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EXPANSION OF THE DOMAIN NAME SYSTEM:
ADVANTAGES, OBJECTIONS AND CONTENTIONS

By Mark V.B. Partridge and Jordan A. Arnot*

We are about to experience the most significant change to the structure of the Internet since the advent of the World Wide Web. This change will have a dramatic impact on Internet users, service providers, and brand owners in the coming months. Now is the time to prepare.

At its General Meeting in Singapore in June 2011, Internet Corporation for Assigned Names and Numbers (ICANN), the governing body for domain names, approved plans to begin processing applications for an unlimited number of new top level domains ("TLDs") in January 2012. The new program allows brand owners and individuals to create new domain name registries using virtually any term in place of the existing "generic top level domains" ("gTLDs"), such as .com and .org. Dozens of planned domains have already been announced, based on location (.berlin), interests (.music), industries (.eco), and well-known brands (.canon). Hundreds of new domains could begin operation within a few years. Proposed new gTLDs1 include industry-centric TLDs (such as the previously introduced .travel, etc.) and city-

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1. While the authors had intended to discuss specific gTLD applications, ICANN postponed publication of the list of applied-for new domain names (which was initially scheduled to be released on April 30, 2012) due to a "technical glitch" that required the temporary suspension of the TLD application system just before the application-window was initially scheduled to close. See, e.g. ICANN Announcement, TAS Interruption Update (23 April 2012), available at http://newgtlds.icann.org/en/announcements-and-media/announcement-23apr12-en.
centric TLDs (such as .nyc, .paris and .chicago). Additionally, the new TLDs will support extensions in languages that use characters outside of the Roman alphabet.

The introduction of new TLDs will present significant challenges for trademark holders. New TLDs present the need for many trademark holders, particular owners of famous marks, to engage in defensive registrations to preempt cybersquatters. The new address extensions themselves may be confusingly similar to a trademark, or similar to existing address extensions, requiring a careful distribution process to avoid potential problems.

Problems may also arise in the second level, the space to the left of the dot. To help resolve these problems, ICANN has implemented new mechanisms for rights protection, including a new Trademark Clearinghouse, Sunrise registration process, intellectual property claims process and URS procedure (Uniform Rapid Suspension procedure). Many predict that cybersquatting will increase dramatically with the launch of new gTLDs, making these new procedures particularly important for brand owners.

This article discusses the reasons a brand owner may be pursuing a new TLD application, and provides a summary of the contention and objection phase of the TLD application process.

I. THE ADVANTAGES AND DISADVANTAGES OF PURSUING A NEW TLD

The policy behind the new TLDs is the promotion of competition on the Internet. The availability of new TLDs increases domain-name choices available to consumers, and

3. Id.
because new TLDs can be administered by new and independent domain name registries, it increases competition and choice. Yet, on the other side of the equation, brand owners considering a new TLD have had to make many difficult and strategic considerations.

Brand owners who have applied for new TLDs may benefit most obviously from more control over their web presence. Most significant to the brand’s value is the marketing and promotion advantages. Owning both sides of the “dot” in a web address allows the company to strengthen its online presence in its brand, products, and services. “Having a brand-specific gTLD gives companies an infinite universe of branded domains that can be used to promote products and services.”

In addition to the value to the brand are the actual and perceived security advantages, the ability to obtain more data about customers and users, the publicity and obvious benefits of being cutting edge, maintaining control of your industry or brand by being among the first with a new gTLD, and avoiding the pain and expense of trying to assert rights or obtain domain names later on.

While the advantages are appealing, there are significant countervailing reasons why other brand owners have chosen to abstain. The most obvious reason for pause is the high cost of applying for, securing and then operating a new TLD. The


7. Press Release, Neustar (June 20, 2011), Neustar to Establish its Own Brand-Specific Generic Top-Level Domain, http://www.neustar.biz/about-us/news-room/press-releases/2011/neustar-to-establish-its-own-brand-specific-generic-top-level-domain (quoting Mark Pilipczuk, vice president of Marketing for Neustar, one of the first companies to announce it would be embracing the gTLDs: “One of the many benefits of owning the .NEUSTAR gTLD is the flexibility it provides in creating shorter, more intuitive and easy to remember domains for our marketing campaigns.”).
application fee alone is $185,000. Setting up a registry will cost around $100,000, and the annual estimated expense for operating the registry is $250,000 to $500,000. And as the cost might indicate, the operation of a new gTLD requires expertise and resources, which few companies other than existing registries can provide.

