

LAW OF DOMAIN NAMES II

The domain name



HOW DOMAIN NAMES ARE ASSIGNED

- Assignment is based on registration
- The database of domain names is maintained by Administrators/Sponsors
 - Each top level domain has its administrator ICANN, EURid, CZ nic
 - The main task of administrator is to run DNS
- The registration of domain names to individual users is performed by REGISTRARS
 - Registrars are entrepreneurs and compete



MAIN PRINCIPLES OF REGISTRATION

- Singularity principle (uniqueness)
 - The domain name can be registered only for one user
 - One user can have more domain names
- Priority principle
 - First come first served



ICANN – TOP AUTHORITY

- Internet corporation for assigned names and numbers
- responsible for managing and coordinating the Domain Name System (DNS)
- ICANN is also responsible for accrediting the domain name registrars



DOMAIN SPECULATIONS

And abusive registrations



THE ULTIMATE CONSEQUENCE OF PRIORITY AND SINGULARITY PRINCIPLES

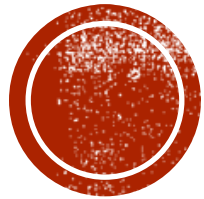
- Competition for privileged domain names
- Fastest user wins the race
- Creates space for abusive domain name registrations
 - Cybersquatting
 - Typosquatting
 - Domain Kiting
 - Domain Hijacking



DOMAIN NAME TRANSFERS

- Sex.com for \$13 million in October 2010
- FB.com for \$8.5 million in November 2010
- Business.com for \$7.5 million in December 1999
- AsSeenOnTv.com \$5.1 million in January 2000
- Toys.com: Toys 'R' Us by auction for \$5.1 million in 2009^[11]
- Altavista.com for \$3.3 million in August 1998
- Wine.com for \$2.9 million in September 1999
- CreditCards.com for \$2.75 million in July 2004
- Autos.com for \$2.2 million in December 1999





WHO CONTROLS THE DNS?



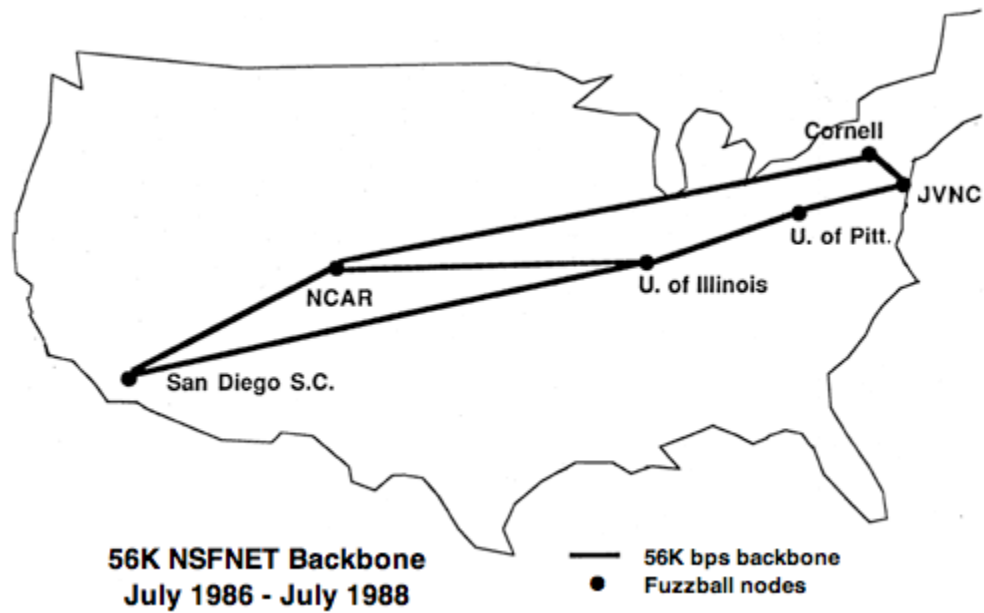
INTERNET GOVERNANCE



ARPA Network, Geographic Map

September 1973





PROPRIETARY OR OPEN FORMAT ?

