

# New Unlimited Cyber Real Estate: They're Making More, But Should You Buy It?

It will take several years for the effect of the new generic top-level domains to fully play out.

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**W**orking with businesses on Internet and technology matters means there's almost always an interesting, and thorny, development just around the corner. This is also the case with the recently announced program for new generic top-level domains or gTLDs. Here are some questions we've been asked about the new "unlimited" gTLDs.



to manage the new gTLD, as well as establishing and enforcing rules (subject to ICANN's approval). Based on ICANN's estimates, these start-up costs and initial expenses could run approximately \$500,000 for the first two years (plus ongoing fees due to ICANN, technical and legal costs, and insurance expenses).

Before writing the check, take stock of your organization's goals, strategies and plan for the gTLD. Not only is such a plan crucial to your operational success, but the organization must also describe that plan to ICANN in its application for the new gTLD.

## What is a gTLD and What's the News About It?

The term "gTLD" stands for generic top-level domain. A gTLD is a piece of the Internet's structure, an extension used in the Internet's domain name system. There are 22 gTLDs and the most common are .COM, .ORG, .INFO, .NET, but one might see many more gTLDs in the future under the new program.

In June 2011, the Internet Corporation for Assigned Names and Numbers, which among other things, is responsible for managing the top-level domain names announced its new gTLD program. ICANN's new program launches in 2012 and will allow parties to apply for any gTLD they wish, such as corporate-named specific generic top-level domain names (e.g., .mcdonalds or .macys). ICANN may also allow registration of names such as .coffee, .burgers, .futbol, .shoes, .shopping, or .movies, or for geographic areas, such as .NYC or .Paris.

## If You're Interested, How do you Participate?

First, get out your check book. Just for the privilege of applying, you'll need to pay ICANN an application fee of \$185,000. From there, the cost goes up. A successful bidder will have to establish and administer its new gTLD.

For most, that probably means engaging professionals

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From Jan. 12, 2012 through April 12, 2012, ICANN will accept new gTLD applications. As described in a 360-page Applicant Guidebook, applicants will be subject to evaluation for technical, financial and administrative qualifications to operate a gTLD registry, and must give a detailed description of their mission and vision for the registry. Companies hoping to use a new gTLD as part of a confidential marketing strategy may find that the open application process limits the benefit of that approach.

## Who Will be Interested and Why?

Despite the high cost, a few businesses and organizations will consider applying. For some, they may calculate that the high cost is not out of line with a broader marketing campaign and other business objectives. The possibilities and reasons are numerous and there's certainly no crystal ball to

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predict creativity, but a few reasons come to mind.

- **Control and the opportunity for the company's brand to dominate the gTLD space.** The Applicant Guidebook and FAQs indicate that applicants may, at least in some circumstances, negotiate a registry agreement under which the registry may refuse domain registrations to any outsider, e.g., anyone not affiliated with its system. How far this extends is an open issue. For example, in a new mythical .burgers gTLD, if Acme Burger Co. applied for and won the right to be the registrar for .burgers, could AcmeBurger Co. reject an application by McDonald's USA LLC to register mcdonalds.burger in the new domain (e.g., the domain name akin to the "McDonald's" brand name)? The manner in which contests for truly generic gTLD names will be decided among brands, associations and other applicants will be closely followed, and likely very controversial.

- **Customer Confidence.** For many brands, source authenticity is critical to consumers' decisions to purchase or participate (e.g., "Rolex" or gift card purchases). By registering and controlling the gTLD that authentic retailers use, manufacturers and franchisors may be able to afford additional peace of mind and confidence to potential customers.

- **Integration of Brand Participants.** For franchise systems and other networks, the ability to consolidate their participants (suppliers, fan pages, affiliated brands, etc.) and various domain extensions under a branded gTLD may be an effective strategy to harness the possibili-

ties in a coherent and attractive way.

- **Search Engine Optimization and Paid-for Advertising.** The new gTLDs will present both new opportunities and new obstacles. On one hand, having a branded gTLD would provide exclusive access to key domain names and facilitate certain SEO efforts. But on the other hand, apart from first-movers, the big winner will be the search engines in general (and Google in particular), since it will be that much harder to intuitively and accurately guess a URL. Therefore, users will resort to conducting searches in the first instance, rather than even typing in a known URL (e.g., would one type in www.sony.radio or just search for "SONY")? Because most current Internet browsers are functionally linked to a search engine, a user can simply type SONY into the URL field at the top of the browser and with one click, search results will appear with the main SONY Web site likely first in the results. The take-away here: buy stock in today's big search engine companies: Google and Microsoft.

- **Industry and Membership Organizations.** Organizations with a gTLD may have value of a different nature. Operating a gTLD may offer new revenue opportunities, as well as additional organized space for dialogue and resource sharing among its community.

#### Worried if you Don't Register?

While the new gTLDs will certainly pose some complications to brands, the sky isn't falling today. Among the factors limiting the downside and related considerations are:

- The extremely high costs should keep casual, or even organized, cybersquatters from attempting to squat on a gTLD.

- Trademark owners, and the general public, will have the chance to object (filing fees will apply) to any gTLD applications. ICANN will publish

portions of all applications.

- When each new gTLD becomes effective, there will be a sunrise period for trademark owners to first obtain registrations, unless ICANN approves restricting the domains to the registry owner's system.

- Trademark protection tools will continue, including a requirement that gTLD operators comply with ICANN's Uniform Dispute Resolution Procedure, which allows trademark owners to challenge domain registrations.

- As new gTLDs proliferate, so too will a brand's costs in maintaining defensive domain registrations and combatting registrations of the trademark in the new gTLDs (e.g., Acme Burger Co. ought not let another party register acme.burger).

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While some franchisors will consider applying for a gTLD, it's not a likely path for many. While it will take several years for the effect of the new gTLDs to fully play out, it's clear that the available cyber real estate will expand. With that expansion will come many opportunities for brand owners and competition alike. Before the application process opens January 2012, interested businesses and organizations should evaluate their brand's goals to determine if they want to apply. Beyond that, all franchisors should re-examine their current strategies on Internet and domain development and protection, and make appropriate adjustments, such as monitoring the gTLD applications and registrations for infringement.

Final question: What's the call on how fast "The Donald" applies for .trump? ■

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