

New gTLDs: Answers to Key Questions

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Dear Reader,

Two Thousand and Eleven will be remembered as the year in which historic decisions were made regarding the future and further expansion of the Internet.

Over the past few years, many people, companies and organizations have participated in a policy development process organized by the Internet Corporation for Assigned Names and Numbers (“ICANN”) which will eventually result in a complete liberalization of the Domain Name System (“DNS”). The DNS is one of the Internet’s core infrastructures, used by many in order to provide or obtain access to commonly used resources such as websites and email.

The impact of this liberalization effort, which is referred to as *the New gTLD Program*, is not to be underestimated. It may have a significant effect on how one of the world’s most critical resources, the Internet, is used in the future.

In the meantime, a large number of documents, working papers and guidebooks on the New gTLD Program have been written and published; essential reading to prepare for and, for interested parties, to participate in this (r)evolution.

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It is our intention to provide - through answers to more than a hundred questions - an overview of the state of affairs as well as recommendations on how to approach ICANN’s New gTLD Program. This document is meant to assist interested parties in determining whether or not they should engage in the New gTLD Program and, if so, what considerations and efforts should be undertaken.

This brochure explains the several steps of the application process, and what the related costs are. In addition, it considers a number of guidelines for businesses and organizations when faced with either competition for a particular extension or opposition from third parties, or when considering whether to oppose an application.

This brochure also provides information concerning the development, implementation, launch and management of a domain name registry. Such guidance is not provided in ICANN’s Applicant Guidebook, but is based on our experience in assisting applicants, registrars, registry operators and domain name registrants. Finally, we look at the various options available to companies and organizations to safeguard their trademark rights in the context of ICANN’s New gTLD Program.

This brochure contains answers to questions that you will also find in the FAQ posted on the ICANN website. We have updated the answers, supplemented the list with a number of additional questions, and re-ordered the topics, to make the whole program more accessible and easier to understand. Depending on your experience with TLDs, you may start reading at the section of your choice.

We intend to publish updated versions of this list periodically on our website. Any observations are welcome. Please email any comments to mnelissen@crowell.com.

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Table of Contents

A). The very first questions	7
1. What is happening in 2012?	7
2. What does a TLD look like?	7
3. Who can apply?	7
4. What could a New gTLD do for an applicant?	7
5. What kind of TLD should one look at creating?	9
6. What are the risks of not applying?	9
7. How will Google treat these new gTLDs compared to the existing ccTLDs and gTLDs?.....	9
8. Will the .com domain disappear now?.....	10
B). Some Basics about Domains and Domain Names	11
9. What is a domain name?	11
10. What is a domain or Top-Level Domain (TLD)?.....	11
11. What is a ccTLD?	11
12. What is a gTLD?.....	11
13. What is the Domain Name System (DNS)?	11
14. Who is in charge of the DNS?	11
15. Where does ICANN get its authority from?.....	12
16. To whom is ICANN accountable?.....	12
17. How are gTLDs delegated?.....	13
18. How many gTLDs does ICANN expect?.....	13
19. How are domain names registered in TLDs?	14
20. What are second-level and third-level domain names?.....	14
21. What is an IDN?.....	14
C). The New gTLD Program.....	15
22. What is the new gTLD Program?	15
23. Why are new gTLDs being introduced?	15
24. How did the New gTLD program develop?	15
25. How did the new gTLD policy development process work?	15
26. How are the GNSO's policy recommendations being implemented?	16
27. Will the introduction of new gTLDs change how the Internet operates?	16
28. How many new gTLDs are expected?.....	16
29. What happens if more applications are received than expected?	16
30. Is the processing in batches to be seen as a limitation of the number of applications?.....	16
31. How do I know in which batch my application will fall?	16

32.	Can I apply for any kind of gTLD or are there any specific restrictions?.....	17
33.	Can I file an application for a gTLD that is not in Latin script?.....	17
34.	What classifications of gTLDs are available?.....	17
35.	What is the advantage of a community-based application?.....	17
36.	What is a Standard application?.....	17
37.	Is this the only opportunity to apply for a new gTLD?	17
38.	Does this application process cover new ccTLDs also?	18
D). Applicant Guidebook		19
39.	What is the "Applicant Guidebook"?	19
40.	Why has ICANN been releasing drafts of the Applicant Guidebook?	19
41.	What is the final approved version of the Applicant Guidebook?.....	19
42.	What is the purpose of the applicant guidebook?	19
43.	Why is ICANN asking for so much information from the applicants?	19
E). Applying for a gTLD		20
44.	Is applying for a new gTLD the same as registering a domain name?.....	20
45.	Can I register an idea for a new gTLD in advance of the next application period?.....	20
46.	Is the application process for new gTLDs the same as previous gTLD application rounds?.....	20
47.	If my application was not selected or not approved in the 2000 or 2004 rounds, can I reapply in the upcoming round?.....	20
48.	Will applicants who participated in the previous gTLD application processes receive special treatment in future rounds?.....	20
49.	Who can apply for a new gTLD?.....	20
50.	Do any scenarios exist in which a party may execute a contract with ICANN on behalf of another party?	20
51.	How do I apply for a new gTLD?	21
52.	Can I apply for more than one gTLD?.....	21
53.	Can I apply for two similar or related TLDs?.....	21
54.	Can I submit just one application for 2 or more gTLDs?	21
55.	Can I simply reserve a gTLD and decide later whether or not to use it?.....	21
56.	Is there going to be a Sunrise Period for trademark owners to submit new gTLD applications?.....	21
57.	Do I need to have a trademark in order to apply for a new gTLD?	22
58.	When must I apply?	22
59.	Where do I apply?	22
60.	What are the key steps in the application process?	22
61.	Why do I need a business plan?	22
62.	Can I make changes to my application after submission?.....	23
63.	Can sector specific entities join efforts and file an application for a TLD but exclude other entities from the sector to participate in the project?.....	23

F). Objection & Dispute Resolution	24
64. How and when can I see which gTLD strings are being applied for and who is behind the application?.....	24
65. How can I object to an application?	24
66. Who will manage the Dispute Resolution Procedures?.....	24
67. I am an existing registry operator and I see that a third party has applied for an extension that is confusingly similar to the TLD that I am operating. What can I do?	25
68. What can I do if someone applies for a string that represents my brand or trademark?.....	25
69. Will ICANN prevent the registration of objectionable or racist extensions?.....	25
70. How can I have the best position at the negotiation table if I would be in competition with one or more parties?.....	25
G). Timeline.....	27
71. When can I apply for a new gTLD?	27
72. How long will the evaluation process take?.....	27
73. How long will the objection process last?.....	27
74. How long will it take for my TLD to go into the root?	27
H). Costs	29
75. How much is the evaluation fee?	29
76. If I file two or more applications, do I have to pay US\$185,000 for each TLD?.....	29
77. Are there any additional costs I should be aware of in applying for a new gTLD?	29
78. Are there any ongoing fees once a gTLD is approved by ICANN?	29
79. Where do the applications fees go to?	29
80. Will ICANN offer refunds?.....	29
81. Is there a cost to file an objection?.....	30
I). Brand-related New gTLDs.....	31
82. Do I need to have a trademark in order to apply for a new gTLD?.....	31
83. Can I reserve my trademark as a gTLD?.....	31
84. If someone applies for a TLD that is a brand name or a trademark that does not belong to them, will the brand or trademark owners be notified by ICANN?	31
J). Evaluation of New gTLD applications.....	32
85. What is the evaluation process?	32
86. What if an application does not pass Initial Evaluation?.....	32