- The first proprietary format was unsuccessful
 - Telecommunications
 - Cable TVs
 - Banks(SWIFT)
 - Intranet
 - LAN



1982

- TCP/IP –
 - Vyvinul Stanford a UCL
 - Army – the first user
 - After that IBM, AT&T and DEC



1988

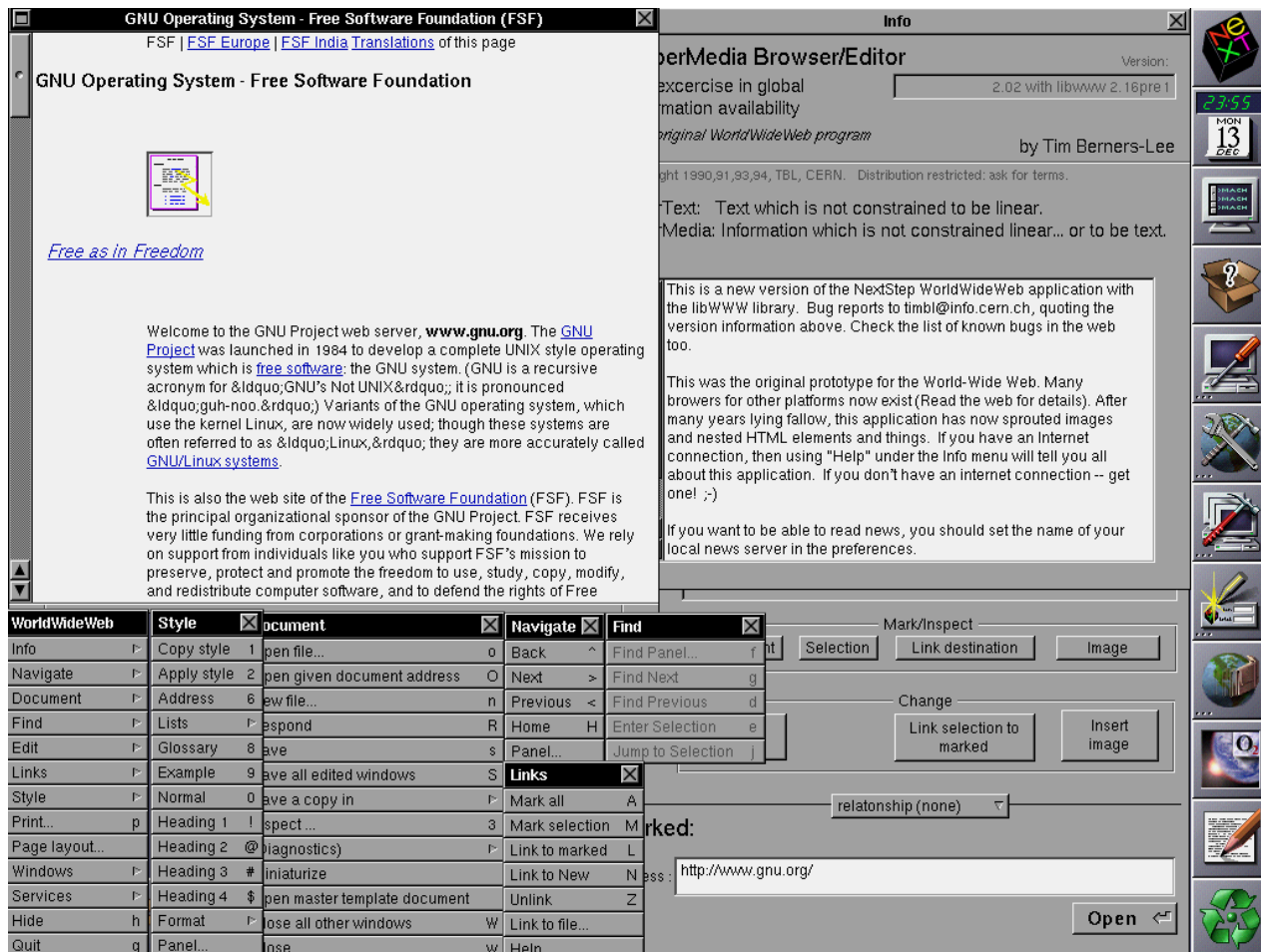


Internet Assigned Numbers Authority

- Established by US government
- Administers IP addresses and domains
- LDNS“ Office



1991 BROWSER



ISOC 1992

- Non-profit organization
- Standards coordination
 - Internet Engineering Task Force (IETF),
 - Internet Architecture Board (IAB),
 - Internet Engineering Steering Group (IESG),
 - Internet Research Task Force (IRTF).