There is also uncertainty as to what the impact of the new TLDs will be on a company’s brand. If the application and ongoing operation process is not managed properly, the company risks negative consequences from mismanagement and malfunctions. Moreover, it is unclear what impact new TLDs will have on current strategic goals and existing business models. Companies are unsure of the cost recovery, revenue generation, or brand investment in light of the financial commitments, in-house resources, and outsourcing opportunities. Finally, brand owners may feel little pressure to defensively register because ICANN procedures provide intellectual property rights protections mechanisms and because the high cost of applications reduces the probability of speculators and cybersquatters at the top level.

Regardless of a company’s decision to pursue a new TLD or not, the process will affect all brand owners. All companies must expand their Internet monitoring and policing of trademark and copyright infringement to encompass the new domains.

A. Opportunities for Those Companies Pursing New TLDs

Those companies that are not pursuing a new TLD this round will be watching from the sidelines—for better or for worse. But those companies pursuing new TLDs and expanding their brands have had several options, including: a company name (.company),

9. Id.
10. Miller, supra note 6.
11. See ICANN APPLICANT GUIDEBOOK, supra note 4, Attachment to Module 2, at A-1 (indicating that this application window is “the first round of what is to be an ongoing process for the introduction of new TLDs” though there is no clear indication or date set for the next round).
a brand or product name (.brand), a product or service category (.restaurant), or an industry key term or other desirable generic term (.sushi, .soda, .menu).

Commercializing a company name may improve the company’s message recall and online efficiency. There are opportunities available for “.company” applicants to activate the names space and drive return on their investments. For example, if eBay were to secure .eBay and sell a slice of that space as a vanity domain name—like janedoe.ebay—to its audience of 94 million registered users for a fee, that would generate a significant amount of revenue. Similarly, franchisors could sell “franchisee.company” to generate revenue.

Brand or product TLDs can be viewed as online promotion tools and value-added assets. But more importantly, .brand provides the best fraud prevention and trademark protection. Moreover, defensive registration of a .brand TLD represents a secure, online system that is completely free from infringement concerns; free from knock-off cites, traffic diversion, cybersquatting, brand abuse, and the host of other problems trademark owners face with TLD and country code TLD (ccTLD) domains. This will result in a trusted space where consumers can rely on the notion that, “if it doesn’t end in .ourbrand, it’s not a genuine ‘our brand’ website.”

Furthermore, a .brand domain puts the brand owner in control of all uses of its domain. It can distribute domains to agents, distributors, retailers and other associated entities; and when those relationships end, it can simply revoke the names. This is a vast improvement over the current arrangement where former agents have been known to keep domains containing the principal’s brand and redirect traffic to other websites.

In the product or service category, the formation of market or vertical centric generic TLDs may offer value to a specific target audience. For example, the .restaurant TLD could be launched specifically for the restaurant, food and beverage industry. Such a namespace is not intended to be a competitor to .com, but it will still hold significant value to the restaurant industry given it will be directly tied to the subject matter as well as the global restaurant community. The perceived value provides the opportunity to demand a higher price per domain, increasing profit even if overall registration volumes are small.
Using a .industry TLD provides opportunities for enhanced messages online because it conveys immediate information about products and services. But registration of .industry by another may create barriers to online marketing efforts, as there is the potential of operating a closed TLD excluding competitors or an open TLD with high charges and restrictions on competitors. Similar to the product or service category above, industry key terms or generic terms may be the greatest opportunity to monetize the TLD space. Still, companies pursuing these generic terms must consider their primary business and whether they are prepared, or even want to become a registry.

B. Application Risks Faced by Those Companies Pursing New TLDs

One risk associated with the new TLDs is that someone with rights in a common term could register a TLD which is subsequently deemed a "confusingly similar" TLD and block a company from ever having an opportunity to obtain its .brand. For instance, there is a United Airlines and multiple United Banks, but only one company will get .united.

Additionally, if the Georgia Utilities Coordinating Council obtains .GUCC in the first round of TLD applications, then Gucci Group may be prevented from obtaining their preferred .gucci domain extension on the grounds that it is "confusingly similar."

Official fees for objections to new TLD registries are expected to cost between $1,000 and $5,000 at filing, and could run considerably higher to take a dispute through to final adjudication, depending on the final mechanisms adopted by the service providers with whom ICANN will contract to adjudicate objections.12 Moreover, the cost of monitoring and opposing new TLDs for second-level domains with objectionable content will incur significant cost. Most concerning about this process is that there is no precedent at this point and it is unclear at best to say how any decision may be rendered.

