

# Internet governance and the The domain name



# Domain vs domain name?

- Domain name:
  - muni.cz
  
- Domain:
  - .cz = domain
  - muni = subdomain

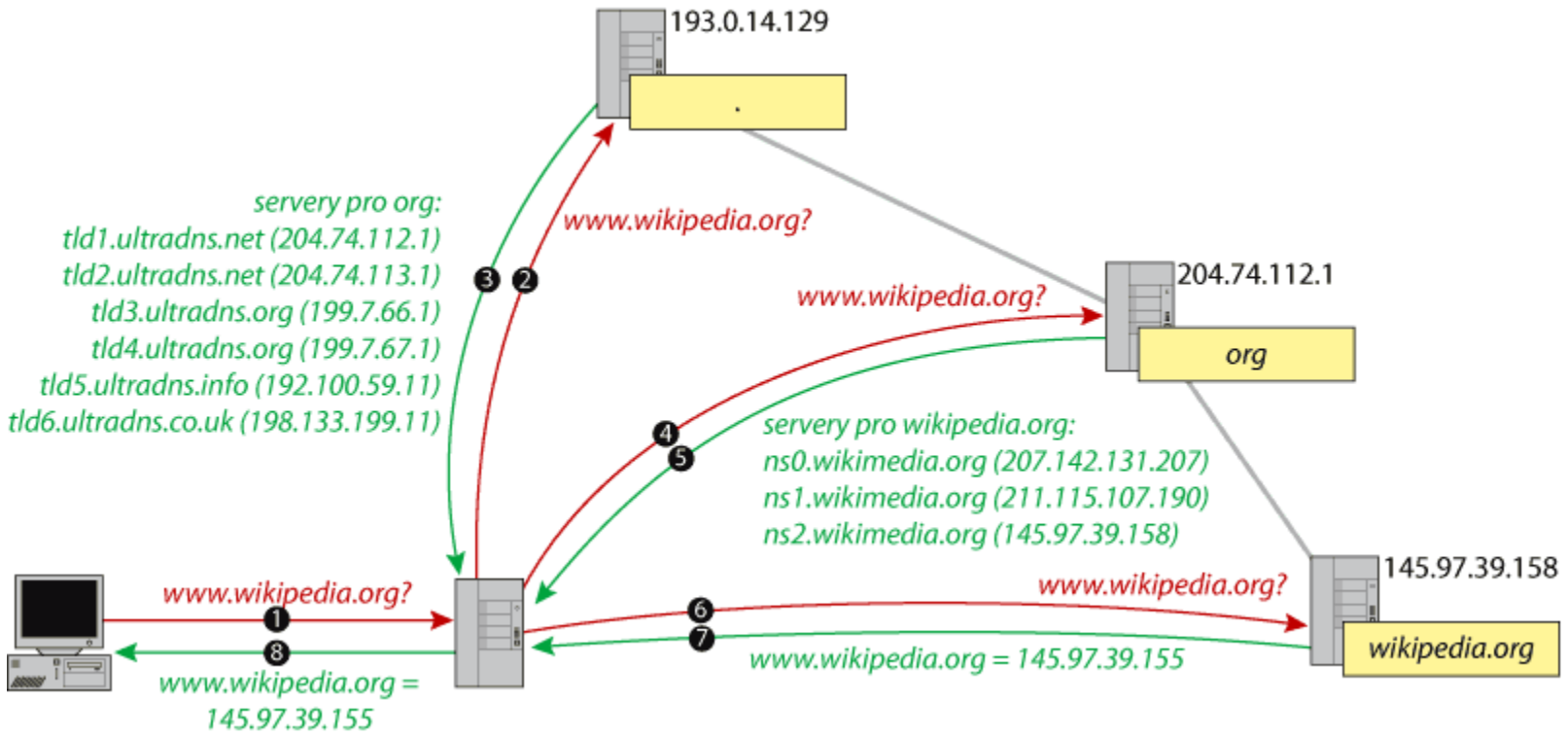
# How the system works?

