

Global IT Law
Domain Names
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Domain Name Issues

- New TLDs
- Dispute Resolution
- WHOIS

New TLDs

- Limited gTLDs + ccTLDs (though some ccTLDs function like gTLDs)
- History of desire for expansion of namespace
 - Postel's plan for 150 new TLDs
 - ICANN to consider new TLDs as part of mandate
- Since 1998
 - Limited expansion of TLDs
 - Emphasis on “sponsored” TLDs with more limited commercial appeal
- The Issues
 - Why expand?
 - Who decides?
 - What conditions?

Why Expand?

- Choice as a “good thing” - more “inventory”
- Portability for individual users
- Shorter names
- Identity functions (ie. valued of sponsored domains)
- Greater control
- Greater marketplace competition
- Avoid split root
- Decline of artificial scarcity
- Reduce value of individual domain

Why Not To Expand

- Technical limitations in the root?
- Intellectual property considerations?
- Security concerns?
- Accountability concerns?
- Consumer confusion?

ICANN's First Expansion

- ICANN seeks detailed proposals
 - \$50,000 application fee
 - Detailed info on business, financial, and technical qualifications
 - 47 applications (2 returned for no fee)
 - Board report indicates favoured proposals
 - Board gives three minutes to each applicant
 - Dot-web controversy
- ICANN selects seven proposals; 11 proposals file reconsideration requests (all denied)
- New domains include:
 - .biz, .info, .name, .coop, .aero, .travel, .pro
- “Sunrise” registrations

ICANN's First Expansion

- Report on first expansion finds:
 - Abuses of sunrise registrations (43% of .info cancelled)
 - Sunrise may be unnecessary - only 2-3% of registrations involve trademarks
 - Limited impact on namespace
 - ICANN contracts unnecessarily long and complex

ICANN's Second Expansion

- ICANN opens in 2003 to sponsored TLDs
- Ten applications
- Adds .cat, .mobi, .travel, .asia
- .xxx controversy
 - US Government meddling

ICANN's Third Expansion

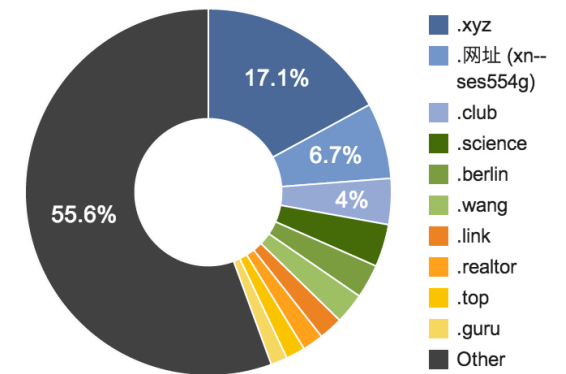
- ICANN opens full process in 2011
- Thousands of applications
- \$175,000 per application
- Multiple applications for same extension
- Wide range of business models
- Community review and objections
- Steady implementation into the root since 2013
- Next process in 2020?