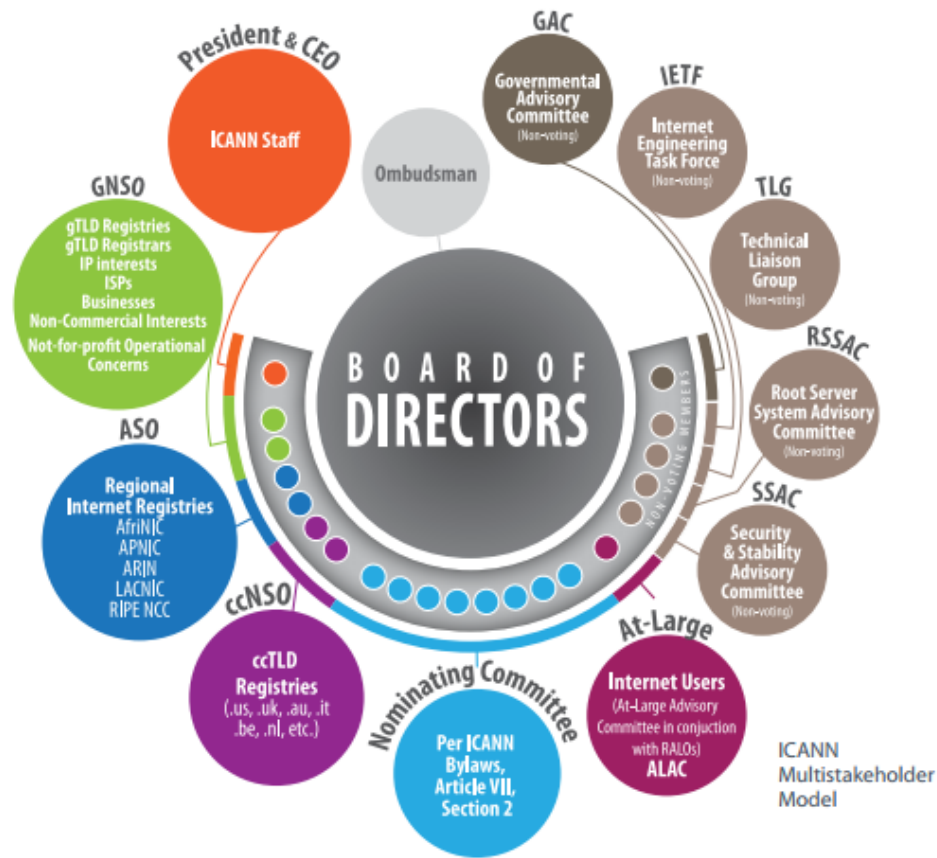
1998



- Internet Corporation for Assigned Names and Numbers
- From „single stakeholder“ to „multi-stakeholder“



ICANN



AFTER 2016

- The contract between USA and ICANN runs out
 - Either – completion of multi-stakeholder model
 - Or – return under US government



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ICANN sends plan for Internet transition to US gov't

By Eden Estopace | 2016-03-14

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 1

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Caption:
ICANN's Board Chair Dr. Stephen D. Crocker

The Internet Corporation for Assigned Names and Numbers (ICANN), the agency responsible for the global coordination of the DNS Root, IP addressing, and other Internet protocol resources, said the [plan for the global stewardship of the Internet](#) has been submitted to

the US government for review.

The plan is the result of an inclusive, global discussion among representatives from government, large and small business, technical experts, civil society, researchers, academics and end users.

RELATED ARTICLES

Telstra drops JV plans in Philippines for new mobile network

Telstra said on Monday its joint venture plans...

