009: New gTLD First Application Period Opens

It will run for 45 days. Applications must be submitted through an online TAS (Tld Application System) and be accompanied by what is currently proposed as a \$185,000 application fee.

August/September 2009: New gTLD First Application Period closes

The evaluation of applications will begin with a check for completeness following which the details of all applications including the character string applied for will be published for Public Comment. The Objection Process will open simultaneously. As Objections can be based upon Legal Rights, this is a key time for trade mark owners.

September 2009 onwards: Applications are Evaluated and Approved

If applications pass Initial Evaluation without challenge, ICANN hopes the path to delegation will be smooth with contracts being executed and new gTLD strings added to the root zone in less than six months.

August 2010: Application process possibly reopens

This may be for a limited period again or may be on a continuous basis. The application process may be simpler.

By this time, ICANN also hopes that some new gTLD registries will be live.

Table One is ICANN's anticipated timeline though it omits the publication of the second version of the Applicant Guidebook.

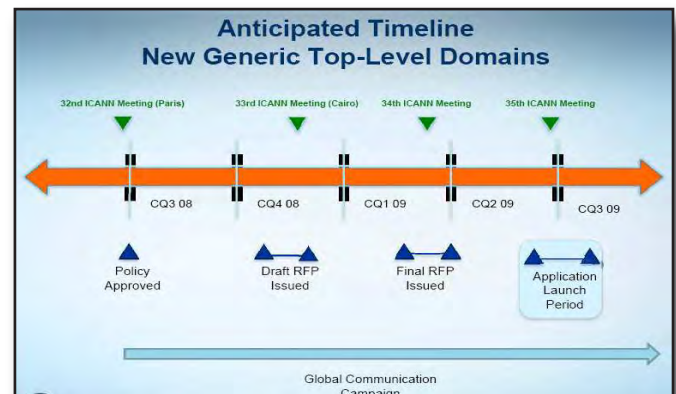


Table 1.

How will ICANN Manage Applications?

Kurt Pritz, Senior VP of Services who is responsible for the new gTLD programme for ICANN says he wants the application process to be “uncomplicated and robust”. The fastest route to success (see Table Two below) will feature a passage that flows from an Administrative Completeness Check to ensure that all questions are completed, documents filed and the application fees are paid through Initial Evaluation by independent evaluators onto Transition to Delegation. However, ICANN anticipates other routes to success: if an Objection is filed then Dispute Resolution is needed; if the applicant fails Initial Evaluation, he can request Extended Evaluation; if there is a clash between the string applied for and a government term or another applicant, String Contention is embarked upon. Each of these steps is outlined below. ICANN has not set out how long each part of the process will take, presumably because it depends on the type of applicant and registry applied for and the nature of any objection.

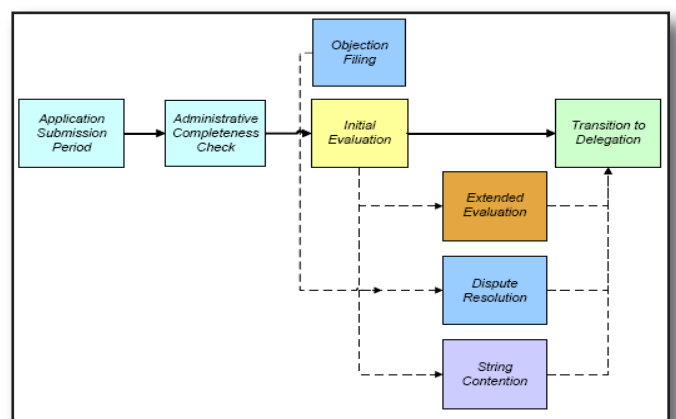


Table 2: The Fastest Route to Delegation.

Initial Evaluation

This will be led by outside contractors retained by ICANN, who are yet to be appointed. Initial Evaluation will feature two main elements:

1. A String Review: this is an examination of the character string applied for to ensure that there is no confusion with:
 - a. existing TLDs;
 - b. other character strings that have been applied for;
 - c. names on ICANN's Reserved list;
 - d. geographical terms that are the concerns of Governments (to be reviewed by a Geographical Names Panel);
 - e. terms that could threaten the stability of the internet.
2. An Applicant Review to test whether:
 - a. the applicant has the requisite technical, operational and financial capabilities;
 - b. whether the proposed registry services might adversely affect DNS security or stability.

Table Three outlines the key steps in the application process for an application that is not challenged.

