



# Domains & Domain Names

in 16 jurisdictions worldwide

# 2014

Contributing editor: Flip Petillion



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*Getting the Deal Through* is delighted to publish the first edition of *Domains & Domain Names*, a new volume in our series of annual reports, which provide international analysis in key areas of law and policy.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 16 jurisdictions featured.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are always referring to the latest print edition or to the online version at [www.GettingTheDealThrough.com](http://www.GettingTheDealThrough.com).

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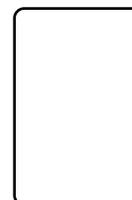


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# Application of domain names in existing or new gTLDs

**John Murino and Emily Alban**

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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 the 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 sixteen 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, the ICANN began a lengthy process of policy development. 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. The 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 1900 applications were received. Some of the gTLDs applied for have already been delegated; others are still pending; and a few have been rejected.

In each round, the 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 TLD applied for. The entire application and evaluation process is being administered by the ICANN, but most of the substantive work of evaluating the applications has been done by outside contractors selected by the ICANN according to policies in the AGB.

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 the string applied for to attempt to prevent the delegation of that string to another party.

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, the ICANN was forced to develop processes to deal with competing applications. First, the 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, the ICANN developed a priority system where 'community applications' were prioritised in the event of competing applications for the same string. If

no agreement between the applicants is reached, applications that qualified to serve a particular community were given priority and delegated instead of other applications. 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 the ICANN, and the contested string will be delegated to the winner of the auction.

Successful applicants can then negotiate a registry agreement with the 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.

Although all gTLDs operate pursuant to such agreements, there is some variation regarding registry agreements. For example, different TLDs have different criteria for who may register a domain name.

The terms of these arrangements will differ among various TLDs. Many new TLDs, like some existing TLDs, will be open to anyone who wishes to register. Other new TLDs, again like some existing TLDs, will impose registration requirements. The registry operators for these TLDs must establish the criteria for who may register. Others will develop registration requirements based on the purpose of the TLD. Finally, some new TLDs will be 'brand' TLDs, for which registration will apparently be restricted to the registry operator itself or its affiliates.

The process for registering domain names in new gTLDs will be 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 registrars, who are accredited retail sellers of domain names that 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 will 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 will vary from TLD to TLD, from domain name to domain name, and from registrar to registrar. Each registry operator will set the wholesale price at which it offers domain names to registrars, and individual registrars will set different resale prices, which may include additional services and support. Additionally, some TLDs will 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 will usually offer a range of registration periods, from as short as one year to as long as 10 years, and will also offer auto-renewal options. Registrants can also choose to renew a domain name registration with a different registrar, or transfer to a different registrar at any time.

Registry operators for new gTLDs will be 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 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, applicants for strings in highly regulated fields,

such as the applicants for .lawyer or .accountant, may be required to restrict registration to those properly certified by the relevant authorities to practise 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.

Similarly, new gTLDs will be 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 the ICANN.

Additionally, the ICANN-accredited registrars are now required to sign new accreditation agreements if they wish to sell names in the new gTLDs. Most controversially, these new agreements include new terms related to data retention that many registrars believe to be in violation of EU law.

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