If there are other entities that may have rights in the same brand name, product category or geographic location, consideration may

12. See ICANN APPLICANT GUIDEBOOK, supra note 4 at 1.5.2.
be given to filing a joint application for the new TLD (e.g. Portland, Maine and Portland, Oregon may wish to jointly apply for .portland). This eliminates the risk of objection and can disperse the cost. It also enables the parties to envision and delineate use in a mutually-agreed upon manner, rather than leaving it to the determination of a third-party dispute resolution process.

II. CONTENTIONS AND OBJECTIONS

After the window for submitting applications in the first round closes, there is a seven-month period for evaluation.13 During the “Initial Evaluation” of a gTLD application, ICANN first evaluates the applicant’s financial and technical ability to operate a gTLD registry. Next, it assesses whether the gTLD would adversely affect the domain name system (DNS). Finally, ICANN determines whether the proposed gTLD is likely to cause string confusion with an existing TLD, applied-for gTLD, or other existing rights of a third-party.

This section addresses the final point of evaluation, string confusion, in greater detail. Outlined below are: (A) the processes and procedures by which ICANN makes the evaluation and determination whether there is confusion (known as “String Review”), (B) how to resolve string confusion conflicts and what recourse an applicant may have if this determination is made and finally (C) whether and how one may object to a confusingly similar application.

A. String Review Procedure

The string review portion of ICANN’s “Initial Evaluation” evaluates whether the applied-for gTLD visually resembles either:

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13. While the first application round was initially scheduled to close on April 12, 2012, ICANN temporarily suspended the application system after it experienced a technical glitch that may have compromised some early filers’ user names and file names. As of the date of publication, no amended schedule has been released by ICANN.
(1) existing TLDs\textsuperscript{14} and reserved names\textsuperscript{15}; (2) other applied-for gTLD strings; or (3) strings requested as Internationalized Domain Name (IDN) ccTLDs that it is likely to deceive or cause confusion.

A panel of ICANN examiners makes this determination using the results of a publicly-available algorithm, which generates a similarity score. String confusion only exists if the confusion is "probable." The mere possibility of confusion is not sufficient, such that the mere fact that one string brings another to mind would not result in string confusion.

There are three potential results after a string similarity review:

1. **Application Fails** (Application Deemed Similar to Existing TLD or Reserved Name)

   An application that fails the String Similarity review due to similarity with an existing TLD or reserved name will not pass the Initial Evaluation, and no further review will be available. Where an application does not pass the String Similarity review, the applicant will be notified as soon as the review is completed.

2. **String Confusion Found** (Application Deemed Similar to Another Application)

   An application for a string that is found too similar to another applied-for gTLD string will be placed in


\textsuperscript{15} Reserved Names include the following: AFRINIC, ALAC, APNIC, ARIN, ASO, CCNSO, EXAMPLE (including translation of this word in several languages), GAC, GNSO, GTLD-SERVERS, IAB, IANA, IANA-SERVERS, ICANN, IESG, IETF, INTERNIC, INVALID, IRTF, ISTF, LACNIC, LOCAL, LOCALHOST, NIC, NRO, RFC-EDITOR, RIPE, ROOT-SERVERS, RSSAC, SSAC, TEST (including translations of this word in several languages), TLD, WHOIS, WWW; as well as marks related to the Olympics and the International Olympic Committee, International Red Cross and Red Crescent Movement. See id.
what is referred to as a “Contention Set,” described further in Section II(B) below.

(3) Application Passes (Application Not Found Visually Similar to Existing TLDs or Applications)

An application that passes the String Similarity review is still subject to objection by an existing TLD operator or by another gTLD applicant in the current application round, described further in Section II(B) below.

Approximately two months after the application window closes, ICANN expects the various evaluation panels will begin conducting the string reviews and will conclude the reviews approximately seven months after the application window closes.16

B. String Confusion Conflicts (“String Contention”), Recourse and Resolution

ICANN will not approve applications for proposed gTLD strings that are either identical or would result in user confusion, called “contending strings.” If string contention exists between two or more applications, the applications are placed in “contention sets” and proceed to contention resolution through either community priority evaluation, or through an auction.

Contention sets are created based on the applied-for strings. For example, two identical applications will automatically be placed in a contention set and the applicants will be deemed in direct contention with one another. Applications that are so similar that they would create a probability of user confusion if allowed to coexist in the DNS may be placed in a contention set. If placed in a contention set with a third mark with which there is no direct

overlap or similarity, the applications would be deemed to be in *indirect contention* with one another.

