

# Domains & Domain Names

In 10 jurisdictions worldwide

*Contributing editor*  
**Flip Petillion**



2015

GETTING THE  
DEAL THROUGH 

# Domains & Domain Names 2015

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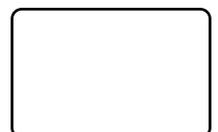


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# Application for New gTLDs and Domain Names

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When the Internet Corporation for Assigned Names and Numbers (ICANN) was formed in 1998, the DNS was limited to seven gTLDs (.com, .edu, .gov, .int, .mil, .net and .org), plus country-code TLDs and one TLD reserved solely for internet infrastructure purposes (.arpa). Part of ICANN's original mission was to develop appropriate policies and processes for adding new TLDs. Accordingly, ICANN accepted applications to create and operate new TLDs in 2000 and again in 2003, leading to the eventual addition of 16 new gTLDs: .aero, .biz, .coop, .info, .museum, .name and .pro, were added in the 2000 round; .asia, .cat, .mail, .mobi, .jobs, .post, .tel, .travel and .xxx were added in the 2003 round. Both of these application rounds were meant to be 'trial runs' to evaluate the process of adding new gTLDs.

Following the 2003 application round, ICANN began a lengthy process of policy development to further expand the root. The results of this process were codified in the 'gTLD Applicant Guidebook' (AGB), a nearly 350-page document outlining the rules, rights and processes for all interested parties regarding new gTLDs. ICANN once again began accepting applications for new gTLDs in January 2012, this time pursuant to the policies in the AGB. In this most recent round, over 1,900 applications were received. The entire application and evaluation process is being administered by ICANN, but most of the substantive work of evaluating the applications has been done by outside contractors selected by ICANN according to policies in the AGB. According to ICANN, as of the end of March 2015, approximately 30 per cent of the applications had proceeded to delegation and 40 per cent were still pending. Of the remainder, approximately 25 per cent had been withdrawn by the applicants, and ICANN had determined that approximately 4 per cent would not proceed to delegation.

In each round, ICANN has established different policies and processes for determining which gTLDs will be created and who will operate them. Under the current AGB, any entity (but not an individual) was eligible to apply for a new gTLD. The application fee was set at US\$185,000, although some assistance was available for qualifying applicants.

Applications were evaluated for, among other things, the financial stability of the applicant, the operational capabilities of the applicant, the technical parameters of the application and the potential for confusion between the string applied for and either an existing TLD or another applied-for TLD.

The AGB also established grounds for objecting to applications, and procedures for resolving those objections. These procedures allowed, for example, a party claiming some legal right to any applied-for string to attempt to prevent the delegation of that string to another party. More than 270 objections were filed with ICANN, involving just over 200 applications. As of the beginning of April 2015, most objections have been resolved, with only 10 still awaiting an initial determination. A few are now the basis for additional challenges brought through ICANN's general dispute resolution procedures, such as Requests for Reconsideration or Independent Review.

ICANN has also responded to certain expressions of opposition to applications that have not strictly complied with the established opposition processes, subjecting certain applications to additional requirements or to denial. Notable examples include the denial of Amazon's application for .amazon because of opposition from various South American governments, and the ongoing opposition from European governments to the applications for .wine and .vin.

Because there can only be one registry operator for each TLD, and because there were instances when there were multiple applications for

the same string, ICANN was forced to develop processes to deal with competing applications. First, ICANN encouraged applicants to reach an agreement as to which application would proceed. Some applicants have already reached such agreements through negotiations or private auctions. Next, ICANN developed a priority system where 'community applications' are prioritised and delegated over other applications competing for the same string. If no agreement between the applicants is reached, an applicant can request to be evaluated to determine whether the application meets the criteria for community priority. If multiple applications qualify for such priority or if no contending applications qualify for priority treatment, then the applicants proceed to an auction process established by ICANN, and the contested string will be delegated to the winner of the auction. ICANN expects that most conflicts will be resolved without recourse to ICANN's auction process, and, as of the end of March 2015, approximately 85 per cent of such conflicts had been resolved, and only 7 per cent of the resolutions required ICANN-administered auctions.

Once an application successfully completes these processes, the applicant can negotiate a registry agreement with ICANN, designating the applicant as the registry operator for the relevant TLD and specifying the terms under which the TLD must be operated consistent with ICANN consensus policies. According to ICANN, by the end of March 2015, 1,246 applications had been invited to begin contract negotiations. Most of the applications still pending are currently involved in contract negotiations.