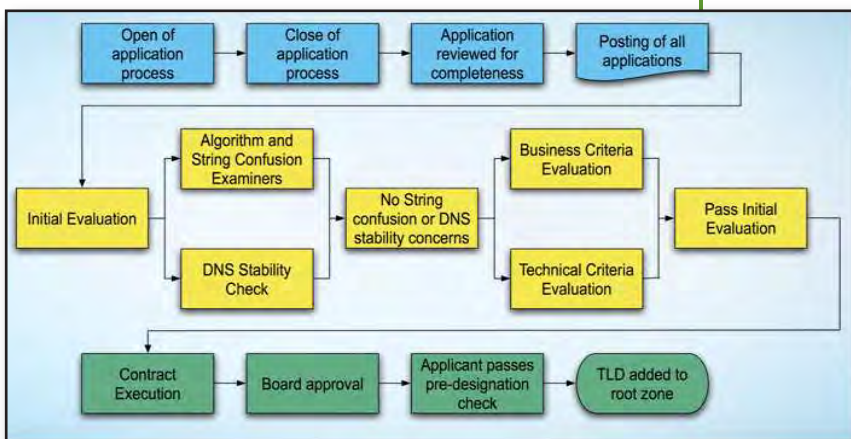


Table 3: The steps in the application process.

In an Appendix buried deep inside the Draft Applicant Guidebook, ICANN has set out the questions that it might use during Initial Evaluation. See:

<http://www.icann.org/en/topics/new-gtld-draft-evaluation-criteria-24oct08-en.pdf>. This features 20 questions that an applicant must answer to demonstrate technical and operational competence and 11 questions to demonstrate financial competence. The answer to each question will be scored 0, 1 or 2 points. This scoring methodology requires a minimum passing score for each question and each section. For example, an applicant must score at least 20 on the technical section to pass.

At the ICANN Cairo Open Meeting in early November 2008, Kurt Pritz stated that the key principles guiding the application process are, "Registrant protection, technical and fiscal conservatism and a requirement for some rights protection mechanisms". The inclusion of an assessment of the Rights Protection Mechanisms (RPM) planned by an applicant in Initial Evaluation demonstrates how keen ICANN is to listen to the concerns of the business community now that it wants them to apply. In earlier announcements about the process, RPM appeared to be a low priority. Now there is a question which requires all applicants to "Describe how their proposal will create policies and practices that minimize abusive registrations and other activities that affect the legal rights of others". It continues: "Describe how the proposal will implement safeguards against allowing unqualified registration within their applications".

There are even a set of questions about the Whois service the applicant will provide as well as a link that takes potential applicants through to a description of the UDRP which is mandated upon all successful new applicants.

Furthermore the "Perfect Sunrise?" booklet produced by the Intellectual Property Constituency of ICANN with sponsorship from MARQUES (and edited by the author of this newsletter)

has now been posted on the ICANN site as part of the core information being made available to prospective applicants.

This new focus on RPM does not mean that IP specialists should sit back and trust in the wisdom of the Evaluators to throw out unsound applications. As soon as applications are posted, IP professionals should scrutinise the RPM mechanisms outlined by applicants and submit comments on their efficacy. As the Evaluators will be sent all comments by ICANN, it is possible that an application could be

rejected if there are sufficient complaints that a proposed RPM is inadequate.

To prevent user confusion, ICANN is appointing String Similarity Examiners to assess every character string that is applied for during Initial Evaluation. These Examiners will be informed by an algorithmic score. A "pre-production test version" of the algorithm developed by SWORD, a US-based IT consultancy, is available at <http://icann.sword-group.com/icann-algorithm/>. The purpose of the algorithm is "to provide an open, objective, and predictable mechanism for assessing the degree of visual similarity between character strings applied for". It uses proprietary software to perform a series of mathematical calculations to calculate the visual

similarity between strings in various character sets based upon the following parameters:

- length of the strings;
- number of similar letters within sequences of two or more letters;
- number of similar letters not in sequence;
- number of dissimilar letters;
- length of common prefixes and suffixes if greater than one.

Every IP professional we know who has tried this tool has found it wanting. Don't take our word that it finds clashes where trade mark registries would not. Type in your own brands and see what is returned. ICANN promises it will be improved.

A partial refund may be made available to an applicant that fails Initial Evaluation who decides to withdraw from the process rather than seeking Extended Evaluation (see below). ICANN has promised to revisit the subject of refunds but offers no guidance yet on how much it will rebate.

Objections

A formal objection to an application can be filed as soon as the details of the applicant and the application are published. All objections must be submitted before Initial Evaluation closes.