New gTLDs

new gTLD Domains

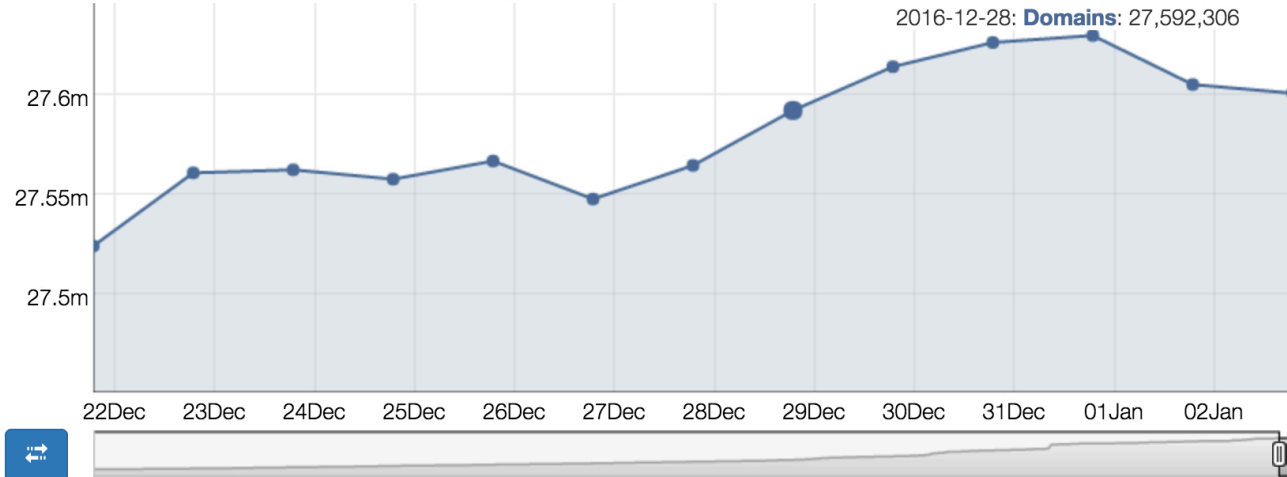


new gTLD distribution

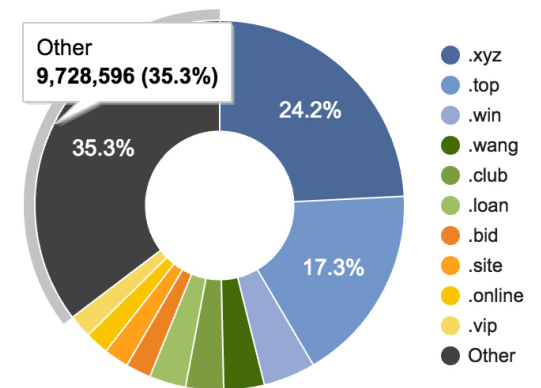


New gTLDs





















new gTLD Domains



new gTLD distribution



Top 30 new gTLDs

	TLD	Domains	% Share
1.	 .xyz	6,667,592	 24.21%
2.	 .top	4,776,837	 17.34%
3.	 .win	1,255,640	 4.56%
4.	 .wang	978,419	 3.55%
5.	 .club	913,574	 3.32%
6.	 .loan	882,134	 3.20%
7.	 .bid	609,483	 2.21%
8.	 .site	601,791	 2.18%
9.	 .online	567,899	 2.06%
10.	 .vip	564,344	 2.05%

Domain Names Case Study

Dot-stinks is a new TLD that recently received approvals from ICANN to enter into the root. Speakout Inc. is the owner of the registry and it has big plans for its new domain. Marketing the domain as the Internet's loudest forum to speak out, the company has brought several innovations to the market.

1. Domain names can be registered by trade mark holders or famous persons during the “sunrise” period, however, those domains retail at US\$1,500 per year per domain.
2. Domain names registered after the sunrise period fall into two categories. A list of “premium domains” feature variable pricing that can range as high as US\$10,000 per domain per year. Non-premium domains cost US\$250 per domain per year. These domains can be registered by anyone.
3. Dot-stinks has a small reserve list of names that cannot be registered by anyone.
4. Speakout Inc. is based in a Caribbean island. It says it will only respond to takedown orders from a local court. It does not believe it is liable for any content on sites registered under dot-stinks.

INTA has filed a complaint with the U.S. government over the dot-stinks plans.

Domain Names Case Study

Please consider the fact pattern and be prepared to discuss:

1. How should the U.S. government respond to the INTA complaint?
2. Is Speakout Inc. liable for content on dot-stinks sites? Should they be?
3. Is there anything wrong with its pricing plans?
4. What jurisdiction should govern dot-stinks disputes?

Where To From Here?

- Unlimited number?
- Gaming issues?
- Who decides?
- Allocation rounds or continues addition?
- Is this necessary?

Domain Name Disputes

- Who owns a dot-ca, a dot-com or dot-il?
- First come, first served
- Issue - only one domain per name & limited restrictions on registration (CPR in Canada; none for dot-coms)
- United Airlines, United Van Lines, United Telephone, United Bank

Challenging Dot-coms

- Early days -- NSI dispute policies
 - Freezing domains
 - Competing global trademarks
- Transfer from NSI to ICANN
- ICANN Uniform Dispute Resolution Process (UDRP) follows WIPO-led process
- The Courts/Anticybersquatting Act (U.S.)

Challenging Dot-coms

- Yahoo v. Yahoo-Israel
 - 1998 case involving yahoo.co.il
 - Settles for \$5000 plus transfer of the domain

ICANN' s Uniform Dispute Resolution Policy (UDRP)

- Domain name disputes are frequently cross-border
- Need for speed, accessibility, global scope
- ICANN UDRP
 - External providers - WIPO, NAF, ADNDRC, etc.
 - Bad Faith Domain Name Registrations
 - 3 Months and \$1 - 3,000

ICANN' s Uniform Dispute Resolution Policy (UDRP)

Complainant must prove...

- domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights
- no rights or legitimate interests in respect of the domain name
- domain name has been registered and is being used in bad faith

ICANN' s Uniform Dispute Resolution Policy (UDRP)

Bad Faith includes...

- Attempt to sell, lease, etc. the domain
- Prevent registration if there is a pattern of such behaviour
- Disrupt competitor' s business
- Attract, for commercial gain, visitors to your site via confusion

ICANN' s Uniform Dispute Resolution Policy (UDRP)

Legitimate interest includes...

- Bona fide offering of goods or services
- Commonly known as domain
- Legitimate non-commercial use provided no attempt to obtain commercial gain via confusion

ICANN' s Uniform Dispute Resolution Policy (UDRP)

- Step-by-step process
- Complainant launches claim with arb. provider
- Registrant opportunity to respond and decide whether one or three member panel
- Arbitration provider assigns panelist(s)
- Panelist(s) render decision based on evidence submitted