87.	How will gTLD applications be assessed?	32
88.	What happens if there are multiple applications for the same string?	32
89.	What happens if there are applications for confusingly similar strings?	33
90.	What evaluation panels exist?	33
K). Delegation of New gTLDs.....		35
91.	What happens once a new gTLD application is approved?	35
92.	How are New gTLDs implemented in the system?	35
93.	Is there a limit on many new TLDs can go into the root a year?	35
94.	What rights will I receive once I am granted the delegation of a TLD?	35
L). Using a TLD		36
95.	How long will I be allowed to use the TLD?	36
96.	Can the initial term be extended?.....	36
97.	Can the TLD be transferred?.....	36
98.	Can a TLD be modified?.....	36
99.	What if I change my trademark(s)?.....	36
100.	What if I want to change the intended use of my TLD?	36
M). Trademarks and Domain Names in New gTLDs.....		37
101.	How will the rights of trademark holders be protected in the process?	37
102.	If I want to register a gTLD solely for my own use, for example, solely for use by my company, partners, consultants, shareholders, auditors, etc., can I limit the issuance of second level domains to those individuals? Can I refuse to accept applications for second level domains from members of the public in general or from competitors?	38
103.	Can I, from the outset, refuse applications for second level domains from individuals who appear to be cyber squatters or scammers?	38
104.	Why do I need ICANN accredited registrars?	38
105.	Are there any restrictions on domain name pricing?	40

A). The very first questions

1. What is happening in 2012?

The Internet Corporation for Assigned Names and Numbers (ICANN) will be accepting applications for new generic top-level domains (gTLDs) from January 12, 2012 to April 12, 2012. Any applicant that can demonstrate the financial, organizational and technical ability can have its own TLD “extension.”

2. What does a TLD look like?

A TLD must have a minimum of 3 characters (and maximum of 63) and can only be made up of letters (no numbers, no hyphens). A new TLD can also be in non-latin script, making it an International Domain Name or IDN.

Example: .crowell

3. Who can apply?

- Only legal entities can apply. Individuals cannot apply.

Applicants need to be financially, administratively and legally sound to apply.

- Cyber squatters need not apply.

An applicant's background will be checked. Applicants will be screened at the start of the evaluation process before their application is allowed to progress.

- Applicants will be publicized.

Details of all applications will be published once the application window has closed. Financial information and sensitive company information will not be published. The names and functions of directors and shareholders holding at least 15% of the shares will be published.

Because of the publication of all applications, organizations that do not apply will still be able to find out about potentially problematic applications before applications are approved, thereby leaving them time to act (e.g., by filing an objection).

4. What could a New gTLD do for an applicant?

A TLD offers much greater control over an entity's Internet presence:

- Control over internal and external communication.

A TLD can become the focal point of a company's Internet presence, both for internal (administration, staff) and external (distributors, customers, media, investors) users.

- Cost control.

A company can register its own domains in its own TLD. It won't have to fight others for a domain name, or pay a premium for the domain it wants on the aftermarket. It can even open up its TLD to sell domain names to dedicated individuals or the public at large and make money from running a TLD (if the string chosen lends itself to (dedicated) public use).

- Intellectual Property control.

Once a gTLD is granted, the company will act as a registry operator and be in control of the registration rules. It can determine that certain domain names can never be registered by anyone else (all their trademarks or product names for example). It can offer customers their very own domain name in the gTLD, thus helping to rationalize the portfolio of domain names and trademarks.

- Image control.

By being one of the new gTLD pioneers, i.e. those applicants that are there in the first round that is open to the general public, companies strengthen their image as innovators and technology leaders.

- Technical control.

Operating a TLD means that the entire registration system is under the control of the TLD owner. Companies can negotiate the location/jurisdiction of the domain name servers with the technical back-end operators and specify the technical criteria of these servers.

This is something that simply cannot be done through a traditional domain name in a traditional TLD such as .com or .info, because the registrant of the domain name depends on a registrar and a registry to keep its domain name online. For example, with a TLD, international shipping companies can ensure that all their global routing systems are more secure. A transportation company using the domain *transportationcompany.com* as the basic scan address for all its bar codes would have to account for a critical point of potential failure that is outside its control, but would retain complete control with a *.transportationcompany* registry. Banks would be able to ensure that their online transactions are done in a fully sealed environment. Network operators would not need to depend on outside companies to guarantee their customers' Internet access.

- Monetizing opportunity.

When implemented appropriately, a gTLD may be able to generate significant direct revenues from the registration and renewal of domain names in the gTLD, if that is the applicant's objective. For example, entities may be willing to pay money to register a domain under an extension such as '.shoe' or '.car'. Second-level registrations within geographical extensions for major cities such as '.nyc' or '.london' might also be attractive to businesses that operate in that area or want to be associated with it.

5. What kind of TLD should one look at creating?

- A brand or generic TLD.

Can you claim some kind of right in the term? If not, should you apply for a trademark in advance? Would such a request be seen as legitimate (because the term is directly linked to your industry or to a community you represent, for example)?

- Examine partnership opportunities.

Would the application be stronger if you would team up with other players in your industry (this could not only help in obtaining a valuable TLD but may also serve to create long-term business relationships with similar companies in the field)?

- Identify the right target audience.

Who would you seek to reach through a generic TLD? Is this feasible?

6. What are the risks of not applying?

It is likely that a significant number of new gTLDs will be delegated in the first round, thereby increasing the number of “existing gTLDs” ineligible for applications in future rounds, and potentially precluding other identical and confusingly similar extensions from being delegated to applicants in future rounds.

Would-be applicants who decide not to apply given uncertain financial implications and the lack of certainty of potential returns for a new gTLD may generally take a more defensive approach. However, not applying for a proprietary gTLD raises the risk that these parties will be permanently precluded from operating their brand, business name, or identity at the top level of the DNS.

For instance, if an entity is hesitant about applying for .musik and decides not to wait for a future round, but .music would be granted during this round, it is highly unlikely that .musik would ever be granted in a future round.

7. How will Google treat these new gTLDs compared to the existing ccTLDs and gTLDs?

We expect Google to take into account the arrival of new gTLDs into its algorithm.

According to Google, its goal is to return the best and most relevant results to the user, regardless of the top-level domain. If its system determines that the best result is a page on a new gTLD, it will return that page in search results.

In its guidelines, Google suggests that webmasters take certain steps to ensure that visitors see the content they want them to see. For example, to help Google serve the most appropriate version of a document, Google asks webmasters to use country code top-level domains whenever possible to handle country-specific content.

