Who is Going To Own DotAmazon? The Pending Domain Name Land Grab

By Anthony J. Biller and Jennifer Bisk

I f the World Wide Web is a 21st century frontier, we are at the onset of a historic virtual land grab, courtesy of the Internet Corporation for Assigned Names and Numbers ("ICANN"). Many believe that such a grab would be less a venture into new territory than it would be a jump off a precipice. Whether it will turn out to be an opportunity for a whole new Internet or simply an expensive cornucopia for cyberpirates, ICANN appears prepared to blow away the traditional limitations on domain name use and management, that is, assuming traditions have already been established within the young lifespan of the Web.

ICANN's New gTLD Process

Every domain name ends in an extension (the group of letters that follow the final dot of any domain name), referred to as a top-level domain or TLD, which currently comes from a short list of generic names (.com, .net, and .org, for example) or two-character country codes ("ccTLDs"). ICANN is a nonprofit corporation charged with coordinating the Internet's naming system, the domain name system ("DNS"). ICANN defines valid TLDs and then delegates responsibility for operating each TLD to an organization called a registry operator. Registry operators set up, maintain, and operate a registry, which is a master database of all domain names in that TLD.

In the past, it has been very difficult to introduce new generic TLDs ("gTLD"). During the past eight years, only 13 new gTLDs were added, for a total of 21 current gTLDs.[1] (There are also approximately 250 ccTLDs administered by local governments or their designees.) The process ICANN used to evaluate the gTLD applications was not publicized and there was no permanent process in place for new applications. However, in October 2008, ICANN published a *Draft Applicant Guidebook for the New gTLD Program* ("*Draft Guidebook*"), which introduces a new process allowing any applicant to register a new gTLD ("NTLD"). ICANN has released two subsequent versions of the *Draft Guidebook*. The latest, Version 3, was published October 4, 2009.[2]

ICANN's new gTLD process will allow anyone, from any country, to apply for an NTLD. There are few constraints on the character string an applicant may propose for an NTLD. Generally, the string must be at least three, but not more than 63, characters in length and consist entirely of letters, digits, and hyphens. It may be a generic term such as .car, a trademark such as .cocacola, a geographic term, a fanciful term, or just about anything else. Applicants may even apply for Internationalized Domain Names ("IDN"), which are names containing non-ASCII characters, to allow for TLDs in languages other than English. The *Draft Guidebook* explains the technical requirements for proposed gTLD strings in detail.[3] Other than these essentially minor technical constraints, the territory to the right of the DOT will be wide open for people and businesses to stake an online domain claim.

Pursuing an NTLD will not, however, be for everyone. In order to obtain an NTLD, the applicant must qualify as a registry operator for the NTLD. There is an initial application or evaluation fee, currently scheduled at $185,000. If the applicant must be evaluated to determine its competency to operate a registry, the fee to be reviewed starts at $50,000. If the application is met with objections or ends up in a public auction, the costs continue to spiral.[4] Aside from the NTLD application costs, equivalent expenditures are required to set up and operate a registry.

There has been much comment and controversy surrounding ICANN's decision to proceed with the NTLD rollout. The first draft of the guidelines generated over 1,000 comments. The reaction from owners of large trademark portfolios and from many intellectual property practitioners has been negative. Many of these parties regularly grapple with ongoing issues of cybersquatting and see the proposed expanding domain name frontier as unnecessarily expanding the costs of online trademark vigilance. Such parties complain that there is little perceived return advantage compared to the increased costs. Critics complain that the only advantage will be to the new registries and to domain name resellers. ICANN sees it differently.

NTLD Benefits

ICANN believes that the NTLDs will bring about the biggest change in the Internet since its inception nearly 40 years ago.[5] With a burgeoning 1.5 billion Internet users, the availability of only 21 gTLDs is a constraining factor for diversity, choice, and competition in domain name services. ICANN cites the promotion of competition in the domain name marketplace while ensuring Internet security and stability as one of its founding principles. ICANN believes NTLDs will bring innovation, choice, and change to the Internet's addressing system.[6] ICANN president and CEO, Paul Twomey, makes the case that innovation is not driven simply by marketplace demand. He points out that structure in the marketplace and available technologies can create substantial and new demands that did not previously exist. He cites Skype and Facebook as recent examples.[7] A few companies have already started accepting pre-orders for NTLDs, without cost. Reportedly, there is significant demand, with these companies reporting 10,000 domain name pre-orders—a day.[8]