- The user enters a domain name into the browser
- The browser sends an inquiry to the “name server”
- Name server searches the “domain sentence” in the DNS database and “translates” the domain name into the IP address
- The browser connects to the server
  
- => DNS (domain name system)

# Structure of a domain name

- Root domain . (always the highest position depends on the situation)  
–
- Top level domain (TLD)
  - Generic- .com .gov .org .biz .edu
  - National- .cz .uk .de .sk .ru
- Subdomain
  - muni.cz seznam.cz google.com
- Subdomains of lower levels
  - law.muni.cz pocasi.seznam.cz mail.google.com

# wikipedia.org



# Functions of a domain name

- Technical
- ?Identification?
  - Not necessarily – e.g. goodwill.com
- Search
- Promotion
- Competitive

# 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



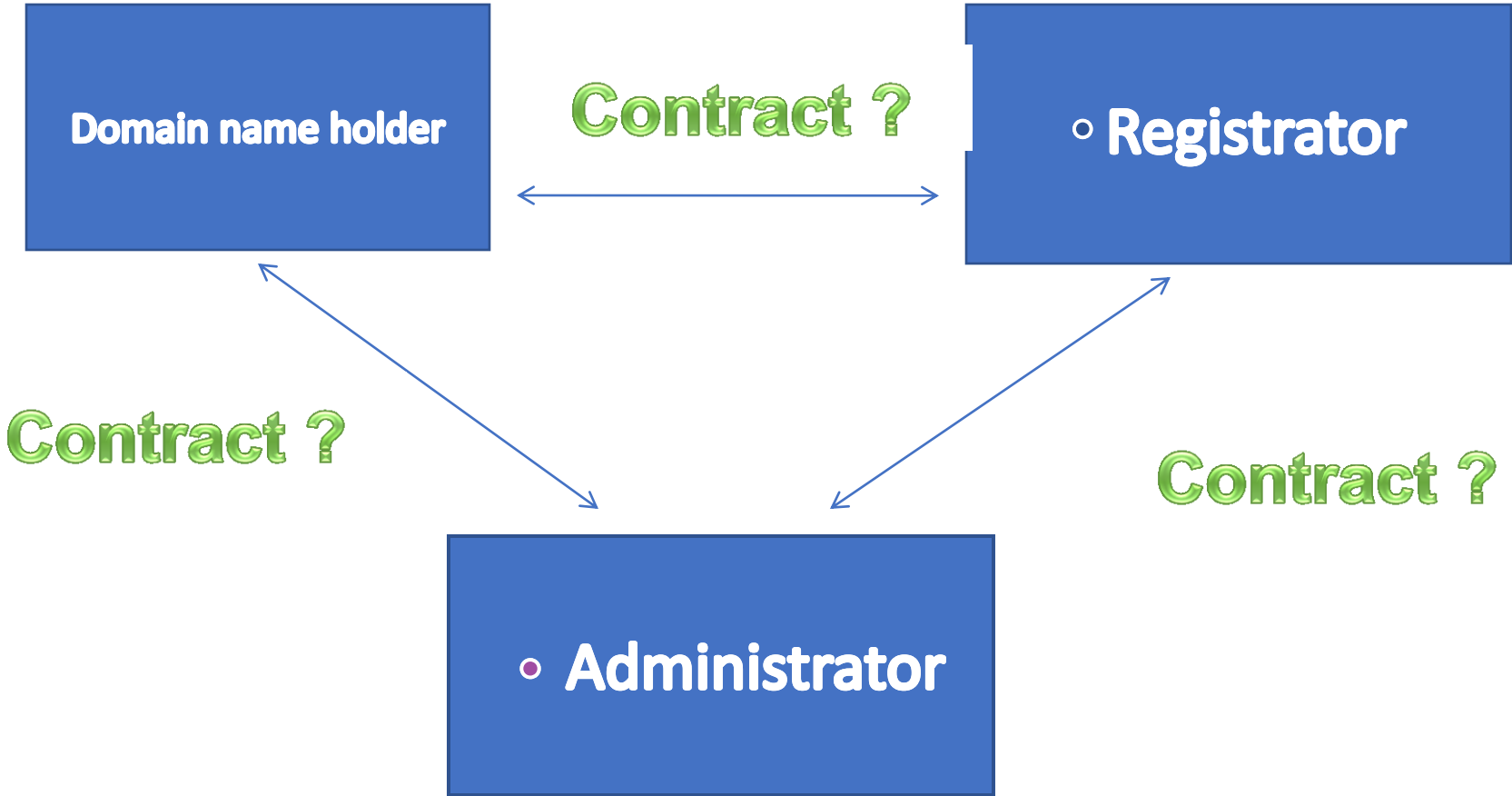