Google is more likely to know that <http://www.example.de> contains Germany-focused content, for instance, than <http://www.example.com/de> or <http://de.example.com>.

We expect a similar logic will apply to gTLDs, old and new.

Whereas the extension .com does not add any detailed information on the content of a particular website, a new gTLD like .food is expected to offer content that is related to the food industry.

8. Will the .com domain disappear now?

No. It is the largest TLD, in which more than 40% of all existing domain names have been registered. Not everyone will be able to register a proprietary TLD. Successful applicants for a TLD may want to keep their current domain name registrations until they have a full picture of the value of their TLD.

B). Some Basics about Domains and Domain Names

9. What is a domain name?

Once connected to the internet, every computer has a unique identifying Internet Protocol address - or an "IP address" - each IP address is then substituted with an easy to remember set of characters or letters which become the domain name. The domain name is what a user will type in when accessing websites.

10. What is a domain or Top-Level Domain (TLD)?

Each domain name is followed by a top-level domain (TLD) i.e. the 2 or more letters that follow the dot. TLDs - also referred to as 'strings' or 'extensions' - are grouped into two categories: generic top-level domain (gTLDs) such as .com, .mobi, and .info, and country code top-level domains (ccTLDs) such as .us, .ca and .uk.

A registry operator would manage the TLD and maintain the registry database including the domain names registered therein.

11. What is a ccTLD?

'ccTLD' is the abbreviation for country-code Top-Level Domain - the top-level domains that identify a country or territory. There are approximately 250 ccTLDs in existence such as .ca for Canada, .jp for Japan, and .eu for the European Union.

12. What is a gTLD?

'gTLD' is the abbreviation for generic Top-Level Domain. The 22 gTLDs currently available include .com, .org, and .info.

13. What is the Domain Name System (DNS)?

The Domain Name System helps make the Internet more accessible by allowing users to type in a domain name instead of an IP address, for example typing 'www.google.com' rather than typing 74.125.77.104.

14. Who is in charge of the DNS?

ICANN is in charge of the DNS. ICANN is the abbreviation for "Internet Corporation for Assigned Names and Numbers", a not-for-profit public-benefit corporation formed in September 1998. Prior to ICANN, the DNS was managed by an agency that belongs to the United States government, the Internet Assigned Numbers Authority ("IANA").

ICANN's primary mission is to coordinate, at the highest level, the Internet's systems of unique identifiers globally, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems, which is the DNS.

ICANN has offices around the world, with headquarters in Marina del Rey, CA. (USA), and regional / representation offices in Washington DC and Palo Alto (USA), Brussels (Belgium) and Sydney (Australia).

ICANN is governed by a Board of Directors, with representation from most, if not all, of its stakeholder groups. These stakeholder groups are involved in the various decisions taken by ICANN through a bottom-up policy making process, ensuring input from users of the Internet community. The stakeholder groups include, amongst others:

- the Generic Names Supporting Organization (“GNSO”);
- the country code Names Supporting Organization (“ccNSO”); and
- the Government Advisory Committee (“GAC”).

15. Where does ICANN get its authority from?

ICANN was created at the end of the previous millennium through a Memorandum of Understanding between the United States Department of Commerce and ICANN to transition management of the DNS from the United States government to the global community. Since its establishment, ICANN has gradually obtained more independency, in particular from the United States Government.

Whereas the initial Memorandum of Understanding, entered into by ICANN and the US Department of Commerce (“DOC”), defined joint tasks, roles and responsibilities, the so-called “Affirmation of Commitments”, signed in September 2009, included a confirmation by the DOC of ICANN’s role and status as a global and private sector led organization responsible for the technical coordination of the DNS.

Nonetheless, this does not mean that governments do not take part in ICANN’s policy development and decision making processes. The GAC still plays an important role in order to ensure that ICANN takes into account the concerns of governments, particularly in matters where there may be an interaction between ICANN’s policies and national laws or international agreements.

16. To whom is ICANN accountable?

ICANN has external as well as internal accountabilities.

Externally, ICANN is an organization incorporated under the law of the State of California in the United States. That means ICANN must abide by the laws of the United States and can be called to account by the judicial system. This means that, amongst other things, ICANN can be taken to court.

ICANN is also a non-profit public benefit corporation and its directors are legally responsible for upholding their fiduciary duties.

Internally, ICANN is accountable to the community of global Internet users and must operate within its own bylaws and within the remit of the Affirmation of Commitments.

Disputes with ICANN may be resolved using one of three dispute resolution procedures: the Board Reconsideration Committee; the Independent Review Panel; and ICANN's Ombudsman.

17. How are gTLDs delegated?

One of ICANN's missions and principal objectives is to promote competition and develop policy concerning the Internet's unique identifiers, in particular in the gTLD space.

In order to do so, ICANN has expanded the number of gTLDs already twice since its inception:

- in 2000, when new gTLDs like .INFO and .BIZ became established; and
- in 2003, out of which came .MOBI, .ASIA and .TEL as the most well-known extensions.

One of the main policy making bodies within ICANN, the Generic Names Supporting Organization ("GNSO") determined that these so-called "trial rounds" gave sufficient insight in order for ICANN to establish a process and a policy for a complete liberalization of the gTLD namespace.

In 2007, the GNSO established a set of principles, guidelines and recommendations for ICANN to implement what is now known as the "New gTLD Program".

Since 2007, ICANN staff has been working together with a number of independent experts in order to effectively implement those principles, guidelines and recommendations into a workable policy for this Program.

These policies are part of the New gTLD Applicant Guidebook which was approved by the ICANN Board on June 20, 2011. This document mainly encompasses an application process, an evaluation process, and a dispute resolution / objections process. Under this policy, applicants for new gTLDs must demonstrate to ICANN their operational, business, technical and financial capability in order to obtain a proprietary top-level domain, such capabilities will be assessed on the basis of objective, measurable and transparent criteria.

18. How many gTLDs does ICANN expect?

ICANN expects about 500 applications for new gTLDs. New gTLDs can be brought under one of the following (non-official) categories:

- cities;
- corporations or brands;
- industries;
- regional, language and cultural communities; and
- "true" generic TLDs.

At the time of drafting and submitting an application, the applicant will be required to qualify the TLD for which an application is submitted. ICANN has provided for two distinct qualifications: “standard” gTLDs and “community-based” gTLDs. Any of the above non-official categories will be able to qualify their application accordingly.

19. How are domain names registered in TLDs?

One or more registrars will register all domain names within a gTLD or a ccTLD. A registry of a ccTLD may allow direct registrations via the registry itself. It is the registrar’s job to check the availability of a domain name with the relevant registry and then execute the registration transaction with the registry. This table illustrates the different parties and their respective roles:

Holds a domain name	Registrant
Registers domain names	Registrar
Is responsible for a TLD	Registry
Is in charge of the DNS	ICANN

20. What are second-level and third-level domain names?

A second-level domain is the portion of the domain name which precedes the top-level domain for example, the "crowell" in "crowell.com".