In response to initial criticism, ICANN commissioned University of Chicago economist Dennis Carlton to study the likely impact of NTLDs on consumer welfare and to analyze price control mechanisms for NTLD registries. At the time of this writing, Dr. Carlton has issued preliminary reports on both topics.[9] Regarding consumer welfare, he concludes that the introduction of NTLDs will create competitive pressures

on the established gTLDs such as .com, .net, and .org. Dr. Carlton agrees with ICANN's conclusion that the proposed NTLD would improve consumer welfare and opines that increasing competition in the gTLD marketplace would lead to increased output, lower prices, and increased innovation in domain name services.[10]

NTLDs also should allow certain communities to better self-regulate their online conduct, at least the online conduct under that TLD. Such NTLD standards may directly benefit the wider Internet community. For example, a financial services NTLD might require certain security protocols, consumer guarantees, and disclosure requirements that consumers would desire and come to associate with that TLD.[11] Self-regulation and internal policing also may stave off public criticism and more intrusive, less efficient government regulation of more controversial online industry sectors.[12]

The Internet provides the opportunity for diffuse interest groups to share information and communications nearly instantaneously despite geographic separation and political boundaries. Allowing communities to form, manage, and regulate their own online domains seems a natural extension or enablement of the online community phenomenon. Expanding TLDs also provides opportunity for innovation and competition for non-English language gTLDs as well as political, cultural, and geographic TLDs in addition to the ccTLD domain level. The NTLD program should promote and empower such communities, provide more secure and flexible means for worldwide Web addressing and e-mail communications, and give a credible and readily identifiable Internet presence.

NTLDs also will provide commercial entities the opportunity to establish and control their own online domains. While providing a flexible and worldwide structure for internal online communications, commercial NTLDs also will allow companies to control who and what they allow in their domain. Companies that register second-level domains to third parties will have direct enforcement powers over their domain, to include policing and eliminating malicious conduct, cybersquatting, and related misconduct.

Brand owner control over their own domains also might reduce the current level of trademark problems by educating consumers and removing incentive for misconduct currently inherent in the .com dominant system.[13] It is not difficult to imagine a day when consumers routinely go to the company TLD to transact business with and obtain information from that company. Currently, cybersquatters and counterfeiters reside predominantly in the .com domain alongside the legitimate brand owners and businesses. The current system of commingling in the same domain nearly all legitimate businesses together with online predators has benefited the predators. With the advent of company-controlled domains, visiting a noncompany domain for company-branded goods should sensitize the consumer to the fact she is dealing with a third party and to the possibility of misconduct.[14] Making it more difficult to confuse and misdirect consumers also should remove at least some of the incentives for misconduct inherent in the current .com dominant system.

In addition to control, opening domain management to the free market of competitive ideas could lead to profound and fundamental changes in how we view and use the Internet. As just two examples from scores of possibilities, the creative powers of Yahoo! and then Google fundamentally affected how we use and what we expect from the Internet, and over a very short amount of time. It is exciting to ponder, as it appears ICANN has, what such brilliant innovators might accomplish if given the opportunity to create and operate their own domains.

NTLD Challenges

While former Vice President Al Gore laid rhetorical claim to all of humanity owning the Amazon rainforest,[15] ICANN will actually decide who owns the Amazon Internet domain. Currently, NTLD applicants representing established and recognized communities are given preference and priority in resolving competing applications for identical NTLDs. Should a bona-fide, recognized IPL community compete against a commercial entity, the "community" should obtain the NTLD, under the current Draft Guidelines. Accordingly, in a conflict for the NTLD .amazon, a recognized collegium of rain forest conservationists would, in theory, be given priority over a business that provides a wide range of retail sales and worldwide distribution at highly competitive pricing. Such an outcome would be anticapitalist chic; however, it fails any sort of utilitarian analysis. While in reality there may not be a large number of "community" versus capitalism conflicts for NTLDs, historic disputes over "community" versus "community" ownership of NTLDs might occur.