# Legal concept of a domain name



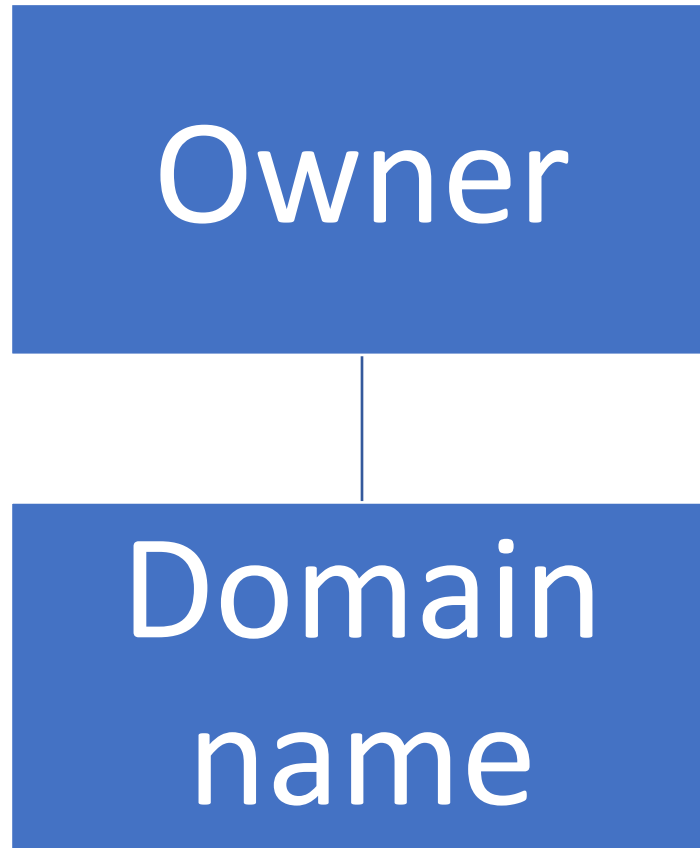
# Legal definition of a domain name

- Property (?)
- Contract (?)
- Legal institute sui generis (?)
  
- **Practical meaning**
- Can you sell a domain name?
- Can we apply the fundamental right of property?
- Is there any “absolute right” for a domain name?
- Can you inherit a domain name?

# Domain name as a contractual relationship?



# Domain name as a Property ?



# International perspective

- (US, UK,)
  - Domain names are creatures of contract Discussion – they are also **intangible property** with limitations (UK, US)
- Germany
  - Not a „thing“ but „contract“ (*vertraglich Anspruch*)
  - It is a part of property/has value (*Vermögenswert*)
- Protected by trademark law (globally) in certain cases
- Discussion –
  - Should the concept be reviewed