A third-level domain name, or a ‘sub-domain’, is the portion of the domain which precedes the second-level domain name and it typically used to categorize special sections of a website, for example, the “bbc” in “bbc.co.uk”.

21. What is an IDN?

An Internationalized Domain Name or ‘IDN’ is the international representation of a domain name *i.e.*, domain names which contain characters with accents or other marks (é) or characters from non-Latin scripts, such as Arabic or Chinese.

C). The New gTLD Program

22. What is the new gTLD Program?

The new gTLD program is an initiative that enables the introduction of new gTLDs beyond the current 22 gTLDs available.

23. Why are new gTLDs being introduced?

ICANN hopes that the new gTLDs will encourage competition in the domain name market by allowing entrepreneurs, businesses, governments and communities around the world to apply for operating a Top-Level Domain of their own choosing.

24. How did the New gTLD program develop?

The decision to establish the New gTLD Program followed a detailed and lengthy consultation process with all constituencies of the global Internet community. Representatives from a wide variety of stakeholders – governments, individuals, civil society, business and intellectual property constituencies, and the technology community – were engaged in discussions for over 4 years. In October 2007, the Generic Names Supporting Organization (GNSO) – one of the groups that coordinates global Internet policy at ICANN – completed its policy development work on new gTLDs and approved a set of recommendations. Contributing to this policy work were ICANN's Governmental Advisory Committee (GAC), At-Large Advisory Committee (ALAC), Country Code Names Supporting Organization (ccNSO) and Security and Stability Advisory Committee (SSAC). The ICANN Board of Directors adopted the policy in June 2008.

There are eight gTLDs that predate the formal establishment of ICANN as an organization. These are: .com .edu .gov .int .mil .net .org .area. ICANN held two previous application rounds, one in 2000 and another in 2003-4, where several proposals were submitted and evaluated. The gTLDs approved during the 2000 round were: .aero .biz .coop .info .museum .name .pro. The gTLDs approved during the 2004 round were .asia .cat .jobs .mobi .tel .travel.

Applications received during these rounds were evaluated against previously-published criteria, and successful applicants went on to sign TLD Registry Agreements with ICANN.

ICANN learned from these previous rounds and developed the New gTLD program to further liberalize the internet extensions in a controlled manner.

25. How did the new gTLD policy development process work?

The Generic Names Supporting Organization (GNSO) created the policy applicable to gTLDs under what is known as the GNSO policy development process (as defined within the ICANN Bylaws). It was the GNSO's intention to create a standing policy to guide the introduction of new gTLDs.

26. How are the GNSO's policy recommendations being implemented?

ICANN has translated the GNSOs recommendations into what is known as the Applicant Guidebook – an essential tool for all potential applicants.

27. Will the introduction of new gTLDs change how the Internet operates?

The new gTLDs should not affect the way the Internet operates, however it could potentially influence online business plans and/or structures or the way people find information and the information search engines index.

28. How many new gTLDs are expected?

Without knowing exactly how many applications it will receive, ICANN is not able to state how many of these applications will translate into live gTLD registries. Industry speculations have ranged from below 500 to over 1,000.

29. What happens if more applications are received than expected?

ICANN has indicated that should the volume of applications be vast in number, ICANN will process the applications in batches with the first batch being limited to 500 applications and each subsequent batch limited to 400.

It is anticipated that this approach would allow for capacity limitations in managing the evaluations, string contentions and any other processes or delays associated with the previous batch.

30. Is the processing in batches to be seen as a limitation of the number of applications?

The Applicant Guidebook does not put a limit on the number of applications that will be accepted. However, due to processing constraints, applications will be batched. The first batch will be a maximum of 500 with subsequent batched at a maximum of 400 each.

31. How do I know in which batch my application will fall?

At the time of applying for a gTLD, Applicants will not know in which batch their application will fall. A process external to the application submission process will be employed to establish evaluation priority. This process will be based on an online ticketing system or other objective criteria, which ICANN still needs to clarify.

If batching is required, ICANN will first examine the identity and similarity of all applied for gTLDs with existing TLDs and other applied for gTLDs. All applied for gTLDs similar to each other will be kept together in the same batch.

32. Can I apply for any kind of gTLD or are there any specific restrictions?

Aside from a set of reserved gTLDs that are unavailable for general use, every proposed gTLD extension will have a set of specific technical rules which apply. For example an application for an ASCII string (as opposed to an IDN), must be composed entirely of alphabetic characters, and applicants for a gTLD that is a geographic name must meet additional requirements, such as a letter of government support. This is not an exhaustive list and there are more specific rules which could apply to an applicant as well as the application – it is advisable to seek the correct advice pre-application.

33. Can I file an application for a gTLD that is not in Latin script?

IDNs will be a type of new gTLD. IDN is an acronym for Internationalized Domain Name. IDNs are domain names with characters other than the Latin: a, b..., z; 0, 1..., 9; and "-".

IDNs have been delegated as country code Top-Level Domains (ccTLDs) in previous processes and will be delegated as new gTLDs.

As a consequence, domain names could contain characters with diacritical marks as required by many European languages, or characters from non-Latin scripts; for example, Arabic or Chinese. IDN top-level domain names will offer many new opportunities and benefits for Internet users around the world by allowing them to establish and use top-level domains in their native languages and scripts.

34. What classifications of gTLDs are available?

One of the following two classifications is available in an application for a new gTLD:

- “standard” gTLD (default);
- “community-based” gTLD.

35. What is the advantage of a community-based application?

A community-based gTLD is *“a gTLD that is operated for the benefit of a clearly delineated community”*. Upon certain conditions, an application for a community-based gTLD can have priority over an application for an identical or confusingly similar standard gTLD. Only in cases of contention with an identical or confusingly similar applied-for gTLD, the community character of the application will be examined. If the criteria for a community-based gTLD are not met, the application will be considered a standard application and not have priority over other applications.

36. What is a Standard application?

A “standard” gTLD is *“an application that has not been designated as community-based”*.

37. Is this the only opportunity to apply for a new gTLD?

ICANN does plan hold additional rounds in the future. However no date for these future rounds has yet been provided and ICANN will certainly not start a future round before concluding the first round. Some believe that there will not be any future rounds.

38. Does this application process cover new ccTLDs also?

The process to obtaining a new ccTLD is completely separate to the new gTLD process. This however does not preclude a ccTLD operator from applying to operate a new gTLD.

D). Applicant Guidebook

39. What is the "Applicant Guidebook"?

The Applicant Guidebook is the manual for the application procedure – it guides the applicant through the process detailing the requisite documents and information, the financial and legal commitments and even what to expect during the application and evaluation periods.

40. Why has ICANN been releasing drafts of the Applicant Guidebook?

ICANN's strategy in releasing the Applicant Guidebook in drafts was to allow for public comment and also to grant the Internet community an opportunity to influence the final set of criteria and processes.

41. What is the final approved version of the Applicant Guidebook?

The final version is the one dated January 11, 2012.