Our collective history of conflict between competing religions could extend into the online ether. ICANN's guidelines provide no insight on how it will resolve disputes about who should own such fundamental terms as .god, .christ, .muhammed, .human rights, .truth, etc. The Roman Catholic Church requested ICANN to specifically address the likely conflict and competing claims among theological and religious traditions.[16] ICANN could maintain its neutrality and avoid 100-year lawsuits by refusing to register words that are fundamental to more than one established religious tradition. While religious conflict might be avoided, foreseeable trademark conflicts are at the heart of the fight against ICANN's NTLD proposal.

Owners of famous marks and large, brand portfolios are understandably and particularly unenthusiastic about expanding the TLD landscape. They view the past as prologue. Intellectual property rights ("IPR") management on the Internet has not been easy, and in some respects is becoming increasingly problematic. Cybersquatting, typosquatting, worldwide distribution of pirated goods, peer-to-peer file sharing of protected content, unreliable WHOIS information,

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and proxy registrations have caused continual problems for businesses. Many of these corporations built their businesses and brand portfolios before the commercial exploitation of the Internet and see that medium as much of a hassle as a marketing and distribution asset. Cybersquatting may cost brand owners $1 billion worldwide each year from diverted Internet traffic, loss of goodwill, defensive domain registrations, and enforcement expenses.[17]

Despite everyone recognizing this problem, it appears to be getting worse.[18] To address these problems, ICANN implemented the Uniform Dispute Resolution Policy ("UDRP"), and Congress amended the Lanham Act, 17 U.S.C. § 1125(d), to create a cause of action for cybersquatting.[19] While the UDRP is fairly efficient and the Lanham Act creates an opportunity to recover damages and attorney's fees, at least against a solvent tortfeasor located in the United States, the brand owner is responsible for locating violations, enforcing its rights, and paying the corresponding costs. With over 100 million registered domains in the gTLDs alone, there is already too much territory for companies to efficiently police for abuses of their IPR. Understandably, companies do not want more of the same.

While the current Internet naming system is imperfect, there is also a simplicity and comfort level with it. When a consumer finds or hears of an interesting product or company, it can predictably be found at [recognized name].com, subject to typos and cybersquatters.[20] Large companies make themselves easier to find by registering related URLs under the .com domain. For example, google.biz and gogle.com resolve to google.com, and newyorktimes.com automatically brings the errant reader to nytimes.com.[21] Expanding the universe of TLDs will likely destroy the simple and intuitive nature of finding the correct website, at least without the assistance of a search engine. Some are concerned that such uncertainty will create enormous potential for gTLD abuse, or, at the very least, significantly increase the cost of capturing or safeguarding users to the correct site. Will the *New York Times* need to register and maintain NTLD's for .nyt, .nytimes, and .newyorktimes?[22]

A substantial portion of the public comments submitted to ICANN regarding its Draft Guidelines addressed the need to better protect IPR holders in any future NTLD program.[23] In March 2009, ICANN responded in part by forming an Implementation Recommendation Team ("IRT") to propose solutions for abating risks to trademark holders in the NTLD implementation process.[24] In late May 2009, IRT released its report with several proposed solutions.[25]

The first and perhaps foremost recommendation by IRT is for ICANN to create an IP Clearinghouse ("IPC") "to support new gTLD registries in operating cost-effective [rights protection mechanisms] of all kinds that do not place a heavy financial or administrative burden on trademark owners."[26] The IPC would hold information on rights of all kinds, to include registered and unregistered rights. It would function in a manner similar to the USPTO's trademark registry. The rights owner would pay a fee and submit data to the IPC. Once the data were validated, the information would be pushed to the NTLD registry operators to support applications such as (1) a watch service for notifying rights owners of applications for terms potentially confusingly similar to their marks, (2) an IPR claims service that would notify applicants and trademark owners that a current IPR exists on a term being applied for, (3) a uniform rapid suspension system for domain names that infringe IPRs or that support malicious conduct, (4) a globally protected marks list that blocks applications for marks that are "globally protected and well-known," and (5) the submission of the data to registries during prelaunch ("Sunrise applications") rights protection measures.[27] If implemented, the IPC would provide trademark owners with one source for establishing trademark rights with all NTLDs, and also could be used to qualify the mark owner for Sunrise applications in prelaunch protection measures of the NTLDs, without having to apply for Sunrise status with each TLD.[28]