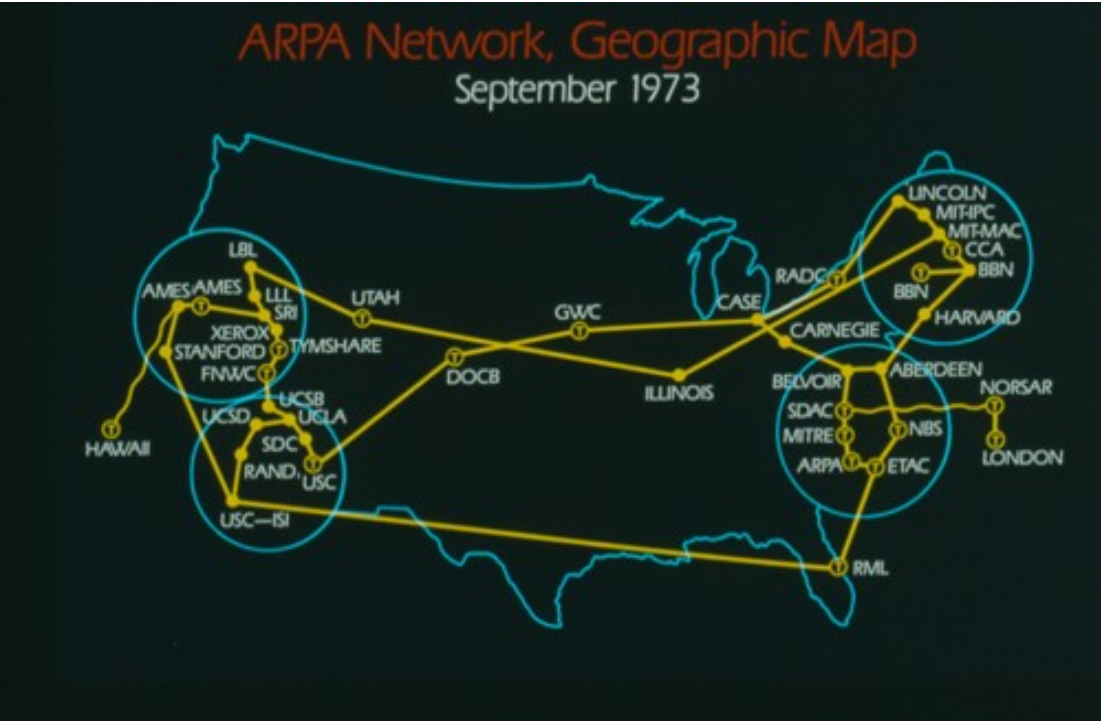


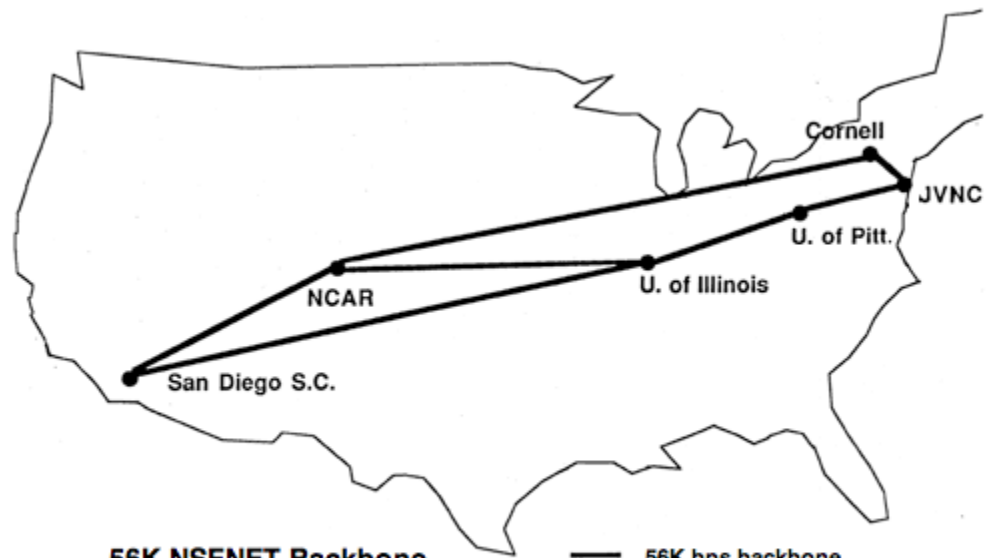
**Who controls the DNS?**

# Internet governance



# ARPA Network, Geographic Map September 1973





**56K NSFNET Backbone**  
July 1986 - July 1988

— 56K bps backbone  
● Fuzzball nodes

# 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

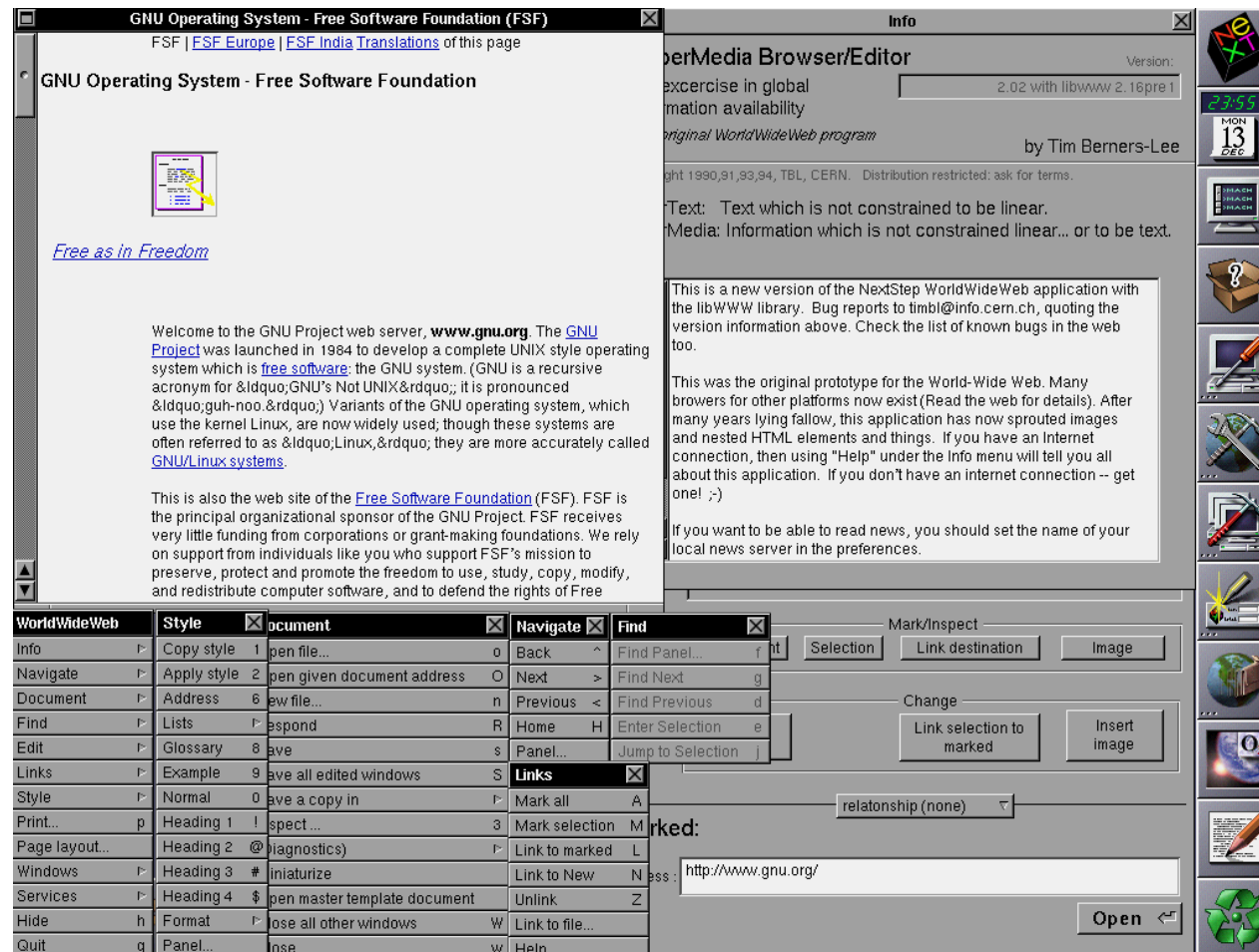
# 1988



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

# 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

## ICANN sends plan for Internet transition to US gov't

By Eden Estopace | 2016-03-14



Email



Print



Share



**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...

#### Microsoft's Korea Cybersecurity Center to advance fight against cyberthreats

Microsoft recently opened its new Cybersecurity...