42. What is the purpose of the applicant guidebook?

The Applicant Guidebook describes in detail which information is required by ICANN in order to successfully apply for a new gTLD in the context of ICANN's process.

Generally speaking, ICANN requires applicants for new gTLDs to describe their administrative, operational, technical and financial capability to launch and operate a new gTLD extension for a term of at least ten years. There are 50 different questions on which basis such capability will be determined by external evaluators to be appointed by ICANN.

43. Why is ICANN asking for so much information from the applicants?

ICANN is responsible for preserving the security, stability and global inter-operability of the Internet – to ensure this is achieved ICANN will expect new gTLD registries to comply with ICANN's contract and to follow all best practices and standards. Extensive scrutiny of each applicant is therefore necessary.

E). Applying for a gTLD

44. Is applying for a new gTLD the same as registering a domain name?

No – to register a domain name a registrant does so via an accredited registrar. Registration and renewal fees and registrant terms and conditions would apply to the registrant.

Applying for a new gTLD is a more complex process: an applicant in this case is applying to create and operate a registry business supporting the Internet's domain name system which involves a number of significant responsibilities since a successful applicant would be running a piece of visible Internet infrastructure.

45. Can I register an idea for a new gTLD in advance of the next application period?

No, this is not possible. ICANN has stated that it will not accept any reservations.

46. Is the application process for new gTLDs the same as previous gTLD application rounds?

No. There may be some similarities to previous gTLD application rounds but the application process is not the same as the previous one.

47. If my application was not selected or not approved in the 2000 or 2004 rounds, can I reapply in the upcoming round?

Yes.

48. Will applicants who participated in the previous gTLD application processes receive special treatment in future rounds?

Earlier applicants, from the 2000 or 2004 rounds, will be treated as new applicants and will be required to meet the evaluation criteria as established in the Applicant Guidebook. However, proof-of-concept applicants from 2000 may request a partial fee credit up to a maximum of one credit.

49. Who can apply for a new gTLD?

Any established public or private organization which can demonstrate the operational, technical and financial capability to run a registry can apply.

50. Do any scenarios exist in which a party may execute a contract with ICANN on behalf of another party?

No. ICANN will only enter into an agreement with the applicant. There's no provision for Party X to enter a registry agreement with ICANN designating Party Y as the registry operator. Subject to the conditions of the Registry Agreement with ICANN, Party X can outsource the operation of the registry to Party Y, but will remain the contract party to ICANN.

51. How do I apply for a new gTLD?

When the application round opens on January 12, 2012, candidates must apply via an online application system called the TLD Application System (“TAS”). The TAS registration must be done before March 29, 2012. Applications can be made up until the closing date of April 12, 2012. There is also a fee to pay which is discussed further in the Costs section of this brochure.

Applicants must familiarize themselves with the criteria as detailed in the Applicant Guidebook. Preparing the application will include drafting policies, selecting a technical provider and preparing a business plan. Time is running short for new gTLD applicants to become familiar with the process and to gather all the relevant materials they will need to submit an application.

52. Can I apply for more than one gTLD?

Yes, but each gTLD string needs a separate application and application fee.

53. Can I apply for two similar or related TLDs?

Yes. These applications will be considered two separate applications. Each application will be treated individually. If both applications were approved, they would result in two separate TLDs. If two TLDs are considered confusingly similar, only one TLD can be delegated.

54. Can I submit just one application for two or more gTLDs?

No. Each application for a gTLD must be filed separately.

55. Can I simply reserve a gTLD and decide later whether or not to use it?

All new gTLDs are expected to be operational and this is why a detailed plan for the launch and operation of the proposed gTLD must be submitted as part of the application process. The launch of gTLD program is to encourage competition and innovation in the Internet marketplace – if a successful applicant does not progress the gTLD into the root system within 12 months of the gTLD being granted, ICANN can terminate the registry agreement.

56. Is there going to be a Sunrise Period for trademark owners to submit new gTLD applications?

A sunrise period allows trademark owners an opportunity to register a gTLD containing their trademark before the process opens up for other applicants. There is no sunrise period for

Trademark owners to submit gTLD applications and Trademark owners will have to apply during the general application period.

57. Do I need to have a trademark in order to apply for a new gTLD?

There is no need for a trademark as a prerequisite to applying.

58. When must I apply?

The application window will last from January 12, 2011 until April 12, 2012.

59. Where do I apply?

Applicants will use a dedicated web-based application interface named TLD Application System (TAS) to apply, where they will answer questions and upload supporting documents. Applicants will have to register as a TAS user before March 29, 2012

60. What are the key steps in the application process?

There are a number of distinct steps in the application process for new gTLDs:

1. Feasibility assessment and business plan preparation;
2. Application preparation;
3. Application submission;
4. Application evaluation;
5. Contract negotiation and execution; and
6. New gTLD delegation.

After having completed these steps, the successful applicant for the TLD will be able to start registering domain names in the TLD, which will allow the introduction of websites and emails.

Setting up, launching and managing a domain name registry is not an easy task, and encompasses many issues and aspects that need to be covered. Applicants for new gTLDs may struggle given the lack of accurate and comprehensive data representative of what is about to take place, little past experience and the relatively short preparation time.

61. Why do I need a business plan?

Developing a sound vision, a realistic business plan and a comprehensive approach (pro-active, defensive, reactive) is not an easy exercise. A feasibility assessment and business plan will provide the future applicant with the following benefits:

- obtaining an holistic view on all the administrative, operational, technical and financial issues relating to his proposed initiative(s);
- enabling the applicant (including executive management or the board) to take an informed decision on the recommended approach, potentially avoiding short and long-term costs

and investments. This is particularly the case if the outcome of the feasibility report would be not to apply for a particular gTLD, and take a mere defensive stance where possible; and

- saving time and efforts in drawing up the actual application for ICANN, if this is the approach taken by the future applicant.

Good planning at this stage will avoid future issues, disappointment, loss of time and costs.

62. Can I make changes to my application after submission?

Essentially no - changes cannot be made to an application once it has been finally submitted to ICANN.

However, ICANN's proposed Registry Agreement provides for the opportunity to request amendments to the contractual provisions following execution of the agreement. Experience shows, however, that the process in order to obtain an approval about proposed changes to a Registry Agreement can be lengthy and cumbersome.

63. Can sector specific entities join efforts and file an application for a TLD but exclude other entities from the sector to participate in the project?

Antitrust rules will apply but do not specifically differ from the rules that apply to other situations in which entities of the same sector wish to work together.

F). Objection & Dispute Resolution

64. How and when can I see which gTLD strings are being applied for and who is behind the application?

ICANN has stated that it will post on its website the list of strings, applicant names and other application data once it has verified all the applications for completeness. This will not happen until after the application period closes on April 12, 2012.

65. How can I object to an application?

It is possible to object to an application by initiating court action. Post publication of the applicant list, third parties will also have the opportunity to file a formal objection using pre-established Dispute Resolution Procedures (DRP). These objections will be administered by independent Dispute Resolution Service Providers (DRSP) in all but exceptional circumstances, and not by ICANN.