Another prominent recommendation in IRT's proposal is a mandatory uniform rapid suspension system ("URS") for all NTLD registries.[29] Acknowledging the "already insidious and enormous scale" of cybersquatting, which "will continue to spiral out of control" with the NTLD rollout if not addressed, the IRT recommended that ICANN incorporate the requirements of the URS mechanism into its contracts with each NTLD registry.[30] In obvious cases of malicious domain abuse and cybersquatting, the URS would provide low-cost and rapid relief. Domains that violate a brand owner's rights would be placed in a locked state for the life of the trademark registration.[31]

The IRT recommended that ICANN require NTLD registries to provide robust, centralized, registry-level disclosure of WHOIS information , "Thick WHOIS," for all domain names registered with the registry—the same standards currently applicable to .info and .biz registries.[32] IRT also endorsed a World Intellectual Property Office ("WIPO") proposal that would allow third parties to submit a claim, or "post delegation complaint," to ICANN to advise ICANN of an alleged breach of a registry's contractual obligations to ICANN, where the breach related to the rights of the third party, such as a registry's operation or use of a TLD that infringes the complainant's rights or a failure to comply with the mandatory dispute resolution mechanisms, such as the proposed URS.[33]

Module 1
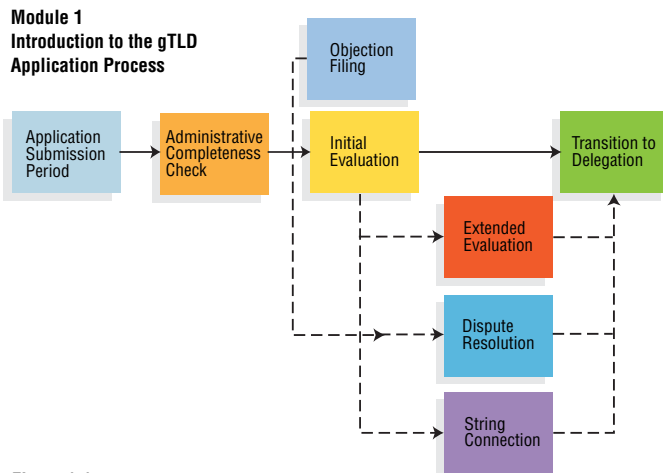**Introduction to the gTLD Application Process**

Figure 1-1
Once submitted to ICANN, applications will pass through multiple stages of processing.

ICANN received public comment on the IRT's recommendations.[34] Some commentators have complained that the mechanisms proposed by the IRT would put too much emphasis on obliging registries to enforce trademark rights in lieu of ICANN devoting more effort to enforcing its contracts with registrars.[35] Others have complained that the Thick WHOIS model as proposed would unnecessarily compromise privacy rights by not providing safeguards for personal information. Such conduct would likely induce private individuals that register URLs to engage in counterproductive conduct, such as registering through proxy services or providing illegitimate contact information.[36]

In September 2009, the ABA-IPL Committee on Trademarks and the Internet adopted a resolution in favor of ICANN implementing each of the IRT's recommended procedures in order to "protect the rights of trademark owners in conjunction with ICANN's proposed launch of new gTLDs" in the event ICANN proceeds with the NTLD rollout.[37] That same month, the IPL Section Council approved the resolution. The resolution favors incorporating "at least" the IRT recommended procedures.

During a recent congressional hearing, the International Trademark Association, which is strongly critical of ICANN's proposed NTLD rollout, opined that the IRT's recommendations were "useful"; however, since the mechanisms are untested, they may not be adequate to address the potential problems associated with an unlimited expansion of NTLDs.[38] During the hearing, ICANN's COO Doug Brent reportedly testified that the ICANN board will be sending the IRT's recommendations for an IP Clearinghouse and for a Uniform Rapid Suspension System to the Generic Names Supporting Organization ("GNSO")[39] for analysis and that a Globally Protected Marks Lists was not being pursued.[40]

In the recently released third draft of the Application Guidelines, ICANN incorporated only the more modest proposals of the IRT, namely the Thick WHOIS requirements[41] and a post delegation complaint procedure.[42] As for the more substantial protection mechanisms of the IP Clearinghouse and URS, as forecast, ICANN sent those to the GNSO for review and for public comment through November 22, 2009.[43]