### RELATED WHITEPAPERS

**DEFEATING APTS:** How can agencies change the game?

<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)**

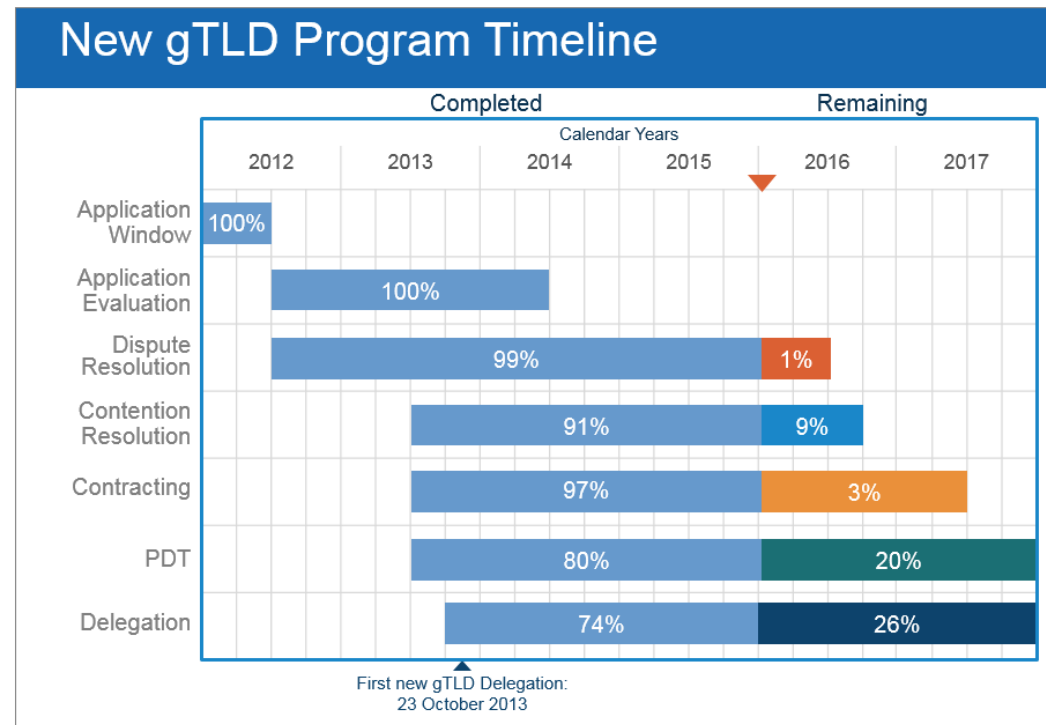
**March 2016**

# 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



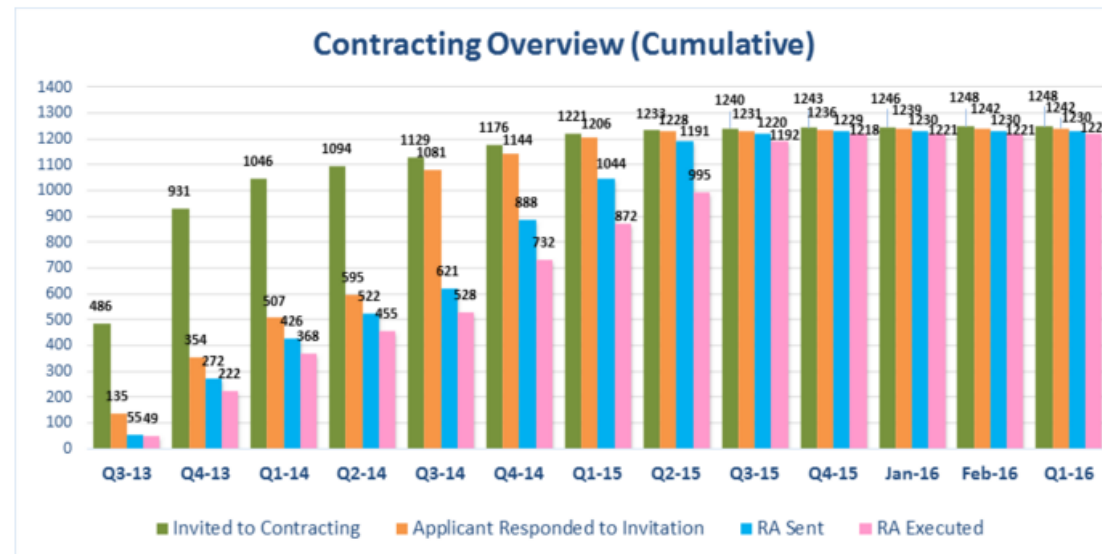
# How to get a new TLD?