There are four grounds for objections:

1. String confusion (to avoid contention when similar strings are applied for, called "Contention Sets")
2. Existing legal rights (so IPR are protected)
3. Morality and Public Order (to minimise government or religious interference)
4. Community Objection (expected from local or national governments, indigenous groups, geographical communities)

ICANN has appointed three Dispute Resolution Providers (DRPs): The International Chamber of Commerce (ICC) based in Paris will administer both Morality and Public Order Objections and Community Objections; The International Centre for Dispute Resolution (ICDR) based in New York has agreed in principle to administer disputes relating to String Confusion Objections; The Arbitration and Mediation Center of the World Intellectual Property Organization (WIPO) in Geneva will administer Legal Rights Objections.

During a Legal Rights Challenge, WIPO panelists must consider "if the potential use of the TLD applied for by the applicant takes unfair advantage of the distinctive character or the reputation of the objector's trade mark or service mark or unjustifiably impairs its distinctive character or

reputation, or otherwise creates an impermissible likelihood of confusion".

There will be a non-refundable Dispute Resolution Filing Charge for any Objection, which is likely to be between \$1,000 - \$5,000, as well as a more expensive Adjudication Fee. Both these are payable directly to the relevant DRP.

ICANN estimates that the costs of a Legal Rights Challenge administered by WIPO will be set somewhere between \$2,000 - \$8,000, depending on the number of panelists. However, objections on other grounds could be much more expensive - with adjudication fees even as high as \$122,000 it suggests - as the panelists will be paid on an hourly basis and the process for a Morality or Community Objection could involve both written submissions and a hearing.

ICANN apparently expect objectors to set aside their legal rights when they commence a proceeding. This is something that there will be many comments upon that we expect to see changed in the next iteration of the Guidebook.

Extended Evaluation

An applicant who fails Initial Evaluation because of concerns expressed as low scores for its technical, operational or financial capabilities, or because its proposed character string or Registry Services threaten the stability of the Domain Name System, has 15 days to request Extended Evaluation.

Extended Evaluation allows one further round of inquiry and answer between the Evaluators and the applicant. The Evaluators provide the applicant with a set of further questions around the perceived deficiencies. If the answers are adequate, the applicant will pass. If not, the applicant will fail. There is no further appeal mechanism.

A three member panel will undertake Extended Evaluation where there are concerns about a character string and a Registry Services Technical Evaluation Panel (RSTEP) will consider operational concerns. A review by a three person RSTEP panel could cost an applicant an additional \$50,000.

String Contention between competing applicants

ICANN will not approve "Contention Strings" when two or more applicants apply for the same or confusingly similar character sets and pass initial evaluation. ICANN hopes that applicants in this position can reach a settlement whereby all but one withdraws. However, as competing applicants cannot combine and may not select another character string, ICANN is considering auctions as "a clear and objective method of last resort". ICANN says it will use the proceeds from auctions "for projects or uses identified by the (ICANN) community" and not for its own purposes.

There is no mechanism for resolving “Content Contention”. This means that in theory ICANN might approve more than one application based on the same idea.

Transition to Delegation

Applicants who get through Initial Evaluation without an objection and those who pass Extended Evaluation move to “Transition to Delegation”. This features the execution of a registry agreement with ICANN which includes agreed dates for the launch of the registry (preferably within one year of applying) and a set of technical tests to ensure the applicant can fulfill the promises made in the application. The applicant will also be required to provide documentary evidence of its ability to fund “ongoing basic registry operations” for a period of three years.

Scenario Number	Initial Evaluation	Extended Evaluation	Objections Raised	String Contention	Approved for Subsequent Steps
1	Pass	N/A	None	No	Yes
2	Fail	Pass	None	No	Yes
3	Pass	N/A	None	Yes	Yes
4	Pass	N/A	Applicant prevails	No	Yes
5	Pass	N/A	Objector prevails	N/A	No
6	Fail	Quit	N/A	N/A	No
7	Fail	Fail	N/A	N/A	No
8	Fail	Pass	Applicant prevails	Yes	Yes
9	Fail	Pass	Applicant prevails	Yes	No

Table 4: Nine scenarios for applicants.

Open vs. Community

All applicants must designate their applications as either “Open” or “Community-based”. An Open gTLD is one that can be used “for any purpose” and a Community-based gTLD is one that is “operated for the benefit of a defined community consisting of a restricted population”.