In the meantime, there is some cause for optimism. Before embracing two of the IRT's proposals and sending the two most significant proposals for further analysis and comment, Paul Twomey explained that ICANN now has "legacy contracts" with registries and knows where and how such contracts can be improved.[44] Presumably such improvements would be for the purposes of better compelling registries to be more proactive in stopping domain name misconduct.[45] ICANN also recently demonstrated increased vigilance over WHOIS accuracy by registries, sending notices of breach of their registrar agreement to two registrants in October 2008.[46] In 2008, ICANN also implemented a new policy that resulted in a substantial reduction, if not near elimination, of domain tasting, which had been the most recent variation on cybersquatting.[47] After the firestorm of criticism from trademark owners since ICANN's first draft of the Guidelines, it is difficult to imagine ICANN not adopting IRT's recommendations. If they are adopted, and if those provisions ultimately extend to the current gTLDs, the Internet domain system will be vastly improved for trademark owners.

The NTLD Application Process

ICANN is proposing several application submission periods during which time the applications for NTLDs will be accepted. At the time of this writing, ICANN anticipates accepting applications for NTLDs starting first quarter 2010.[48] This current timeline is troubling in that it is doubtful the IRT's recommendations for implementing an IPC and globally protected marks list could be implemented by then.[49]

ICANN's proposed application process consists of an "initial evaluation" required for all applications. This "initial evaluation" will include a "string review" of the proposed NTLD and an "applicant review" of the applying organization's technical and financial capability to operate a registry for the NTLD. If the applicant fails either of these reviews, the applicant may request an "extended evaluation" allowing the applicant to clarify information in the original application. The "extended evaluation" is ordinarily conducted by an independent three-member panel. If an applicant fails this "extended evaluation," the application will be denied.

During the "string review" portion of the "initial evaluation," ICANN will review proposed NTLD strings for (1) potential confusion with existing and other proposed NTLDs, (2) conflicts with TLD reserved names, (3) stability (technical review of the string to make sure it does not introduce stability problems with the DNS), and (4) potential conflicts of a geographical name with the interests of the relevant government entity.[50] ICANN will not affirmatively review proposed strings against any trademark registry or confirm that an applicant is the trademark owner of a proposed NTLD. The string confusion review will be conducted by a panel of String Similarity Examiners who will determine, in part by using a predefined algorithm,[51] whether a proposed string so closely resembles another NTLD visually that it is likely to deceive or confuse Internet users.

During the "applicant review" portion, ICANN will review the technical, operational, and financial capability of the applicant itself to ensure that an applicant is qualified to operate a registry. Applicants are not required to have deployed an actual registry in order to pass this review; however, the applicant must demonstrate "a clear understanding and accomplishment of some groundwork toward the key technical and operational aspects of running a gTLD registry."[52]

In addition, the applicant must include enough information in the application to ensure that they are financially capable of long-term operation of an NTLD. Obviously, much of this information is confidential. Applicants provide this information to ICANN through use of ICANN's TLD Application System ("TAS"), an online system. ICANN states that it will take "commercially reasonable steps" to protect this information against unauthorized access, but it "cannot warrant against the malicious acts of third parties."[53] These efforts include using Secure Socket Layer ("SSL") to encrypt information provided through TAS and limiting access to ICANN-authorized personnel on an as-needed basis.

"As soon as practicable after the close of the application

period," ICANN will post the nonconfidential information from all applications considered complete so they are available for viewing by the public.[54] Parties can formally object to proposed NTLDs on four grounds: (1) string confusion, (2) legal rights, (3) morality and public order, and (4) community objections.[55] Only certain parties have standing to raise each of these objections. All of these objections must be made by dates posted by ICANN. Currently, ICANN does not provide procedures for objecting after these dates.

The string confusion objection can be raised by an existing TLD operator who asserts confusion between a proposed NTLD and the TLD that it currently operates or by another NTLD applicant claiming confusion between another proposed TLD and the TLD for which it has applied. In the case of two applicants with gTLD strings that are either identical or similar enough to create a probability of user confusion, the two applications will proceed to contention resolution.[56] At any stage in the process, applicants may resolve the string contention by settlement in which one or more applicants withdraw their applications. An applicant may not, however, select a new string in order to settle the string contention, and any material changes in an application will trigger a reevaluation and may require additional fees.