Under the DRP, an objection can be put forward on the following grounds:

- String Confusion Objections

The applied-for gTLD string is confusingly similar to an existing TLD or to another applied for gTLD string in the same round of applications. Objectors can be existing TLD operators or a gTLD applicant in the current round.

- Legal Rights Objections

The applied-for gTLD string infringes the existing legal rights of the objector. Objectors can be rights holders, for example, trademark holders.

- Community Objections

There is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted. Objectors can be an established institution associated with a clearly delineated community.

- Limited Public Interest Objection

The applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law such as racially abusive strings.

66. Who will manage the Dispute Resolution Procedures?

Each ground of objection will dictate which DRSP will manage the dispute process:

- String Confusion Objections will be managed by The International Centre for Dispute Resolution (ICDR). The ICDR, based in New York has cooperative agreements with arbitral institutions around the world to help facilitate the administration of its international cases.
- Legal Rights Objections will be managed by The Arbitration and Mediation Center of the World Intellectual Property Organization. The WIPO Arbitration and Mediation Center based in Geneva, Switzerland, was established in 1994 to offer Alternative Dispute Resolution (ADR) options for the resolution of international commercial disputes between private parties.
- Both Limited Public Interest Objections and Community Objections will be managed by The International Chamber of Commerce (ICC). The ICC is a world-renowned dispute resolution provider based in Paris, France.

67. I am an existing registry operator and I see that a third party has applied for an extension that is confusingly similar to the TLD that I am operating. What can I do?

Insofar and to the extent the evaluators have not determined that a particular applied for gTLD string is confusingly similar to an existing TLD string in the context of Initial Evaluation, the existing registry operator of such TLD is entitled to object against such application.

If the existing registry operator's objection is successful, the application for the confusingly similar extension will be rejected.

68. What can I do if someone applies for a string that represents my brand or trademark?

A Legal Rights Objection can be filed with the WIPO Arbitration and Mediation Center.

69. Will ICANN prevent the registration of objectionable or racist extensions?

Each string applied for could be subject to a review based on Limited Public Interest grounds. The ICC would conduct this review and would use international standards taken from a number of international treaties.

70. How can I have the best position at the negotiation table if I would be in competition with one or more parties?

Firstly, you will only be invited to participate in the negotiation if you also have applied for the TLD.

Second, from a strategic perspective, it makes sense to consider in the preparatory stages of your TLD application whether or not one or more other parties will apply for the same or confusingly similar gTLD, who these parties may be, and what their approach would consist of. If there would be a likelihood of contention for a particular string with one or more third parties, it may be a good approach to draft your TLD application in such a way that these other parties could participate to your project. By making your TLD application an “inclusive” bid, you provide for the opportunity for co-bidders to join your project but you largely remain in control over it.

G). Timeline

71. When can I apply for a new gTLD?

Applications can be submitted anytime between January 12, 2012 and April 12, 2012, provided the applicant has registered as a TAS user prior to March 29, 2012. ICANN will not accept any application submitted outside of this window.

72. How long will the evaluation process take?

The "evaluation process" will start at the point when the Application Window closes. Each application will progress through various stages prior to ICANN's final determination. The possible stages an application can go through are:

- i. Administrative Check;
- ii. Initial Evaluation;
- iii. Extended Evaluation;
- iv. String Contention;
- v. Dispute Resolution; and
- vi. Pre-delegation.

The shortest path for a successful application is to progress from Administrative Check (lasting 2 months), through Initial Evaluation (lasting 5 months) and then move to straight to Pre-delegation (lasting approximately 2 months). This assumes the application will face no objections or no string contentions. So, the shortest evaluation process could take as little as 9 months to complete.

On the other hand, if an application does not pass Initial Evaluation and the applicant elects Extended Evaluation and/or is involved in the Dispute Resolution or String Contention stages, the evaluation process could take up to 20 months to complete.

Therefore, each application will take at least 9 months to complete but could take up to 20 months (or longer). Some expect that no gTLD will be going live before the end of 2014 or even later.

73. How long will the objection process last?

It is estimated that the objection process could last over 5 months.

74. How long will it take for my TLD to go into the root?

Depending on which batch your application falls into, the application will then follow the timeline of a minimum of 9 months outlined in the Applicant Guidebook.

Estimated Timeline of a Complete Application - No contention			
Application Submission	Administrative Completeness Check	Initial Evaluation	Transition to Delegation
January 12 - April 12, 2012	April 12 - April 30, 2012	May 31 - November 30, 2012	Starting November 30, 2012

This is the ideal scenario and it is expected that it will take at least until the end of 2013 before new gTLDs can go into the root.

H). Costs**75. How much is the evaluation fee?**

For each application US\$185,000 is payable to ICANN. This cost only covers the evaluation of the application. Applicants will be required to pay a US\$5,000 of this as a deposit fee when they request an application form and the remainder becomes payable when the application is submitted.

Other fees and even refunds may apply depending on the specific application path.

76. If I file two or more applications, do I have to pay US\$185,000 for each TLD?

Each application will be treated individually and there is no discount on application fees based upon the filing of multiple applications.

77. Are there any additional costs I should be aware of in applying for a new gTLD?

Yes. Applicants may be required to pay additional fees in certain cases where specialized process steps are applicable (*e.g.*, objection handling, technical tests for new technology) and should expect to account for their own business (start up) costs.

78. Are there any ongoing fees once a gTLD is approved by ICANN?

Yes. All successful applicants will be required to sign a New gTLD Agreement or Registry Agreement with ICANN. Under this Registry Agreement, there are two fees which will apply: (a) a fixed fee of US\$6,250 per quarter; and (b) and a yearly transaction fee of US\$25,000. The latter does not apply until and unless more than 50,000 domain name transactions (renewal, transfer, ...) are conducted in the gTLD.

79. Where do the applications fees go to?

ICANN is a not-for-profit organization and this is a not-for-profit initiative so in the event that the fees collected exceed ICANN's expenses, the community will be consulted as to suitable use of that excess.

80. Will ICANN offer refunds?

Yes. Applicants may choose to cancel their application at any point in time during the evaluation process and ICANN will offer a refund in specific circumstances. The onus is on the applicant to request the refund.

The following refund scheme has been published by ICANN:

Refund available to applicant	Percentage of application / evaluation fee	Actual refund
Within 21 calendar days of a GAC Early Warning	80%	US\$ 148,000
After posting of applications until posting of Initial Evaluation results	70%	US\$ 130,000
After posting of Initial Evaluation results	35%	US\$ 65,000
After the applicant has completed Dispute Resolution, Extended Evaluation, or String Contention Resolution(s)	20%	US\$ 37,000
After the applicant has entered into a Registry Agreement with ICANN	-	-

This scheme implies that at the very least an applicant who has not yet entered into a Registry Agreement with ICANN can apply for a refund of at least US\$37,000.