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[HTTPS://WWW.ICANN.ORG/EN/SYSTEM/FILES/FILES/IANA-STEWARDSHIP-TRANSITION-PROPOSAL-10MAR16-EN.PDF](https://www.icann.org/en/system/files/files/iana-stewardship-transition-proposal-10mar16-en.pdf)

**Proposal to Transition the Stewardship of the
Internet Assigned Numbers Authority (IANA) Functions
from the U.S. Commerce Department's National
Telecommunications and Information Administration (NTIA)
to the Global Multistakeholder Community**

IANA Stewardship Transition Coordination Group (ICG)

March 2016

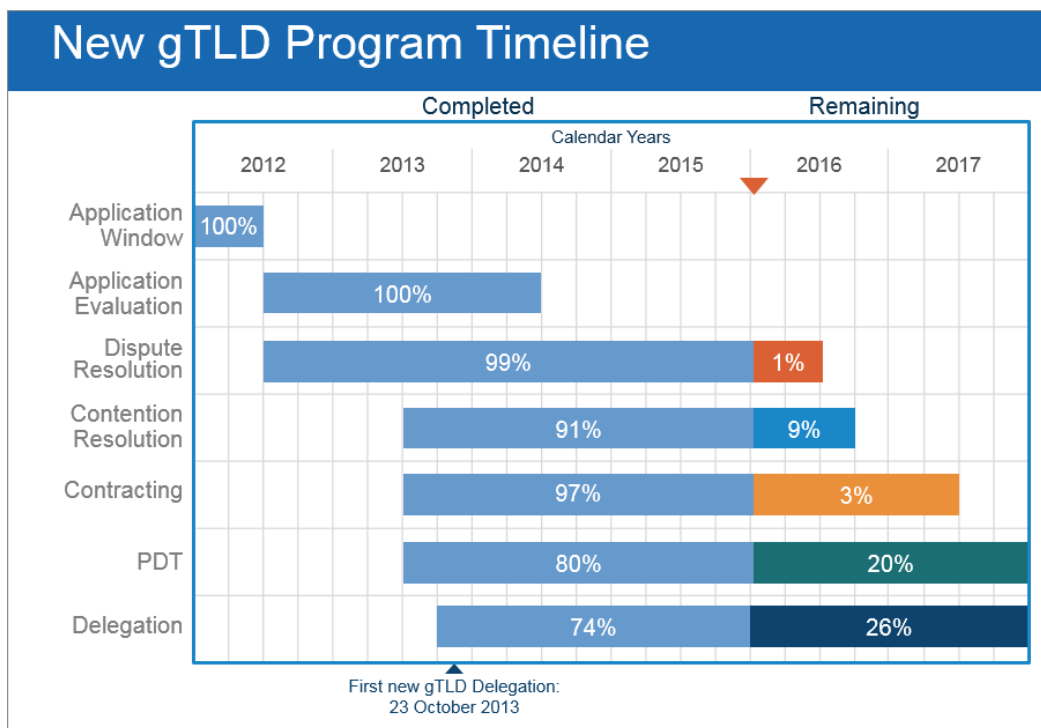


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HOW TO GET A NEW TLD?

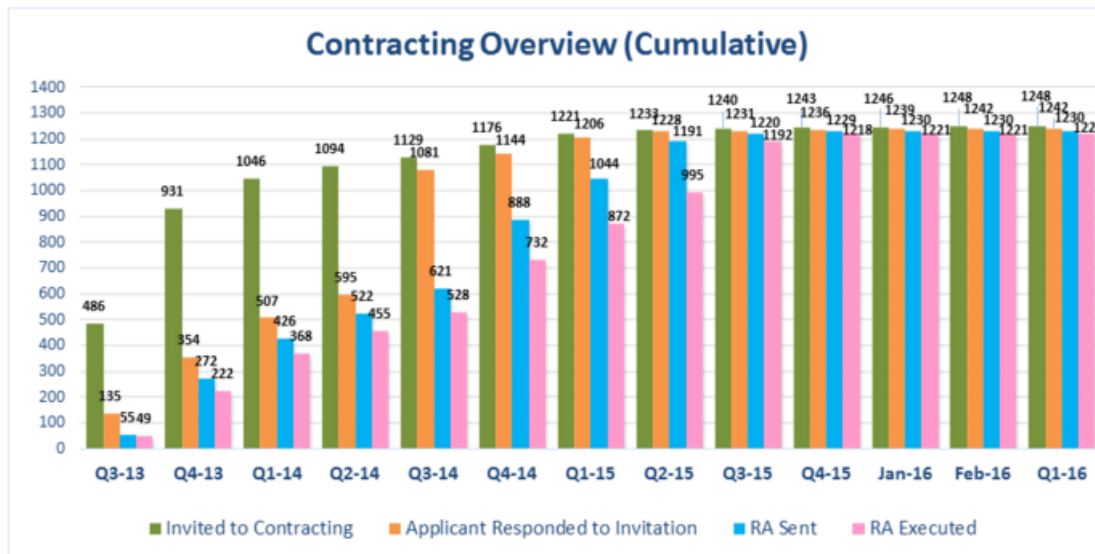


Last updated 22 July 2014



HOW MANY TLD ARE THERE NOW?