Contention resolution consists of either (i) a comparative evaluation or (ii) an auction. A comparative evaluation is used only with community-based applications and only if one of the community-based applicants in contention selected the comparative evaluation option in its application. The comparative evaluation involves application of an algorithm to assign points to the community-based applicants in contention based on (1) the nexus between the proposed string and the community, (2) dedicated registration policies, (3) community establishment, and (4) community endorsement. ICANN expects that most contention cases will be resolved through either settlement or the contention evaluation procedure. String disputes between noncommunity applications are resolved through either private settlement or auction. The auction is a last resort tie-breaking mechanism.

In Version 3 of the *Draft Guidebook*, ICANN outlines an ascending-clock auction that will be conducted over the Internet.[57] Participants in an auction will place bids using specially designed software in a series of auction rounds, which take place at a predetermined time. In each round, a participant will submit a bid within a range of prices set by the auctioneer in advance. The first round will have a start price of US$0 and later rounds will have a start price equal to the top price in the range of the previous round. If a participant submits a bid at a price less than the highest price in that round's predetermined range, it is called an "exit bid," meaning the participant is not willing to pay the amount at the high end of the range for that round. If other participants are willing to pay the highest amount in that round, the participant with the exit bid is not permitted to reenter any subsequent rounds. The process continues with the auctioneer increasing the price range in each round until there is only one bidder left.[58] Proceeds of the auction are to be reserved and earmarked for use in a manner that directly supports ICANN's mission and core values. The International Centre for Dispute Resolution has agreed in

principle to administer string contention disputes.[59]

A legal rights objection may be made by any rights holder (of a registered or unregistered mark) claiming infringement by the proposed NTLD. The dispute resolution panel would determine whether the potential use of the NTLD would take "unfair advantage of the distinctive character or the reputation of the objector's [mark], or unjustifiably impairs the distinctive character or the reputation of the objector's mark, or otherwise creates an impermissible likelihood of confusion between the [NTLD] and the objector's mark" based on a multi-factorial analysis.[60] The Arbitration and Mediation Center of WIPO has agreed in principle to administer disputes brought pursuant to the legal rights objections.[61]

A community objection may be made by any established institution associated with a clearly delineated community, which is related to the string that is the subject of objection.[62]

Anyone may bring a morality and public order objection. However, objectors are subject to a "quick look" procedure designed to identify and eliminate frivolous and/or abusive objections. An objection that fails this quick look may be dismissed at any time.[63]

Once an application is approved, the applicant is required to enter into a registry agreement with ICANN.[64] The applicant also must complete a process of testing based on criteria meant to verify that the applicant can operate the gTLD registry in a stable and secure manner. In addition, the applicant must provide evidence of its ability to fund ongoing registry operations for three to five years.

What to Do

IPR practitioners should review the third draft of ICANN's *Draft Guidebook* and submit comments and concerns to ICANN for consideration. The current deadline for comments is November 22, 2009. As noted above, the GNSO is also accepting comment regarding the IRT's proposal for an IP clearinghouse and URS. Practitioners should encourage ICANN to fully adopt the IRT recommendations.

If ICANN ultimately establishes an intellectual property clearinghouse, practitioners should counsel their clients on the importance of filing their trademark rights with the IPC and on the deadlines and requirements for IPC filings. Clients also should be counseled on the NTLD opportunities and be made aware of the benefits and corresponding deadlines for Sunrise applications. Trademark owners also should monitor the NTLD application process; be aware of objection deadlines, particularly for legal rights objections; and be prepared to raise timely objections if necessary.

Clients also might be interested in learning of the opportunities for community-based applications. This may be particularly attractive for clients that lack the means to obtain an NTLD or to maintain a registry, but who participate in a market segment or "community" that might benefit from a collective online domain. Trade organizations or other recognized "community"-based organizations may be willing to take on the responsibilities of domain registration if backed by a meaningful number of its members. As an illustrative hypothetical only, most law firms would not be in a position to host their own domain, but .aba might be an attractive domain for U.S. law firms to register

under and conduct their online marketing. Such a domain also would be a reliable and consolidated source for consumers to research and obtain legal services online.