An applicant, particularly brand owners, who have adopted a defensive strategy, could avoid substantial costs by submitting an application for a brand-TLD and then withdrawing it before the Initial Evaluation results have been published if there is no contention for the TLD.

81. Is there a cost to file an objection?

At the time an objection is filed, the objector is required to pay a filing fee in the amount set and published by the relevant Dispute Resolution Provider (DRSP). If the filing fee is not paid, the DRSP will dismiss the objection without prejudice. After the hearing has taken place and the panel makes its expert determination, the DRSP will refund the advance payment of costs to the prevailing party.

I). Brand-related New gTLDs

82. Do I need to have a trademark in order to apply for a new gTLD?

There is no requirement for an applicant to hold a trademark in order to apply for a new gTLD.

83. Can I reserve my trademark as a gTLD?

As discussed in the 'Applying for a gTLD' section of this, ICANN will not accept reservations or pre-registrations. This also applies to trademarks owners. Trademarks can however be used to object to third party applications.

84. If someone applies for a TLD that is a brand name or a trademark that does not belong to them, will the brand or trademark owners be notified by ICANN?

ICANN will not notify trademark owners. A list of all applications received will be published after the application window closes and ICANN will continue to publicize the objection process. The onus is on the brand or trademark owner to decide whether an infringement has occurred and to bring an objection. ICANN has made huge efforts to educate the community on what their responsibilities are, as well as what the formal objection mechanism and timeline is, before it launches the program.

J. Evaluation of New gTLD applications

85. What is the evaluation process?

After the application window, there are several evaluation stages, each with its own estimated duration. During the evaluation process, ICANN will check whether the application meets the requirements. ICANN will first check whether or not an application is administratively complete (Have all mandatory questions been answered? Have all required supporting documents been provided in the proper format(s)? Have the evaluation fees been received?). Except exceptional circumstances, an application that is not administratively complete, the application will not be accepted.

Then, ICANN will perform the Initial Evaluation. The Initial Evaluation will start with a background screening on the applicant, in order to avoid applications from known cybersquatters. Afterwards, ICANN will check whether the application meets the administrative, operational, technical and financial requirements.

If an application passes the Initial Evaluation and there are no objections, no GAC Advice and no identity or confusing similarity with another (applied-for) gTLD, the application will immediately move to the delegation phase.

86. What if an application does not pass Initial Evaluation?

Applicants failing certain elements of the Initial Evaluation process can request an Extended Evaluation. In the context of Extended Evaluation, the applicant shall be entitled to exchange additional information with the evaluators in order to clarify information contained in the application. An additional payment will be required.

87. How will gTLD applications be assessed?

Application criteria against which each application will be assessed are set out in the Application Guidebook.

Pre-selected evaluation panels will use a point scoring system to assess answers to the 50 questions posed in the application form and will also consider among other things, what influence the applied for gTLD could have on stability of the DNS and whether the applied for gTLD is confusingly similar to existing gTLDs, etc.

There is a minimum pass score applicable to most sections of the application form which must be achieved for the application to progress.

88. What happens if there are multiple applications for the same string?

Since it is not possible for two or more identical strings to occupy the Internet space, the String Contention procedure would come into effect should there be applications for identical strings. The String Contention procedure in the first place aims at parties self-resolving the contention by mutual agreement.

89. What happens if there are applications for confusingly similar strings?

If there are two or more applications for confusingly similar strings, only one application can be granted and therefore the String Contention procedures would come into effect. Applicants always have the opportunity to resolve contention by a mutually agreeable settlement amongst themselves.

90. What evaluation panels exist?

How are the evaluation panels organized?

ICANN selected the various evaluation panelists through a call for 'Expressions of Interest'. Each panelist must abide by the Code of Conduct and Conflict of Interest guidelines included in the Applicant Guidebook.

We have listed below the main evaluation panels:

- String Similarity Panel

This Panel is tasked with assessing whether a proposed gTLD string is likely to result in user confusion due to similarity with any reserved name, any existing TLD, any requested IDN ccTLD, or any new gTLD string applied for in the current application round. This assessment will take place as part of the String Similarity review at the Initial Evaluation stage.

- DNS Stability Panel

This Panel must determine whether the proposed string might adversely affect the security or stability of the DNS. This will occur during the DNS Stability String review at the Initial Evaluation stage.

- Geographical Names Panel

This Panel is responsible for the review of each applied-for gTLD to determine whether it represents a geographic name. In the event that the string represents a geographic name and requires government support, the panel will also review and verify the supporting documentation.

- Technical Evaluation

This Panel will review the applicant's technical and operational capability of running a gTLD registry as proposed in its application. This review takes place during the Technical/Operational

reviews at the Initial Evaluation stage, and may also occur in the Extended Evaluation stage if necessary.

- Financial Evaluation Panel

This Panel will review an applicant's financial capability of maintaining a gTLD registry against the relevant business, financial and organizational criteria contained in the Applicant Guidebook. This review takes place during the Financial review at the Initial Evaluation stage, and may also occur in Extended Evaluation stage if necessary.

- Registry Services Panel

This Panel will look for any adverse impact on security or stability of the registry services proposed in the application. If applicable, this review will take place during the Extended Evaluation period.

K). Delegation of New gTLDs

91. What happens once a new gTLD application is approved?

Once an application passes all the evaluation and selection processes, including objection processes and final approval, it will enter the Pre-delegation stage. During this stage, the applicant will enter into an agreement with ICANN and be expected to pass technical tests before the new gTLD is delegated to the root zone.

92. How are New gTLDs implemented in the system?

New gTLDs are being introduced carefully so that the process does not cause instability in the Internet.

93. Is there a limit on many new TLDs can go into the root a year?

Yes. A maximum of 1000 new gTLDs can be delegated per year.

94. What rights will I receive once I am granted the delegation of a TLD?

The successful applicant for a particular new gTLD will obtain an exclusive right to operate the applied for gTLD. Having become a registry operator, he will become a “trustee” of the top level domain for the global Internet community.

L). Using a TLD

95. How long will I be allowed to use the TLD?

The term of a Registry Agreement shall, in principle, be for a period of ten years.

96. Can the initial term be extended?

The ten-year initial period can be indefinitely renewed for one or more successive terms of ten years, unless terminated by either party. Insofar and to the extent there are no reasons for ICANN or the Registry to terminate the agreement, the contract with ICANN can be renewed for one or more additional terms.

97. Can the TLD be transferred?

A TLD cannot be transferred to a third party without ICANN's prior written approval.

98. Can a TLD be modified?

ICANN does not have a process for changing the TLD.

If, for some reason, you want to change the extension after a delegation, you will need to submit another application with ICANN in a future round. It will only be possible to submit an application for TLDs that are available at that point. In other words: it will not be possible to obtain a TLD that is identical or confusingly similar to a TLD that has been allocated (or is still in the process of being allocated) to a third party.

99. What if I change my trademark(s)?

Changing the TLD itself shall not be possible. In such cases, a new application will need to be submitted to ICANN.