Once contention sets are identified, the parties are encouraged to resolve the conflicts amongst themselves (i.e. one applicant withdraws their application). However, applicants may *not* select a new string or replace itself with a joint venture if it creates a "material change" to the application, as this requires re-evaluation (additional fees paid in subsequent application rounds). If so, the successful application will proceed to the next stage.

If the parties themselves cannot resolve the conflict, it proceeds to Resolution Evaluation through either community priority evaluation or through an auction.

1. *Community Priority Evaluation*

All applications are either community-based or standard applications. A "community based gTLD is a gTLD that is operated for the benefit of a clearly delineated community" and "each applicant making this designation is asked to substantiate its status as representative of the community it names in the application by submission of written endorsements in support of the application." A standard application is "an application that has not been designated as community-based will be referred to . . . as a standard application." However, only community-based applicants are eligible to participate in a community priority evaluation.

Community-based applicants within contention sets are notified when they may opt for community priority evaluation. Once notified, community-based applicants that wish to participate in the community priority evaluation must submit a deposit by a specified deadline in order to be scored in the community priority evaluation. ICANN then appoints a community priority panel,

17. *See ICANN APPLICANT GUIDEBOOK, supra* note 4 at 4.1.3.
18. *Id.*
19. *Id.* at 1.2.3.
20. *Id.*
21. *See id.* at 4.2.1.
22. *See id.*
which performs evaluations for each eligible contention set and determines whether any of the community-based applications fulfill the criteria.23

The Community Priority Panel reviews and scores the community-based applications having elected the community priority evaluation against four criteria: (1) community establishment (up to 4 points); (2) nexus between proposed string and community (up to 4 points); (3) registration policies (up to 4 points); and (4) community endorsement (up to 4 points).24 Following the evaluation, the deposit will be refunded to applicants that “prevail” by scoring 14 or higher. A community priority criteria review can produce several different results:

(1) If none of the community-based applications are found to meet the criteria, then all of the parties in the contention set (both standard and community-based applicants) will proceed to an auction.

(2) If a single community-based application is found to meet the community priority criteria, that applicant will be declared to prevail in the community priority evaluation and may proceed.

(3) If more than one community-based application is found to meet the criteria, the remaining contention between them will be resolved as follows:

(a) applications in indirect contention with one another: proceed to the next stage. In this case, applications that are in direct contention with any of these community-based applications are eliminated.

(b) applications in direct contention with one another: proceed to an auction (see below in the subsection that follows for an in-depth analysis of

23. See ICANN APPLICANT GUIDEBOOK, supra note 4 at 4.2.2.
24. See id. at 4.2.3.
auction procedures). If all parties agree and present a joint request, ICANN may postpone the auction for a three-month period while the parties attempt to reach a settlement before proceeding to auction. This is a one-time option; ICANN will grant no more than one such request for each set of contending applications.25

It should be noted that a qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be.

2. Auction (Last Resort Resolution)

If a contention cannot be resolved otherwise, an “ascending clock” auction is the tie-breaker method for resolving string contention.26 In the Ascending Clock Auction of two or more applications within a contention set, the auctioneer will successively increase the price of the applications within the contention set, and the applicants indicate their willingness to pay these prices.27 According to the Applicant Guidebook, “[a]s the prices rise, applicants will successively choose to exit from the auction. When a sufficient number of applications have been eliminated so that no direct contentions remain (i.e., the remaining applications are no longer in contention with one another and all the relevant strings can be delegated as TLDs), the auction will be deemed to conclude. At the auction’s conclusion, the applicants with remaining applications will pay the resulting prices and proceed toward delegation.”28

At this time, a detailed set of Auction Rules is not available but will be prior to the commencement of any auction proceedings. However, it is clear that all auctions will be conducted over the Internet, with participants placing their bids remotely using a web-based software designed especially for auction. If a bidder

25. See id. at 4.2.2.
26. See id. at 4.3.
27. See id. at 4.3.1.
28. Id.
temporarily loses connection to the Internet, that bidder may be permitted to submit its bids in a given auction round by fax, according to procedures described in the auction rules. The auctions will generally be conducted to conclude quickly, ideally in a single day.