IPR practitioners should continue to monitor ICANN's publications and guidelines regarding the NTLD roll out for the purpose of providing constructive feedback on the proposed mechanisms, particularly with regard to ICANN's draft dispute resolution procedures and to assure their clients are aware of relevant deadlines. Further attention and comment also might be given to ICANN devoting certain percentages of NTLD sales and auction proceeds to deferring the costs to trademark owners of IPC filings and NTLD dispute resolution proceedings.

Conclusion

ICANN's proposed NTLD rollout, if implemented, will provide numerous opportunities for IPR professionals to counsel their clients on online brand management. Should ICANN fail to fully implement the IRT proposals, the firestorm of criticism from brand owners will likely and justifiably escalate. An NTLD rollout with all the safeguards recommended by the IRT could vastly improve the domain naming and management system for consumers and brand owners alike. The next generation might find recollections of a time with 21 gTLDs as amusing as analog television with four channels of reception and adjustable rabbit-eared antennae. ∎

Endnotes

1. http://www.icann.org/en/registries/listing.html.

2. http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-04Oct09-en.pdf (Oct. 4, 2009).

3. Internet Corporation for Assigned Names and Numbers, Draft Applicant Guidebook, Version 3, Module 2.1.1.3.2 [hereinafter Draft Applicant Guidebook V3].

4. *Thinking About Applying for Your Own gTLD? It Could Cost You a Lot More Than $185k*, The Domains, http://www.thedomains.com/2009/02/21/thinking-about-applying-for-your-own-gtld-it-could-cost-you-a-lot-more-than-185k/ (Feb. 21, 2009).

5. New gTLD Program. What Kind of Internet Do You Want? Paris Conference Presentation (June 23, 2008), https://par.icann.org/files/paris/BAA_Intro_NewGTLDs_Paris_23Jun08.pdf.

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

7. http://www.youtube.com/watch?v=9Nj8ahNlUs8&feature=channel_page (Feb. 4, 2009) (ICANNnews "guidebook update").

8. John Berard, *10,000 Domain Names Pre-ordered Daily for Likely New Top-Level Domains*, CircleID.com (May 22, 2009), http://www.circleid.com/posts/10000_a_day_pre_ordered_new_gtlds/.

9. Dennis Carlton, *Preliminary Report of Dennis Carlton Regarding Impact of New GTLDs on Consumer Welfare*, Compass LexEcon (Mar. 2009), http://www.icann.org/en/topics/new-gtlds/prelim-report-consumer-welfare-04mar09-en.pdf [hereinafter Carlton, *Consumer Welfare*]; Dennis Carlton, *Preliminary Analysis of Dennis Carlton Regarding Price Caps for New gTLD Internet Registries*, Compass LexEcon (Mar. 2009), http://icann.org/en/topics/new-gtlds/prelim-report-registry-price-caps-04mar09-en.pdf [hereinafter Carlton, *Internet Registries*].

10. Carlton, *Consumer Welfare*, *supra* note 9, at ¶ 5.

11. *Id.* at ¶ 26.

12. *See, e.g.*, http://www.icmregistry.com (efforts of ICM Registry, Inc. in furtherance of .xxx gTLD).

13. Charles Christopher, *Some Trademark Industry Views Are Very Amusing*, ICANN Email List Archives (Dec. 15, 2008), http://forum.icann.org/lists/gtld-guide/msg00162.html.

14. *Id.*

15. Alexei Barrioneuvo, *Whose Rain Forest Is This, Anyway?* NY Times Online (May 18, 2008), http://www.nytimes.com/2008/05/18/weekinreview/18barrionuevo.html.

16. Mons. C.M. Polvani, Holy See's Rep. to GAC, Memo to Paul Twomey (Feb. 20, 2009), *at* http://www.icann.org/correspondence/polvani-to-twomey-20feb09.pdf.

17. Mark V.B. Partridge & Scott T. Lonardo, *ICANN Can or Can It?* 1:5 Landslide 24, 25 (May/June 2009).

18. *Id.*

19. *Id.* at 26.

20. Joel Hruska, *ICANN Plan for New TLDs Comes Under Barrage of Criticism*, Ars Technica.com (Dec. 16, 2008), http://arstechnica.com/security/news/2008/12/icann-plan-for-new-tlds-comes-under-barrage-of-criticism.ars.

21. *Id.*

22. *Id.*

23. http://forum.icann.org/lists/gtld-guide/index.html (index of comments).

