

.Anything 101: A Brief Guide to the New gTLD Program

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Last week, ICANN began accepting applications for its new gTLD program. ICANN has posted a series of extremely comprehensive materials outlining the registration and evaluation process. A copy of those materials can be found [here](#). The following brief summary of the application process is geared toward trademark holders seeking to protect their trademark rights during this process:

The user registration period for new gTLD applicants is open until March 29, 2012. The application period itself closes on April 12, 2012. Applicants wishing to register a new gTLD extension must provide the following:

- Payment of \$185,000 filing fee (a non-refundable \$5,000 registration fee is due at the time of filing and a subsequent \$180,000 fee is due at the time of application submission)
- Satisfactory completion of background screening for criminal record or history of abuse of domain names
- Technical requirements to operate the TLD in a secure and stable manner
- Financial requirements to operate the TLD
- Business and Marketing Plan for use of the TLD
- Proposed benefits and support of TLD for the global internet public interest.

Applicants are also required to submit two financial projections: one demonstrating the most likely scenario of registration volume, fees and costs during the start-up period and first three years of operation, and the second showing the “worst case scenario” for costs and projections.

Following the close of the submission period on April 12th, ICANN will check all applications for completeness. ICANN estimates that its administrative completeness check will take approximately eight weeks. ICANN will then publicly post portions of all applications considered to be complete and ready for evaluation.

At the time that certain applicant information is publicly posted, ICANN will host an open comment period to allow for community review and comment. Application comments received within 60 days of the posting of the application materials will be available to the evaluation panel performing the initial evaluation reviews. At this time, trademark owners can raise comments on trademark infringement, dilution and related grounds.

Separate from the open comment period, a formal objection process will also be available to trademark owners. Formal objections may be made on one of four grounds:

- **String Confusion Objection** – The applied-for gTLD string is confusingly similar to an existing TLD or to another gTLD string that has been applied for in the same round of applications.
- **Legal Rights Objection** – The applied-for gTLD string infringes the existing legal rights of the objector.
- **Limited Public Interest Objection** – The applied-for gTLD string is contrary to accepted legal norms of morality and public order that are recognized under principles of international law.
- **Community Objection** – There is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

All objections must be filed electronically by the posted deadline date. Objections must be in English, each objection must be filed separately and must be accompanied by the appropriate filing fees. Objections must also contain the name and contact information of the objector, a statement of the objector's basis for standing, a statement giving the specific ground upon which the objection is being filed, a detailed explanation of the validity of the objection and copies of any documents that the objector considers to be a basis for the objection.

In response to a formal objection, the applicant may (1) try to reach a settlement with the objector, resulting in withdrawal of the objection or the application, (2) file a response to the objection and enter the dispute resolution process, or (3) withdraw the application. If an applicant chooses to file a formal response to the objection, responses are due within 30 days of notification of objections being filed. The applicant is also required to pay a filing fee in an amount equivalent to that of the objector in order to file a response.

If the application passes the above-mentioned hurdles, it will then be evaluated by two separate application review panels. The first evaluates the application against the financial criteria (e.g., can the applicant demonstrate an ability to operate and fund the registry on an ongoing basis). The second evaluates whether the applicant has met the technical and operational criteria (e.g., has the applicant demonstrated a technical plan that will deliver on best practices for a registry).

An option for trademark holders seeking to protect their rights but not wishing to file a formal application is registration in the Trademark Clearinghouse. The Trademark Clearinghouse is intended to be a central repository for trademark holders to register information pertaining to their rights. The Trademark Claims service is intended to provide clear notice to the prospective registrant of the scope of the mark holder's rights in order to minimize the chilling effect on registrants. During the Sunrise registration period, notice must be provided to all trademark holders in the Clearinghouse if an applicant is seeking a sunrise registration that is identical to a mark in the Clearinghouse.

The Clearinghouse theoretically appears to be a good option for trademark holders wishing to steer clear of the .anything mayhem. However, as of [October 2011](#), the Clearinghouse had not yet been created nor had a service provider been selected to house the database.

We will keep you posted on new developments as ICANN's roll-out continues.