

Position Paper

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The German Association for Information Technology, Telecommunications and New Media (BITKOM) represents more than 1,000 companies, of which 850 are direct members with revenues of some 120 billion Euro and 700,000 employees. They include manufacturers of ICT equipment and providers of software, IT services, telecommunication services and content.

Summary

After the introduction of some new Top Level Domains (such as “.eu“ for Europe, “.cat“ for Catalonia or “.mobi“ for mobile content), another expansion of the Internet name space to include further new Top Level Domains (TLDs) is in preparation by ICANN. In addition to new generic Top Level Domains such as .web, .shop or .geo, those for regions such as Galicia (.gal), Brittany (.bzh) and Wales (.cym), and those for cities like Paris (.paris) and New York (.nyc), there will also be an application for the TLD for Berlin (.berlin). New TLDs are expected to be introduced starting in autumn 2008.

New TLDs can offer a number of advantages for providers and users in the Internet. There are, however, also problems associated with the expansion of the domain name space, particularly regarding a possible increase in disputes involving domains. The opening of a new “empty“ TLD namespace potentially offers abusers a new and attractive sphere of activity to register domains with malicious or fraudulent intent.

These kinds of misuse must, as far as possible, be prevented when introducing new TLDs. Before registration begins under a new TLD, we consider it imperative to take all necessary measures to prevent abuse. At the same time, we should aim to avoid a number of shortcomings that have become apparent in the past in the introduction of new TLDs. A “hands off approach“, as with e.g. the “.de“ registration, would not be acceptable in introducing new domains. Some may claim the number of cases of misuse within the scope of the “.de“ domain has been very small compared with the number of domains legitimately in use. We believe, however, that this argument is not applicable for new TLDs as the “.de“-Domain is a TLD space which has grown naturally over 20 years.

With this position paper, BITKOM would like to provide essential stakeholder input from the private sector to ICANN. BITKOM urges ICANN to consider the proposed measures outlined below, as means to provide preventive action against domain disputes. BITKOM can only welcome an expansion of the TLD space if these considerations find appropriate reflection.

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1 Sunrise Period

Essential to the introduction of new TLDs is the organisation of a so-called Sunrise Period. For this “pre-launch“ phase, the normal “first-come - first-served“ principle should not apply. This would rather be a period in which eligible right owners (for example, trademark owners) would be able to decide if they want to register “their“ domain. This avoids from the outset a whole series of wasteful and expensive litigation with cybersquatters.

Sunrise periods of this kind have already been applied successfully to various TLDs around the world.¹

For these sunrise periods, various aspects have to be considered:

- **Regulation of deadlines:**

The most important example for the application of a sunrise period is the registered trade mark. Since marks can be registered at any time, legal security demands the specification of a given date. Marks which are registered after this date can no longer be taken into account for the sunrise period. This prevents marks being registered solely for the purpose of falling under the sunrise rule. A deadline regulation of this kind should also be applied, as appropriate, to the registration of other rights.

- **Simplicity/Security:**

Since the sunrise mechanism is specifically intended to prevent disputes, it is of particular interest to find a simple and secure regulation that should be communicated at the appropriate time in particular to such right holders.

- **Prior right of reservation for the locally resident:**

In addition, regulation is needed – particularly in relation to the city TLDs such as “.berlin“ – of the extent to which locally resident enterprises have a “prior right of reservation“, and what is to happen with other cities with the same name as the originator for a city TLD.

2 Restriction of applicants according to function

For TLDs covering specific subject areas such as “.music“, registration should be restricted only to a specific target group with the a particular interest in common. This would simplify the intuitive search for specific content and would save users transaction costs.

¹ WIPO Arbitration and Mediation Center - New Generic Top-Level Domains: Intellectual Property Considerations, Para. 124. <http://www.wipo.int/amc/en/domains/reports/newgtld-ip/index.html>.

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3 Registration costs, registration process

- The higher the registration costs and the more restricted the target groups of a TLD, the fewer problems arise with so-called cybersquatters. This should be taken into account in the process of registration, at least for a certain period.
- The registration process should in addition allow the possibility of later correction of formal errors.

4 Accreditation, WHOIS enquiries

- Registrars should be in the position to report multiple accreditations and to prevent these through the registry.
- When businesses try to protect themselves against trade mark infringements through the civil courts, as well as in cases of prosecuting criminal actions such as phishing, it is often necessary to identify the person responsible for the act committed to commence civil litigation in addition to the public prosecution. Due to existing difficulties of international litigation, it would be desirable if an appropriate identification procedure would be established. High performance data bases with open access are indispensable for this. The assignment of new TLDs should therefore involve the provision of details for corresponding data bases on a compulsory basis. In addition, "WHOIS" enquiries should be retained in the present form. However, to prevent data harvesting through automated processes for the purposes of e.g. spamming, appropriate means should be implemented in the WHOIS query process. Further to this, when the party involved has a legitimate interest, the corresponding registry and the responsible registrar should provide information exceeding that available in the "WHOIS" data rapidly and in appropriate detail, in particular in the case of a prosecution under criminal law. As a matter of principle, data protection laws and regulations need, of course, to be respected and observed.

5 New accreditation of registrars

In the case that the administration of new TLDs is not restricted to registrars who are already accredited, a new registration should be associated with strict conditions, to ensure that only respectable organisations, and in no case "letter box firms", are accredited as registrars.

6 Establishing dispute entries

As in the case of other successful TLDs (".de" could serve as an example), it should be possible for rights holders to establish a so-called "dispute entry" with the corresponding registry. A dispute entry in this sense would have the effect that the

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current owner of a domain cannot simply transfer the domain to a new owner in an attempt to avoid an involvement in the conflict of interest over the domain. In the case of a deletion, the domain should fall to the party that established the dispute entry. Proof of a “legitimate interest“ of the right holder in a dispute entry should, however, be provided in legally secure form to the registry.

7 Notification procedure for owners of trade mark rights

The owners of trade mark rights have an interest in observing whether and which domains are registered with constituent parts of their trade marks, so that they can determine whether in a particular case their rights are infringed by these domains. It is therefore desirable that notification procedures are developed for which the rights holders with an interest can register themselves. Registration of this kind would then mean that the responsible registry immediately informs the right holder as soon as a domain application is submitted of which a second level domain contains registered marks or components of names.

8 Domain Tasting

BITKOM would welcome the prohibition of so-called “domain tasting“.

9 Alternative Dispute Resolution

In new TLDs addressed to an international audience, disputes concerning domains will often transcend borders. Particularly in these cases, a rapid and inexpensive resolution can best be reached through an ADR procedure tailored to domain disputes. The ADR costs for private persons and SMEs should be appreciably lower than the prices usually asked for by cybersquatters, to make it easier for right holders to recover the domain from cybersquatters.

In our view, the ADR system of the Uniform Dispute Resolution Policy² should be applied. In this way the legitimate rights owner can secure the deletion or the transfer of the disputed domain, efficiently and inexpensively, by way of an out of court procedure.

² see in particular <http://www.wipo.int/amc/en/domains/rules/index.html>.