- CCA 1400
- https://en.wikipedia.org/wiki/List_of_Internet_top-level_domains



WHAT DO THEY HAVE IN COMMON?

In terms of registration eligibility?

- Not much

In terms of registration proces?

- Not much – not every site needs to operate via „registrators“

In terms of jurisdiction

- Not much



WHAT IS HARMONIZED?

- Trademark protection
 - Alternative dispute resolution
 - Applies to new TLD
 - LTD prior to such



ALTERNATIVE DISPUTE RESOLUTION

The harmonized solution



REASONS

- Increased volumes of squatting cases
- Problems with international element
- Insufficient national regulation
- Low experience of judges with cybersquatting and IP law in general



ALTERNATIVE RESOLUTION - PRINCIPLE

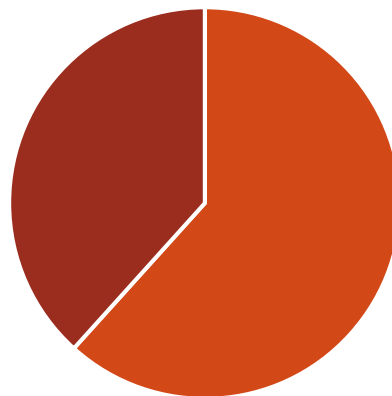
- Arbitration clause in the terms and conditions of registrations
- Third parties have the right (not duty) to file a complaint at a selected arbitration institution
- Arbitration clauses are contained in the majority of domain names



ANOTHER PROBLEM

- Defensive registrations
- 215,835 .xxx domains. 132,859 are, adult-related sites, while 82,976 are merely defensive registrations

Graphs



■ 1. čtvrt. ■ 2. čtvrt. ■ ■



WHY TAYLOR SWIFT IS BUYING ADULT WEB DOMAINS (FORTUNE.COM)



The pop star is making another savvy Internet business move

Photograph by Brian Ach — Getty Images

Taylor Swift has made yet another shrewd business move by buying up Internet domains with her name in them that imply adult material could lurk within. The move keeps those domains under Swift's control.

The pop star purchased TaylorSwift.porn and TaylorSwift.adult, according to [CNNMoney](#).

The .porn and .adult Top-Level Domains (TLDs) are scheduled to become available for all to purchase on June 1, but the Internet Corporation for Assigned Names and Numbers, which controls these and other new domains, is letting some major brands and celebrities get ahead of the game.



.PORN AS A BUSINESS MODEL?

COSTS

- 1 million dollars

INCOME

- 150 dollars per registration per 5 years
- 1 000 000 / 150
 - All you need is 6 000 Celebrities and companies who make „smart business move“



TRENDS TO HELP TRADEMARK AND PERSONAL RIGHTS



- RESERVED NAMES
- SUNRISE PERIODS
- UDRP procedure
- RRP procedure



RESERVED NAMES

- <https://www.icann.org/sites/default/files/packages/reserved-names/ReservedNames.xml>

IOC, Red Cross, and IGO reserved names for new gTLDs

Created

2013-07-03

Last Updated

2014-12-10

Note

This registry contains the list of reserved names according to the new gTLD base registry agreement for International Olympic Committee, International Red Cross and Red Crescent Movement, and Intergovernmental Organizations categories.

Registries included below

- [International Olympic Committee](#)
- [International Red Cross and Red Crescent Movement - National Red Cross and Red Crescent Societies Names](#)
- [International Red Cross and Red Crescent Movement - International Committee of the Red Cross and International Federation of the Red Cross and Red Crescent Societies Names](#)
- [Intergovernmental Organizations](#)

International Olympic Committee

Registration Procedure(s)

Not defined by an RFC, assigned by ICANN

Description

Reservation at second level

Reference

[\[http://newgtlds.icann.org/en/applicants/agb/agreement-approved-02jul13-en.pdf\]](http://newgtlds.icann.org/en/applicants/agb/agreement-approved-02jul13-en.pdf)