All community-based applicants will be expected to:

1. Demonstrate an ongoing relationship with a defined community that consists of a restricted population;
2. Have applied for a gTLD string strongly and specifically related to the community named in the application;
3. Have proposed dedicated registration and use policies for registrants in its proposed gTLD;
4. Have its application endorsed in writing by an established institution representing the community it has named.

Community-based applicants will be subject to post-delegation contract obligations to operate the gTLD in a manner consistent with its obligations to the community. ICANN must approve any material changes to “the community-based nature of the gTLD”.

ICANN appears to expect a so-called private label gTLD applicant such as a trade mark owner seeking “.brand” to designate its application as Open even though a private, commercial registry restricted to a limited number of registrants appears to meet most of the requirements of a Community-based application. Further clarification is required here, especially as Kurt Pritz stated during the Paris ICANN Open Meeting in June 2008 that “should an applicant for a Community-based gTLD clash with an applicant for an Open gTLD, the former may prevail because it will be of greater benefit to the overall internet community”.

Allowable Character Sets and IDNS

The character strings applied for must be composed of three or more “visually distinct letters or characters” either in Ascii (the characters A – Z, the numbers 0-9 and the hyphen) or an approved IDN script.

IDNs are Internationalised Domain names. Applicants for an IDN gTLD must specify the language of the applied for string, supply a U-label (Unicode characters with at least one non-Ascii character) and A-label (the Punycode algorithm that starts with the ACE prefix “xn-”), the short form of the string in Ascii and a representation of the string in the phonetic alphabet.

ICANN is very keen to attract IDN gTLD applications. Paul Twomey says, “Currently there are only 21 gTLDs and they are all in characters that look like English. There are 1.5 billion internet users and many non-English speakers will have the opportunity to express the whole of a domain name in characters that look like their language”.

Whilst this may be true, the impact of fully-functioning IDN gTLDs is one aspect of the new gTLD programme that will raise many difficulties for the IP community who are currently accustomed to registering and monitoring domains in their own languages plus English.

The Costs of Applying

The draft schedule of “Fees and Amounts” published by ICANN features:

- A TAS (Tld Application System) Registration fee of \$100: this must be paid by the applicant in order to access ICANN’s on-line application system
- A gTLD Evaluation fee of \$185,000

Plus, if an applicant fails Initial Evaluation and goes into Extended Evaluation one or more of:

- A Registry Services Review Fee: anticipated to be \$50,000
- A Dispute Resolution Adjudication Fee: this could be between \$2,000 - \$8,000 if a Legal Rights Objection

has been filed, much more for a Morality Objection. Both the Objector and the Applicant will be required to pay the estimated costs of the proceedings in advance. The prevailing party will have this advance fee refunded leaving the losing party to bear most of the costs

- A Comparative Evaluation Fee if there is a String Contention and possibly the cost of bidding in an auction. These sums are yet to be confirmed

In addition, if successful in a bid, an applicant will be required to pay ICANN a so-called annual Registry Level Fee of \$18,750 per quarter (\$75,000 pa). This is a significant annual levy that has been criticised as being unfair on smaller registry operators and a bargain for larger registries. A fee per domain name per year is an alternative solution some commentators are advocating.

Objectors will also need to spend an estimated \$1,000-\$5,000 in a Dispute Resolution Filing Fee.

ICANN says that it has invested \$13 million in staff and consultancy costs in the past two years on the new gTLD programme. This investment plus the \$100,000 it estimates will be needed to process each standard application together with a further \$60,000 "for risk elements", led ICANN to the conclusion that it needs 500 applications paying \$185,000 each to make the first round of the new gTLD programme a success.

Applicants must fund more expenditure than just the ICANN fees in order to demonstrate the financial capability of running a gTLD registry. Each applicant must budget for:

- The process of developing a business plan
- The drafting of the application
- A team to lead on the bid and the creation of the registry
- The incorporation of an organisation to own the registry
- The creation of policies
- The creation of an effective back-end registry operating system: the majority of applicants will buy in registry services from a provider such as a ccTLD registry or one of the current gTLD operators Back End registry
- Working with at least one ICANN Accredited Registrar who will be allowed to place names into the registry (though ICANN is now questioning whether the current lines of demarcation between Registries and Registrars should continue)
- The daily operation and maintenance of a registry (almost certainly on an outsource basis)
- Insurances
- A team to oversee the operation and management of

the registry, to ensure stability is maintained and ICANN contract compliance is met. Again, this can be supplied on an outsource basis

Part Two: The Impact on IP Owners

In any forum where business or IP professionals discuss the new gTLD programme there is always someone who asks the question, "But who wants these new domains? Where is the demand? What is this really going to add other than cost and complexity?"