24. http://www.icann.org/en/announcements/announcement-24apr09-en.htm.

25. http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf.

26. *Id.* at IRT Recommendation for an IP Clearinghouse, a Globally Protected Marks List, and Other Top and Second-Level Rights Protection Mechanisms, IRT Draft Recommendations.

27. *Id.*

28. *Id.*

29. *Id.* at Draft Uniform Rapid Suspension System (URS).

30. *Id.*

31. *Id.*

32. *Id.* at IRT Recommendations of Thick WHOIS Model.

33. *Id.* at IRT Report and Recommendation on Post-Delegation Dispute Mechanism.

34. See http://www.icann.org/en/topics/new-gtlds/summary-analysis-irt-final-report-04oct09-en.pdf (ICANN's Comment and Analysis on IRT Report).

35. Public Interest Registry (the Official Manager of .ORG TLD), *Comments on ICANN's IRT Final Report*, CircleID.com (July 14, 2009).

36. Michele Neylon, *IRT Final Report Ignores End User Concerns*, I Squatted Your EU—Domains/Internet Technology News (May 31, 2009), http://www.isquattedyour.eu/2009/05/31/irt-final-report-ignores-end-user-concerns/.

37. ABA IPL Resolution 254-1(A) (Sept. 2009) (Approved by Council Sept. 17, 2009).

38. *Hearing on the Expansion of Top Level Domains and Its Effects on Competition: Hearing Before the Subcomm. on Courts and Competition Policy of the H. Comm. on the Judiciary*, 111th Cong. (Sept. 23, 2009) (testimony of Richard Heath, President, INTA).

39. The GNSO is ICANN's "Generic Names Supporting Organization," the body responsible for ICANN policy development.

40. Konstantinos Komaitis, *An Update on the IRT*, Noncommercial Users Constituency (Sept. 25, 2009), http://ncdnhc.org/profiles/blogs/an-update-on-the-irt.

41. DRAFT APPLICANT GUIDEBOOK V3, supra note 3, Module 5.4.1.

42. DRAFT APPLICANT GUIDEBOOK V3, supra note 3, Module 5.4.2.

43. http://www.icann.org/en/topics/new-gtlds/gnso-consultations-reports-en.htm.

44. http://www.youtube.com/watch?v=9Nj8ahNlUs8&feature=channel_page (Feb. 4, 2009) (ICANNnews "guidebook update").

45. http://www.youtube.com/watch?v=9Nj8ahNlUs8&feature=channel_page (Feb.ruary 4, 2009) (ICANNnews "guidebook update").

46. ICANN Contractual Compliance Newsletter, Dec. 2008, *at* http://www.icann.org/en/compliance/newsletter/index.htm.

47. Partridge & Lonardo, *supra* note 17, at 27.

48. ICANN New gTLD Program Update (May 7, 2009), http://www.icann.org/en/announcements/announcement-07may09-en.htm.

49. Michael D. Palage, *ICANN's New gTLD Timetable: The Good, the Bad & the Ugly*, CircleID.com (May 8, 2009), http://www.circleid.com/posts/20090508_icanns_new_gtld_timetable_good_bad_ugly/.

50. *See* Draft Applicant Guidebook V3, *supra* note 3, Module 2.1, for complete details.

51. The String Similarity Algorithm is available at http://icann.sword-group.com/icann-algorithm.

52. Draft Applicant Guidebook V2, *supra* note 3, Module 2.1.2.1.

53. *Id.* Module 1.4.1.

54. *Id.* Module 1.1.2.2.

55. See *id.* Module 3.1 for complete details on the objection process.

56. See http://www.icann.org/en/topics/new-gtlds/string-contention-18feb09-en.pdf for a full description of string contention procedures.

57. Dʀᴀғᴛ Aᴘᴘʟɪᴄᴀɴᴛ Gᴜɪᴅᴇʙᴏᴏᴋ V3, *supra* note 3, Module 4.3.1.

58. *Id.* Modules 4.3.1–4.3.3.

59. *Id.* Module 3.1.3.

60. *Id.* Module 3.4.2.

61. *Id.* Module 3.1.3.

62. *Id.* Module 3.1.2.4.

63. *Id*. Module 3.1.2.3.

64. http://www.icann.org/en/topics/new-gtlds/draft-agreement-clean-18feb09-en.pdf.