Name	DNS Label
olympic	olympic
olympiad	olympiad
olympique	olympique
olympiade	olympiade
olympisch	olympisch
olimpico	xn--olmpico-8ya
olimpiada	xn--olmpada-g2a
اولمپيكي	xn--igbk-7fennc
اولمپياد	xn--igbk-3azhgtrc
奥林匹克	xn--74qv0co1jlpq
奥林匹克	xn--jlq85io9fipq
奥林匹克	xn--74qv0cu1jdpq
奥林匹克	xn--nlq05iu9fdpq
ολυμπιακοι	xn--kxadxfcgtff2c
ολυμπιαδα	xn--kxadxfcgtff2c



TRADEMARK CLEARINGHOUSE

The screenshot shows the TMCH Clearinghouse website. At the top, there is a navigation bar with links for 'The Clearinghouse', 'Services', 'Fees', 'List of Agents', 'News & Calendar', 'Help', and 'News'. A search bar is located on the right side of the navigation bar. Below the navigation bar, there is a green banner with the text 'Need support? An official TMCH agent can assist you in a language of choice.' The main content area features a large green-bordered box with the heading 'The Trademark Clearinghouse: Protect your trademark online'. This box contains introductory text about the expansion of the domain name system and a list of quick links: 'Beginner's guide', 'Announcements', 'Full Calendar', and 'Contact an official TMCH agent'. To the right of the main content area, there are several blue buttons for user actions: 'LOG IN TO YOUR ACCOUNT', 'CREATE AN ACCOUNT', 'GET SUPPORT VIA AN AGENT', 'SUNRISE CALENDAR', 'BECOME AN OFFICIAL AGENT', and 'HELP & SUPPORT'. Below these buttons are social media links for Twitter and LinkedIn. At the bottom of the page, there is a 'Tweets by @tmchinfo' section showing a tweet from TMCH about the closing of the Barcelona Sunrise Period for new TLDs. The bottom right corner of the page features a red circular logo.

DESIGNATED BY ICANN

CLEARINGHOUSE

The Clearinghouse Services Fees List of Agents News & Calendar Help News

Need support? An official TMCH agent can assist you in a language of choice.

Home

The Trademark Clearinghouse: Protect your trademark online

The Internet is expanding drastically....right now. Hundreds of new Top Level Domains (TLDs) are now LIVE as part of the most significant expansion of the domain name system ever. More than half of these new TLDs run with open registration policies so that anyone can register a new domain name without restriction.

Brand owners need to react and adapt strategies to prepare for this rapidly growing TLD landscape. And use the Clearinghouse as the one-stop-solution for protecting their brand in the new gTLD era.

Please check these quick links to find the content you need:

- Beginner's guide: New to the New Internet Domains
- Announcements: Most recent confirmed TLD Launches
- Full Calendar: Overview of all launched new gTLDs
- Contact an official TMCH agent and get personal support

OTHER LANGUAGES

AR DE ES FR HE HI IT JA KO NL PT RU SV TR ZH

LOG IN TO YOUR ACCOUNT

CREATE AN ACCOUNT

GET SUPPORT VIA AN AGENT

SUNRISE CALENDAR

BECOME AN OFFICIAL AGENT

HELP & SUPPORT

Twitter

LinkedIn

Tweets by @tmchinfo

TMCH @tmchinfo

#TMCH Sunrise Period for BARCELONA closes March 15th #trademarks #barcelona #newgTLDs trademark-clearinghouse.com/gtid-calendar?...

07 Mar

Embed View on Twitter

RECENTLY ADDED	COMING UP	LAUNCHED	CLOSING
AWAITING SUNRISE LAUNCH .SALON	No updates in the last 15 days. Check the full calendar for a total overview.	SUNRISE PERIOD ACTIVE .homes	SUNRISE PERIOD ACTIVE .mom
AWAITING SUNRISE LAUNCH .GROUP			
AWAITING SUNRISE LAUNCH .PROMO			