Participants in auctions must sign a bidder agreement acknowledging its rights and responsibilities, including that its bids are legally binding commitments to pay the amount bid if its application is approved, and to enter into the prescribed registry agreement with ICANN along with a specified penalty for failing to enter into the required registry agreement or failing to pay the winning bid amount. The winning bidder must pay the full amount, by wire transfer, within 20 business days of the end of the auction; payment must be through the same international bank account as the bidding deposit. The applicant’s deposit will be credited toward the final price. In the event of default by the winning bidder, the other bidders, in ascending order will be notified and given the opportunity to purchase at their bid amount.

C. Disputes Regarding Confusion

The string review only compares gTLDs for visual confusion, not phonetic, conceptual, or other similarities. The visual similarity check that occurs during Initial Evaluation is intended to augment the objection and dispute resolution process that addresses all types of similarity. Thus, if a third-party believes confusion may be likely on any basis (including visual, aural, or similarity of meaning), there is an opportunity during the Initial Evaluation process to object.

Objectors who have standing make their objections not to ICANN, but rather before the proper independent dispute resolution service provider (“DRSP”) identified below. A formal string confusion objection must be based on one of four enumerated grounds:

29. See ICANN APPLICANT GUIDEBOOK, supra note 4 at 4.3.1.
30. Id.
(1) **String Confusion.** Disputes brought pursuant to string confusion objections will be administered by the International Centre for Dispute Resolution which will determine whether the applied-for gTLD string so nearly resembles another that it is likely to deceive or cause confusion. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

(2) **Legal Rights Objection.** Disputes brought pursuant to legal rights objections will be administered by the Arbitration and Mediation Center of WIPO which will determine whether the potential use of the applied-for gTLD by the applicant takes unfair advantage of the distinctive character or the reputation of the objector’s registered or unregistered trademark or service mark (“mark”) or IGO name or acronym (as identified in the treaty establishing the organization), or unjustifiably impairs the distinctive character or the reputation of the objector’s mark or IGO name or acronym, or otherwise creates an impermissible likelihood of confusion between the applied-for gTLD and the objector’s mark or IGO name or acronym.

(3) **Limited Public Interest Objection.** Disputes based on limited public interest objections will be administered by the International Center of Expertise of the International Chamber of Commerce which will determine whether the applied-for gTLD string is contrary to general
(4) Community Objection. Disputes brought pursuant to community objections will also be administered by the International Center of Expertise of the International Chamber of Commerce which will determine whether there is substantial opposition from a significant portion of the community to which the string may be targeted. This requires the objector prove (i) a clearly delineated community; (ii) with substantial opposition; (iii) a strong association with the applied-for-gTLD string; and (iv) the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted.\textsuperscript{31}

A formal objection based on one of these four grounds initiates a dispute resolution proceeding.\textsuperscript{32} According to the Applicant Guidebook, in filing an application for a gTLD, the applicant agrees to accept the applicability of the gTLD dispute resolution process.\textsuperscript{33} Likewise, an objector accepts the applicability of the gTLD dispute resolution process by filing its objection.\textsuperscript{34} The rules specific to each DRSP must be followed in all dispute proceedings. In general, all objections are required to:

(1) be filed electronically with the appropriate DRSP by the posted deadline date;

(2) be filed in English;

\begin{flushright}
\begin{itemize}
  \item 31. \textit{Id.} at 1.1.2.6
  \item 32. \textit{Id.} at 3.2.
  \item 33. \textit{Id.}
  \item 34. \textit{Id.}
\end{itemize}
\end{flushright}
(3) be filed separately (multiple objections to several applications cannot be combined and objections on more than one ground must be filed separately);

(4) pay a filing fee in the amount set and published by the relevant DRSP (or the objection will be dismissed with prejudice);

(5) include (a) the name and contact information of the objector; (b) a statement of the objector's basis for standing; and (c) a description of the basis for the objection, including (i) a statement giving the specific ground upon which the objection is being filed; (ii) a detailed explanation of the validity of the objection and why it should be upheld; (iii) copies of any documents that the objector considers to be a basis for the objection;

(6) be fewer than 5000 words or 20 pages, whichever is less, excluding attachments; and

(7) provide copies of all submissions to the DRSP associated with the objection proceedings to the applicant.35

If these requirements are satisfied, the DRSP will publish and regularly update a list on its website identifying all objections as they are filed. ICANN will also post on its website a notice of all objections filed once the objection filing period has closed.