If there is an ICANN participant in such a discussion, it will be pointed out that \$13 million has been spent over two years in developing the programme. If there was once a time when the process could be stopped it was long ago. However, the Business and IP Constituencies in ICANN who favoured a slower pace of change were outvoted by those with vested interests in the expansion of the domain name system, including the Registry and Registrar Constituencies and the At Large Constituency, who, together with Board Members, relish the prospect that IDN gTLDs especially will bring "digital democracy".

The biggest surprise to many, even ICANN insiders, is the sheer audacity of the new gTLD programme. ICANN has abandoned caution – remember the "Proof of Concept" expansion that saw just 13 new gTLDs added in two rounds across eight years? – in favour of this "uncomplicated and robust approach" that will be communicated across the world in a four month marketing campaign in the spring of 2009 that ICANN anticipates will attract at least 500 applications in the first round.

The old ICANN could not have made this programme work. The new ICANN, led by an assured and professional team, have the experience and commitment to drive the programme through, coupled with the awareness that it secures ICANN's future. Now that they have taken steps to allow governments to block terms of importance to them, it appears that the only force that can slow them down is the perilous state of the global economy, a factor that was noticeably off-agenda at the ICANN Open Meeting in Cairo.

If ICANN can deliver its vision of a domain name system with several thousand gTLDs, then for most significant IP owners it is surely not a question of whether to apply but rather when to apply. As the domain name system metamorphosises into a directory of leading corporations, and internet users become accustomed to seeing brand names in the browser, can anyone ignore the process in the long-term? What should

IP owners consider when assessing the opportunities and risks of applying sooner rather than later in the new gTLD programme? We've put together the check lists below:

REASONS TO CONSIDER APPLYING IN FIRST ROUND

1. Your own gTLD demonstrates confidence & vision and may accelerate your brand and its value. Registration at the Top Level is better than registration at the 2nd Level.
2. First mover advantage is valuable – and it is vital that you keep pace with your peers; imagine what the consequence would be if your competitors apply and you do not?
3. It is a good way of reinforcing your global image, especially if in time you add IDN functionality (scripts in local languages) that impact on local markets.
4. Internet infringement is a plague: with your own gTLD, you create the policies & control who can register. You can build a trusted vault for authentic goods & services and lock out speculators & infringers.
5. Your own gTLD gives you a new channel for marketing and client/customer loyalty: if your customers want to register under your own gTLD you'll have a new sales channel.
6. You will get a high priority in search engines.
7. Alternatively, you can help users of Direct Navigation who type your new gTLD straight into the browser to find you, reducing your dependency on search engines.
8. A gTLD registry will be a valuable internet asset. There are outsource providers who can run it for you. If the costs are seen as an investment in marketing the brand rather than an IP overhead, it makes long-term commercial sense.
9. Perhaps you could combine with others in your sector to apply for a gTLD for a generic term that assists everyone in your industry but excludes infringers?
10. No-one knows when the second round of applications will open: ICANN hopes it will be in 12 months time but it might be longer. You could be left behind for years, perhaps forever.
11. A third party with an equal right to your name in another class of goods & services might apply, beating you to your preferred term. The Objection process won't help you then.
12. You'll be in charge of your own registry. Your key brands will be more secure and stable than in a 3rd party registry.

What are the counter arguments in favour of delaying an application until the process is proven?

REASONS TO DELAY APPLYING

1. It is not your business to run a registry.
2. Applying is going to be expensive and time consuming: let others pioneer the process. There have been many failed initiatives that have been expected to transform the internet – remember RealNames that shut down in 2002?
3. The investment you have made in securing a portfolio of gTLDs and ccTLDs and creating websites that communicate with your customers wherever they are already gives you a global presence.
4. A new gTLD is not going to stop infringers registering under other gTLDs: in fact the new gTLD process is going to increase your policing costs. You can't risk abandoning other registrations.
5. There is no demand from your consumers or customers, your shareholders or staff. It is ICANN, the registry operators and registrars who are pushing the programme. They will be the ones who profit from early applications.
6. You pay for Search Engine Optimisation already. Can anyone guarantee that a new gTLD will launch you up the listings?
7. What term should you apply for? The main operating company? Which trade mark or brand? The process raises as many branding issues as it resolves.
8. What about liabilities? What about risks? Suppose the process is delayed by legal challenge or your application faces an Objection? Suppose you set up a registry and it fails? There is too much uncertainty.
9. Owning a generic term in co-operation with competitors may be seen as anti-competitive. It raises many issues and might not enhance your brand.
10. The risk and the cost of applying will reduce after the first round. You can save money and learn from the mistakes others make.
11. You can oppose anyone who applies for a character string that matches your brands.
12. How long will it take internet users to understand private-label gTLDs? You've already invested in registration at the 2nd level other gTLDs that have proved unpopular with the public. No-one is going to abandon their .com.