SUNRISE PERIODS

AWAITING SUNRISE LAUNCH SUNRISE PERIOD ACTIVE CLAIMS NOTIFICATION ACTIVE ONGOING NOTIFICATION FULL CALENDAR

SEARCH TLD NAME, INFO, REGISTRY SUNRISE OPENS AFTER SUNRISE CLOSES AFTER SORT BY ORDER FILTER

E.g., 03/17/2016 E.g., 03/17/2016 Sunrise start Desc

Sunrise starting: 2016 - May

AWAITING SUNRISE LAUNCH

.insurance

Sunrise starts:
Mon, 9 May '16

Sunrise starting: 2016 - April

AWAITING SUNRISE LAUNCH .PROMO

.promo

Sunrise starts:
Thu, 14 April '16

AWAITING SUNRISE LAUNCH

.motorcycles motorcycles

Sunrise starts:
Wed, 6 April '16

Sunrise starting: 2016 - March

SUNRISE PERIOD ACTIVE •HOMES Trusted Domain

.homes

Sunrise closes:
Fri, 6 May '16

SUNRISE PERIOD ACTIVE

.vip

Sunrise closes:
Sat, 30 April '16



DOMAIN DISPUTES



HOW TO BE LEGALLY PROTECTED FROM SQUATTERS?

- Competition law
- Trademark law
- Geographical indications
- Commercial name (firma)
- Right for privacy



UNFAIR COMPETITION

- §2976 –
- "conduct in economic competition
- conflicts with the accepted practices of competition
- may be detrimental to other competitors or customers.

- Unfair competition is prohibited.



UNFAIR COMPETITION

- misleading marking of goods and services
 - svycarskehodinky.cz, google.com, wikipedia.org
- parasitic use of the reputation of another competitor's enterprise, products or services



DOMAIN NAMES AND RIGHT FOR PRIVACY AND PERSONALITY RIGHTS

- UDHR Article 12
 - No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.
- Charter of human rights – Article 10(1)
 - Everyone has the right to demand that his human dignity, personal honor, and good reputation be respected, and that his name be protected.



POSSIBLE VIOLATIONS OF PERSONAL RIGHTS

- Paroubeknamars.cz
- bushsucks.com
- lhategates.com (inactive)

- Juliaroberts.com
- Britneyspears.com



PROTECTION OF COMPANY NAMES - § 423 CIVIL CODE

- FIRMA
 - FIRMA is protected by unfair commercial rules



TRADEMARK

- Exclusive right to use the trademark in connection with goods and services



EXAMPLE

- Squatter registers a domain sony.cz and offers it for sale
 - Can these companies rely on the protection on the company name claims?
 - **Sony Music Entertainment Czech Republic s.r.o.**
 - **Sony Music Entertainment Czech Republic s.r.o.**
 - **SONY Czech, spol. s r.o.**
 - **Sony Ericsson Mobile Communications International AB Branch Office Czech Republic,**



EXAMPLE



- Squatter registers the domain lego.cz
- He does not use this domain and offers it for sale for 200 000 Kč
- Can the trademark owner claim violation of his rights?
- Can the trademark owner claim transfer of the domain name?
- What if the owner is based in denmark, administrator is Czech and squatter Russian?



ALTERNATIVE DISPUTE RESOLUTION



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- Problems with international element
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ALTERNATIVE RESOLUTION - PRINCIPLE

- Arbitration clause in the terms and conditions of registrations
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DOMAIN .EU

- Not an arbitration clause
- Competence of arbitration courts enacted by regulation 874/2004/EC



UDRP PROCESS

- Complainant must prove:
 - Domain name is **identical or confusingly similar** to a trademark in which complainant has rights
 - Domain name has been registered and is being used in **bad faith**
 - No rights or **legitimate interests** in respect of current domain name



1) IDENTICAL OR CONFUSINGLY SIMILAR



- The test:
 - comparison between the trademark and the domain name itself to determine likelihood of Internet user confusion.
 - the relevant trademark would generally need to be recognizable as such within the domain name
 - the content of website is irrelevant
 - E.g. guinness.com
 - Typosquatting!



2) LACK OF LEGITIMATE INTERESTS IN GENERIC WORDS

- If the complainant makes a prima facie case that the respondent has no rights or legitimate interests
- The respondent fails to show one of the three circumstances under Paragraph 4(c) of the Policy,
- The respondent may lack a legitimate interest in the domain name



3) BAD FAITH

- What is bad faith?
 - Attempt to sell, lease, etc. the domain (cybersquatting)
 - Disrupt competitor's business
 - Attract (for commercial gain) the visitors to the site via confusion
- Article 4 (b) of the rules



QUOTATION OF PICTURE

- <http://pegasusservicesgroup.com/images/domain-name.jpg>

