

Impact of New Top-Level Domain Names

Q: Please explain the new program for top-level Internet domain names, and what it might mean for our association.

A. Top-level domain names are the generic letter extensions at the end of an Internet domain name (e.g., .org, .com, .net, .gov, .us, .ca). Currently, 22 generic top-level domains (gTLDs) are used, and all are in Latin characters.

Starting this month, organizations may apply for and operate their own top-level domains (TLDs) — generic and otherwise — in any language or script. For example, organizations could apply for “community” (e.g., .nurse, .sports), “brand” (e.g., .associationforum) or other types of TLDs (e.g., .chicago, .ilovenyc). By applying for a new TLD, an organization essentially becomes a domain name registrar and can establish the criteria for who may obtain a domain name using that TLD. For example, if the Association Forum of Chicagoland applied for and obtained the TLD “.associationforum,” it would control who was entitled to use “.associationforum” in its domain name.

Organizations may initially apply for new TLDs between Jan. 12 and April 12, 2012. The Internet Corporation for Assigned Names and Numbers (ICANN) is the registry for all TLDs used on the web and is in charge of implementing the application process. ICANN estimates between 300 and 1,000 new TLDs could be created each year under the new program, although they will allow only 500 applications during the initial application period, with later application periods to follow. The evaluation process may range from nine to 20 months, depending on the application, intended usage and other issues. ICANN expects the first new TLDs to appear within a year, but end users likely won't see new domains until 2013.

The application fee is substantial: \$185,000. Applicants must undergo background checks — criminal, cybersquatting history — and must demonstrate

they are financially, operationally and technically capable of operating a TLD. ICANN also will review whether there are existing trademarks that may have an impact on the proposed new TLD. Including the application fee, the first-year costs to applicants to complete the process and set up supporting infrastructure are estimated to be as high as \$500,000.


ICANN intends to issue TLDs on a first-come, first-served basis. If two organizations apply for the same TLD at the same time, however, ICANN will assess which organization has higher priority under a point system based on criteria such as mission and purpose of the proposed TLD, benefits to users, minimizing social costs and other criteria. For the complete evaluation form, visit www.icann.org/en/topics/new-gtlds/evaluation-questions-criteria-clean-19sep11-en.pdf. In the event of a tie, the TLD will be auctioned, so the organization willing to spend the most resources will win.

In addition, trademark owners, related communities and the public may file objections to applications based on the legal rights and interests of the objecting parties. Later in the year, ICANN expects to publish the initial results of its application evaluations, at which time the objection period also will open. Organizations should monitor applications posted by ICANN and evaluate whether to file objections for two reasons: to ensure the organization's own trademarks are not being infringed by entities attempting to register new TLDs; and to ensure appropriate registration and use of new “community” TLDs in which the organization may have an interest.

Community TLDs allow someone to register and pay for the use of TLDs that are related to a particular community (e.g., .associationexecutives). To obtain such a TLD, the applicant must be able to show the following: an ongoing relationship with the delineated community; the applied-for extension is “strongly and specifically related” to the community

names in the applications; the availability of dedicated registration and use policies; and whether the application has been endorsed by one or more established institutions representing the community named in the extension.

Community TLDs are of particular interest to associations, which represent industries or professions. While the fee alone will likely stop most associations from applying for their own TLDs, it is important that associations know about and monitor others' applications for new TLDs to prevent misuse of names and marks that either belong to the association or are closely related to the profession or industry served by the association.

ICANN believes adding new TLDs will allow more competition and more focused marketing on the web, as well as allow organizations to build secure communities under specific domain extensions. Nevertheless, there has been significant opposition to the new TLDs because of the potential risks for trademark infringement and consumer confusion. With a potentially unlimited number of TLDs, there will be far more potential opportunities for trademark infringement, “phishing” and deception of consumers. All businesses, including associations, should be aware of these potential changes in Internet domain names and prepare to protect their names, trademarks and reputations. For more information, go to <http://newgtlds.icann.org>. 

The answers provided here should not be construed as legal advice or a legal opinion. Consult a lawyer concerning your specific situation or legal questions.