Although all gTLDs operate pursuant to agreements with largely standardised terms, there is some variation. For example, different TLDs have different criteria for who may register a domain name.

Many new TLDs, like some existing TLDs, are open to anyone who wishes to register. Other new TLDs, again like some existing TLDs, impose registration requirements. Some such TLDs establish criteria for who may register. Others develop registration requirements based not on registrant identity but instead on how the requested domain name relates to the purpose of the TLD. Finally, some new TLDs are 'brand' TLDs, for which registration is restricted to the registry operator itself or its affiliates.

The process for registering domain names in new gTLDs is largely the same as the process for registering in existing TLDs, assuming there is open registration within the TLD. Domain names can be purchased through accredited registrars, who contract with individual registry operators to offer specific TLDs. In essence, registry operators are the wholesale sellers of names and registrars serve as the retailer sellers of the names. A potential registrant can register for an available domain name through any registrar that has an agreement with the registry operator to sell its names. The registration process may be different for different TLDs, depending on the registration requirements established by the TLD operator. All registrations require certain technical information, needed to locate the proposed domain name in the DNS, and contact information for the registrant, needed to identify the person or entity that controls the domain name.

The price for registration, the length of that registration and the terms of registration varies from TLD to TLD, from domain name to domain name and from registrar to registrar. Each registry operator sets the wholesale price at which it offers domain names to registrars and individual registrars set different resale prices, which may include additional services and support. Additionally, some TLDs offer certain names deemed to be especially valuable through auctions or at a premium price.

Depending on the nature of the TLD, registrants may have to agree to certain terms governing how the domain name can be used, what content it may contain and so on. For instance, in TLDs where anyone can register, the domain name can generally be freely transferred from registrant to registrant. For TLDs that restrict registration, the domain name is likely to be transferrable only if the receiving registrant demonstrates the necessary qualifications.

Registrars usually offer a range of registration periods, from as short as one year to as long as 10 years, and also offer auto-renewal options. Registrants can also choose to renew a domain name registration with a different registrar, or transfer the registration to a different registrar at any time.

Registry operators for new gTLDs are required to implement certain policies not yet applicable to all existing TLDs, mostly related to additional protections for rights holders. For example, new TLDs have to participate in the newly created Trademark Clearinghouse, a global repository for trademark data, which allows trademark holders an advance opportunity to register matching domain names before the names are available to the general public and provide notice to trademark holders of any attempt to register matching domain names during the TLD's initial operating period.

Registry operators for some new gTLDs must also comply with a series of public interest commitments (PICs). These PICs require the registry operator to abide by the commitments it made in its application, and may also include specific commitments tailored to the gTLD. For example, registry operators for strings in certain highly regulated fields, such as the strings .lawyer or .accountant, are required to restrict registration to those possessing credentials from the relevant authorities allowing them to practise in those fields.

Registry operators for new TLDs must also implement a new uniform rapid suspension system (URS) for clear-cut cases of infringement.

The URS is intended to be a lower-cost, faster alternative to the existing Uniform Domain-Name Dispute Resolution Policy (UDRP). The URS process will generally be concluded within 20-25 days, whereas the UDRP process generally lasts about two months. URS filing fees will also be significantly cheaper. The URS process also involves an appeal, unlike the UDRP process. As of December 2014, at least one URS appeal had been completed, resulting in a reversal of the initial decision.

Similarly, new gTLDs are required to agree to a set of post-delegation dispute resolution procedures designed to resolve disputes related to the conduct of the registry operator, including claims that the registry operator is complicit in trademark infringement, is deviating from the registration restrictions established for a community-based TLD, or is not complying with the PICs in its registry agreement with ICANN.

Additionally, ICANN-accredited registrars are now required to sign new accreditation agreements if they wish to sell names in the new gTLDs. All registrars will eventually have to sign new agreements in order to renew their accreditation. Most controversially, these new agreements include new terms related to data retention that many registrars believe to be in violation of EU law. ICANN has responded by creating a process by which registrars can seek a waiver from compliance with certain requirements, but many registrars remain dissatisfied.

In the second half of 2014, ICANN began a series of reviews, designed to assess the effectiveness and fairness of the latest application round of new gTLDs, as well as its effect on the security and stability of the Internet. ICANN estimates that these processes will continue until at least mid-2016, with some activities continuing well into 2017. Accordingly, ICANN has not set a date for the launch of the next round of TLD applications, but has stated that the earliest it expects a new round to begin is sometime in 2016, and it will likely be later than that.



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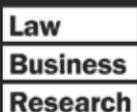
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