



ARE Domain Name Alert

June 20, 2012

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at: <http://newgtlds.icann.org/en/program-status/application-results/strings-1200utc-13jun12-en>.

These include company specific domains (for example, .amazon, .macys, and .nike); industry specific names (for example, .restaurant, and .contractor); and true generic names (for example, .toys, and .ketchup).

These new gTLDs will vastly expand the current list of 21 gTLDs (for example, .com, .net and .org.) Besides the country specific Top Level Domains (“ccTLD”) (like .cn for China and .fr for France), there have been relatively few additions over the past years (for example, .biz, .info, and .xxx).

Every business and organization should review this list and consider appropriate offensive or defensive strategies to deal with this dramatic expansion of gTLDs.

I. Strategies to Stop Specific gTLDs from Being Approved

ICANN has set up four vehicles for objection:

A. THE COMMENT PERIOD

A Sixty day comment period began on June 13. During this period, any party may submit comments to the various initial evaluation panels set up by ICANN. These panels include (i) the string similarity panel (which compares the similarity of TLDs); (ii) the DNS stability panel



(which evaluates technical issues that may impact the stability of the Internet); (iii) the technical and operational capability panel (which considers the ability of the applicant to operate a gTLD); (iv) the financial capability panel (which reviews an applicant's financial ability to operate a gTLD); and (v) the registry services panel (which reviews an applicant's proposed registry services).

Grounds for comment are to be based on the following categories:

1. "String Confusion" — that an applied-for gTLD is confusingly similar to an existing gTLD or another application.
2. "Legal Right" — that an applied-for gTLD infringes a legal right of a third party.
3. "Public Interest" — that an applied-for gTLD is contrary to generally accepted legal norms of morality and public order.
4. "Community Opposition" — that a community-based gTLD is opposed by a significant portion of the community.

B. FORMAL OBJECTION

If an application passes the initial evaluation by the comment panels, the public may submit formal objections to a separate committee on the same four bases listed above. These objections will be considered based on an arbitration model, where each side is entitled to file written submissions. An oral hearing may also be required.

C. THE INDEPENDENT OBJECTOR

An independent objector has been appointed by ICANN, and is charged with generally protecting the public interest. The grounds for the independent objector to file submissions are more narrow than those that the general public may assert. Any business which does not have the financial budget to take independent action may consider writing to the independent objector seeking to persuade him or her to file a formal objection.

D. THE GOVERNMENTAL ADVISORY COMMITTEE

If there is some concern that a specific proposed gTLD will violate a law, the governmental advisory committee may provide advice to ICANN, including a recommendation that the domain not be issued, at least until the issue is resolved.

II. Practical Advice

The first important step is to review the list of potential gTLDs, found at the link listed in the first paragraph above.

If any raise potential concerns, further investigations should be conducted to determine if the



concern may warrant further action. For example, investigations may determine that a specific proposed gTLD will not, in fact, implicate your business. However, if it may be relevant, the level of concern helps dictate what actions are taken. These can range from doing nothing, to merely providing a comment, to filing a formal objection and seeking assistance from the independent objector or the governmental advisory committee.

As a final strategy, there may be benefit to the “if you can’t beat ‘em, join ‘em” approach. Some of the applicants intend on making a business out of selling or leasing pages to potential interested members of the community. For example, if you run a business called “Chester’s Insurance Company,” you may want to own the site: www.chestersinsurance.lifeinsurance.

No matter what, if any action is contemplated, it is prudent of the party to act expeditiously, as there are hard deadlines which can make a real difference.

Our attorneys can help you evaluate these important issues and determine the best strategy and action.

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