100. What if I want to change the intended use of my TLD?

One of the crucial aspects to be taken into account in the application development process is the fact that the intended use of a TLD will be subject to change. As new technologies and marketing methods will be developed in the future, it is clear that the impact of such changes on the contractual arrangements should be as limited as possible.

Applicants are advised to avoid the situation where they need to revert back to ICANN for any change of the intended use of the TLD. The costs, efforts and in some cases, lost time, of negotiating and implementing such changes are not to be underestimated.

This is one of the main reasons why submitting a "template" application will cause difficulties over time.

M). Trademarks and Domain Names in New gTLDs

101. How will the rights of trademark holders be protected in the process?

As discussed in the 'Applying for a gTLD' section of this brochure, there is no sunrise period for trademark holders for obtaining a gTLD and the onus to bring an objection to a proposed gTLD rests wholly on the trademark holder. There are however some protection mechanisms built into the application process.

First, rights holders can raise a Legal Rights objection to demonstrate that a proposed gTLD would infringe their legal rights. A successful objection will prevent the progress of that gTLD application.

Second, applicants are required to describe proposed rights protection mechanisms for second-level registrations. This mechanism must meet certain minimum standards as described in the Applicant Guidebook.

Third, all new gTLDs must ensure that second-level registrations are subject to ICANN's Uniform Domain Name Dispute Resolution Policy (UDRP), a process that has worked well to protect rights for many years.

Finally, other solutions which ICANN has formulated after consulting closely with the trademark community include a trademark clearinghouse, the uniform rapid suspension system (URS), and a trademark post-delegation dispute resolution procedure (PDDRP):

- Trademark Clearinghouse

The launch of every gTLD must be preceded by a process whereby brand owners will have the opportunity to protect their trademarks at the second level (i.e. as a domain name) in such TLD. A "Trademark Clearinghouse" will be established in order to facilitate this mandatory sunrise period for domain name allocation within a new gTLD. The Trademark Clearinghouse will be a database holding validated trademark information in relation to domain names and will provide a centralized location for storage and authentication of trademark information.

The Trademark Clearinghouse will also support the Trademark Claims service which is another mandatory process preceding the launch of a new gTLD. The Trademark Claims Service provides notice to potential registrants of existing trademark rights, as well as notice to rights holders of relevant names registered;

- URS

The URS has been established to complement the Uniform Dispute Resolution Procedure (the "UDRP") and should provide a faster and less expensive process for resolving clear-cut cases of infringement. It is intended that the URS will also provide for the temporary suspension of an abusive domain name; and

- PDDRP

A rights holder can bring a complaint under the PDDRP if they believe a registry is actively engaging in or contributing to infringing behavior.

Worked example: the .XXX gTLD

In March of 2011, ICANN approved .xxx as a gTLD. .XXX is intended to give adult entertainment websites a clearly marked home on the Internet. Registrars for the .xxx gTLD began accepting “Sunrise A” applications on September 7, 2011 from members of the adult entertainment industry who already own qualifying trademark registrations or domain names.

A “Sunrise B” procedure, which also opened on September 7, 2011, allows trademark owners who are not members of that industry and who wish to block their marks from being used in .xxx register their marks. This will ensure that their marks will not be registered in the .xxx domain by cyber squatters. Action taken under Sunrise B will not block an identical qualified Sunrise A application (i.e. the Sunrise A application takes priority) but can be used to prevent future disputes from arising. The Sunrise B procedure also does not replace existing dispute resolution mechanisms.

102. If I want to register a gTLD solely for my own use, for example, solely for use by my company, partners, consultants, shareholders, auditors, etc., can I limit the issuance of second level domains to those individuals? Can I refuse to accept applications for second level domains from members of the public in general or from competitors?

Yes. So long as the registry does not breach its Registry Agreement, it (i.e. the applicant) can set its own business model and policy for how it will use its gTLD.

103. Can I, from the outset, refuse applications for second level domains from individuals who appear to be cyber squatters or scammers?

Yes. The applicant is responsible for setting the business model and policy for how it will use its gTLD, so long as the registry is in compliance with the terms of the registry agreement.

104. Why do I need ICANN accredited registrars?

Under ICANN policy, registry operators are required to provide equal access to the domain name registry to all registrars that have obtained an accreditation from ICANN.

Since its inception, ICANN has made a clear distinction between the role of a registry of a gTLD on the one hand, and the role of a registrar on the other hand. Under this ICANN’s Registry / Registrar model, the registry of a gTLD is prohibited from directly selling domain name

registrations to registrants; offering such registrations must take place through a registrar that has obtained an accreditation from ICANN itself.

The main reason for such separation was to increase competition in the marketplace, and in particular to avoid situations whereby the organization operating the gTLD registry would also be able to directly register domain names in its gTLD, thereby being put at a commercial and competitive advantage. For these reasons, most of ICANN's current registry and sponsorship agreements for gTLDs prohibit the registry from also acting as a registrar in the same TLD.

Recently, however, the Board of Directors of ICANN decided to allow cross-ownership between gTLD registries and ICANN Accredited Registrars.

Under ICANN Policy, a gTLD registry operator cannot allow an entity that is not an ICANN Accredited Registrar to offer domain name registration services to the market under a direct contract with the registry. This implies that any registry operator will need to draw up an agreement that needs to be made public and can be entered into by all ICANN Accredited Registrars meeting the requirements laid down in that agreement.

Contractual relationships between Registries and Registrars are laid down in so-called Registry-Registrar Agreements (or "RRA's"), which are most of the time template terms and conditions that have been drawn up by the Registry and published on their web sites.

The following general terms and conditions are generally included in these RRA's:

Obligations of the Registry operator:

- how the registrar can access the registry operator's systems;
- provision of the technical specifications for the registrar to interface with the registry operator's systems;
- maintenance of the domain names sponsored by the registrar;
- provision of engineering and customer service support;
- representations and warranties (Service Level Agreement);
- etc.

Obligations of the Registrar generally include:

- funding & payment obligations;
- customer support;
- provisions to be included in the registrars' agreements with their respective registrants;
- compliance with ICANN's accreditation policies and terms, and other registrar-specific requirements;
- representations and warranties;
- etc.

The fact that registry operators must rely on ICANN accredited registrars may raise a number of issues in certain cases. For instance, brand owners who would like to apply for and operate a

brand-TLD need to rely on at least one (independent) ICANN accredited registrar in order to effectively register domain names in its TLD. Moreover, registry operators must provide non-discriminatory access to registry services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD.

105. Are there any restrictions on domain name pricing?

ICANN does not give any indications regarding the pricing of domain names in the new gTLDs. gTLD registry operators are therefore free to set their pricing for domain name related transactions.

However, registry operators need to be aware of:

- price increases need to be reported to accredited registrars well in advance;
- the fact that registrars, who will be offering domain name registrations, will be free to set their pricing to the actual domain name registrant; and
- depending on the case, there may be antitrust / competition law issues.

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For information on our TLDs and Domain Names Practice, please visit our website at www.crowell.com/tlds.

If you wish to receive updated versions of this information, please contact us at mnelissen@crowell.com.