What should IP professionals do now?

As an IP professional, whether or not you or your clients will be applying, you must engage in the ICANN new gTLD process. If you fail to do this, you are exposing the brands that are your responsibility to risk. ICANN has published the First Draft Applicant Guidebook. There will be a Second Guidebook before the Board approves the Final RFP. Despite the

complexity of this process, time is short. ICANN is now driving the process forward at internet speed.

Engagement means:

- Familiarising yourself with the process, for example by reading the Draft Applicant Guidebook
- Assessing with your colleagues the viability of applying now or later – because if ICANN succeeds we believe this will be the choice that you face. If the total costs of applying and establishing a .brand registry in the first 18 months are somewhere between \$500,000 - \$1million where can this capital be found during a time of recession?
- Hiring the consultants to make the application process easier, especially the operators of back-end registry systems if you decide you want to apply. You don't want to find that your grand plans are delayed not by ICANN but because the only operators you can work with have a back-log of 10 or 20 other applicants to work with before it is your turn
- Making a schedule of key dates and ensuring that you meet them. For example, comments on the First Draft Applicant Guidebook must be submitted by 3rd December. The next ICANN Open Meeting runs from 1st – 6th March 2009 in Mexico City. You might want to get a representative there if you are thinking of applying in the first round. If you feel that ICANN should create a special process for .brand applications or revise the base contract so that it cannot be varied at ICANN's sole discretion, if you'd like them to publish a table of refunds or abandon the String Algorithm in favour of expert opinion, now is the time to say so
- Preparing an Action Plan if you decide you do not want to apply in the first round, which may well be too ambitious for all but the largest brands or so-called internet properties, so that you can minimise the risks. For example, the Objection Period is very short at 15 days and could be expensive. You may want to retain Outside Counsel to prepare the background to an Objection or to investigate other approaches. How would ICANN react if a trade mark owner put it on notice against accepting an application for a term that matches registered trade marks?
- Considering the strengths and weaknesses of applying for a generic term that describes your core area of interest, perhaps in conjunction with others in your sector or a professional trade association?
- Ensuring that the decision makers in your organisation are aware of the new gTLD programme. Some IP owners came late to the internet party, missing out on .com and other key registrations when they were available direct from the registry. How much tolerance will there be if you miss out this time round?

Conclusions

The Draft Applicant Guidebook and accompanying Explanatory Memoranda amount to over 250 pages of information. It is a carefully drafted set of documents that reflects well on ICANN. If there are areas where policy has yet to be decided, it is highly likely that they will be covered off in the Second Draft Applicant Guidebook. Provided the business and IP community submits comments, it is also probable that the efforts that ICANN has made to ensure that the rights of others are protected will be further enhanced. What remains uncertain for many IP professionals is the value of the process, both for their trade marks and the public that depend on them. The best option for most is to wait.

Links

Full copy of the Draft Applicant Guidebook:

<http://icann.org/en/topics/new-gtld-draft-rfp-24oct08-en.pdf>

How to submit comments with links to each section of the Guidebook:

<http://www.icann.org/en/topics/new-gtld-comments-en.htm>

Draft questions that applicants may face:

<http://www.icann.org/en/topics/new-gtld-draft-evaluation-criteria-24oct08-en.pdf>

Explanatory Memorandum on Protecting the Rights of Others in the new gTLD process:

<http://www.icann.org/en/topics/protection-rights-22oct08.pdf>

An interactive process flow:

<http://www.icann.org/en/topics/new-gtld-interactive.htm>

The Character String Algorithm:

<http://icann.sword-group.com/icann-algorithm/>

Our New gTLD Services

Our new gTLD services include advice and services for those who don't want to apply but who wish to monitor their marks and support for those who do want to apply, including developing a business plan, drafting an application, and running a registry. We have engaged with back-end registry operators in Europe and the USA.

Our philosophy is that application in the first round is something that everyone should consider as a long term strategic option but only a few should implement. Should you wish to apply, we do not believe that creating a successful application has to be expensive and have developed a work flow to minimise up-front costs.

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