Applicants whose applications are the subject of an objection have four options. They may:

(1) Settle with the Objector. The applicant can work to reach a settlement with the objector, resulting in withdrawal of the objection or the application;

35. See ICANN APPLICANT GUIDEBOOK, supra note 4 at 3.2.
(2) **Formal Dispute Resolution.** The applicant can file a response to the objection and enter the dispute resolution process. If a response is filed, it must:

(a) be filed within 30-days of notice of the objection from the DRSP;

(b) be filed electronically;

(c) be filed in English;

(d) be filed separately (if responding to several objections, each must be filed separately)

(e) pay the applicable filing fee;

(f) include (a) the name and contact information of the applicant; (b) a point-by-point response to the claims made by the objector; and (c) any copies of documents that it considers to be a basis for the response;

(g) be fewer than 5000 words or 20 pages, whichever is less, excluding attachments; and

(h) provide copies of all submissions to the DRSP associated with the objection proceedings to the objector.

(3) **Withdraw the Application.** The applicant can withdraw, in which case the objector will prevail by default and the application will not proceed further;

(4) **Abandon the Application.** If for any reason the applicant does not file a response to an objection, the objector will prevail by default.36

36. *Id.*
Within fourteen days of receiving an objection (unless an extension is requested), the DRSP will conduct an administrative review to ensure all formalities have been complied with. If so, the objection is deemed filed, and the proceedings continue. If not, the DRSP will dismiss the objection and close the proceedings without prejudice to the objector's right to submit a new objection that complies with procedural rules. The DRSP's review or rejection of the objection will not interrupt the time limit for filing an objection.

At this point, the DRSP may consolidate any related objections into one proceeding if it determines that the "time, money, effort, and consistency that may be gained by consolidation" would outbalance any prejudice or inconvenience caused by consolidation. Moreover, DRSP may recommend mediation of any objections, though it is never mandatory.

The designated DRSP will then appoint a one to three member independent panel. A single expert panel will be appointed in proceedings involving a string confusion objection or community objection. A one member expert panel, or, if all parties agree, three experts with relevant experience in intellectual property rights disputes will be appointed in proceedings involving an existing legal rights objection. Finally, a three member expert panel recognized as eminent jurists of international reputation, with expertise in relevant fields as appropriate, will be appointed in proceedings involving a Limited Public Interest objection.

In exceptional cases, the panel may require a party to produce additional evidence. Moreover, disputes will usually be resolved without an in-person hearing; however, the panel may decide to hold such a hearing only in extraordinary circumstances. The panel then makes its determination using appropriate general principles (standards) to evaluate the merits of each objection. In

37. Id. at 3.4.2.
38. Id.
39. Id.
40. Id.
41. See ICANN APPLICANT GUIDEBOOK, supra note 4 at 3.2.
42. The principles are subject to evolution based on ongoing consultation with DRSPs, legal experts, and the public and the panel may also refer to other relevant rules of international law in connection with the standards.
approximately five months, the DRSPs' final expert issues its determinations in writing, which includes: a summary of the dispute and findings; an identification of the prevailing party; and the reasoning upon which the expert determination is based. Unless the panel decides otherwise, each DRSP will publish all decisions rendered by its panels in full on its website.

One of four outcomes will result: First, the application will be rejected if an existing TLD operator successfully asserts string confusion with an applicant. Second, both applications will be placed in a contention set if a gTLD applicant successfully asserts string confusion with another applicant, and will be referred to a contention resolution procedure (see Section II above). Third, both applications will proceed if an objection by one gTLD applicant to another gTLD application is unsuccessful, and both applicants will move forward in the process without being considered in direct contention with one another. Finally, the objection will be dismissed only when a Limited Public Interest Objection is deemed manifestly unfounded (it does not fall within one of the other enumerated categories) and/or an abuse of the right to object may be dismissed at any time.

III. CONCLUSION

The new gTLD process is an elaborate experiment fraught with numerous opportunities for problems. Already, ICANN faced programming problems with the online application system and was compelled to take the system offline and delay publication of the applied for new domain names. No doubt there will be more complications along the way.

This article has explored the thought process of brand owners who considered pursuing a TLD and summarized the process for contentions and objections – the next stage in launching the new TLDs. The remaining phases after evaluation include several new tools and policies to help prevent confusion and cybersquatting at the second level, to the left of the dot. These include the Trademark Clearinghouse, Sunrise application, legal rights objections, and the Uniform Rapid Suspension policy. Brand

43. See ICANN APPLICANT GUIDEBOOK, supra note 4 at 1.1.2.9.
owners with the help and guidance of their counsel should take steps now to take advantage of the new tools and processes, beginning with the Contentions and Objections discussed in this article.