Last updated 22 July 2014

# HOW many TLD are there now?

- CCA 1400
- [https://en.wikipedia.org/wiki/List\\_of\\_Internet\\_top-level\\_domains](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

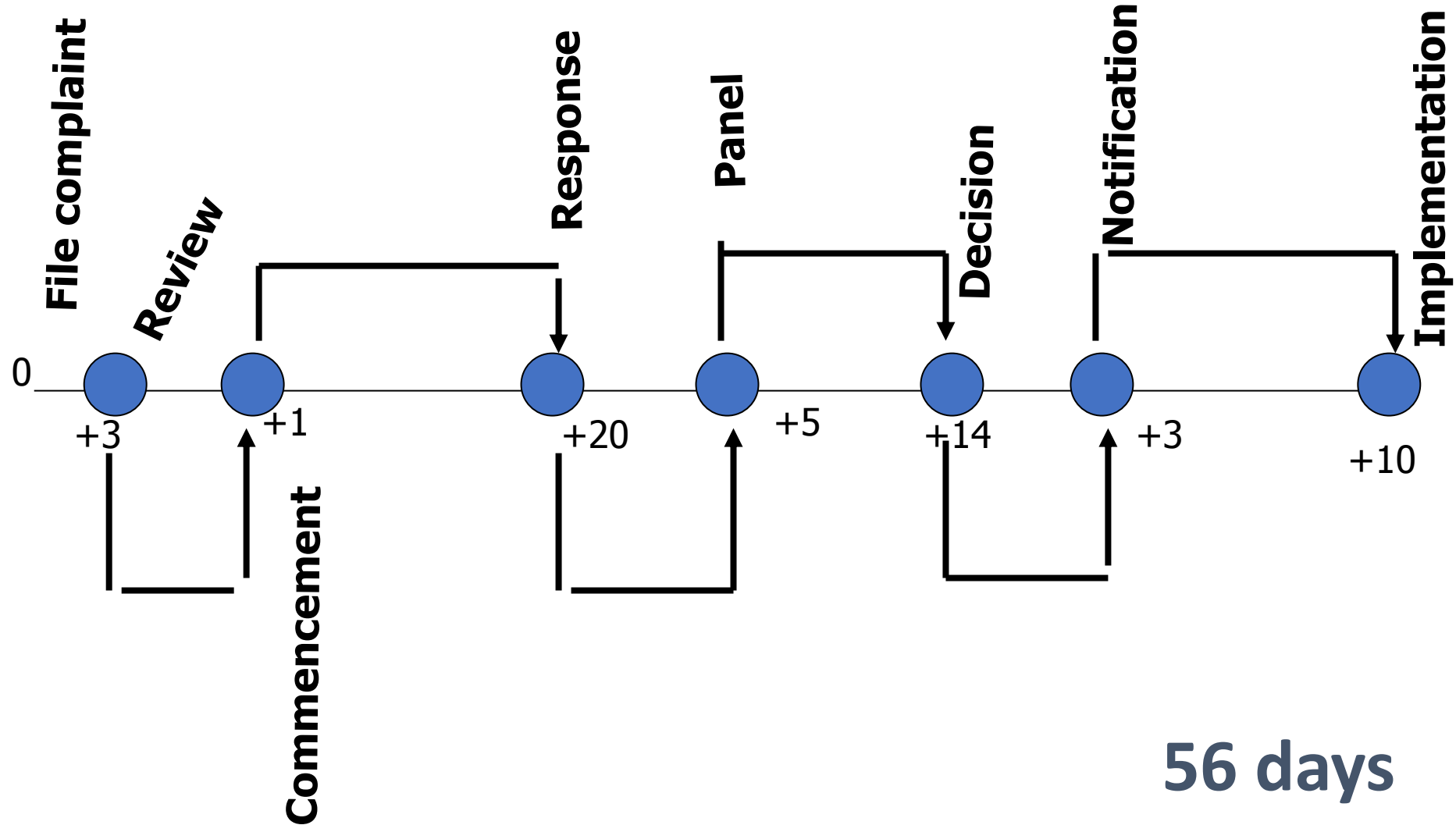
# Reasons

- 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

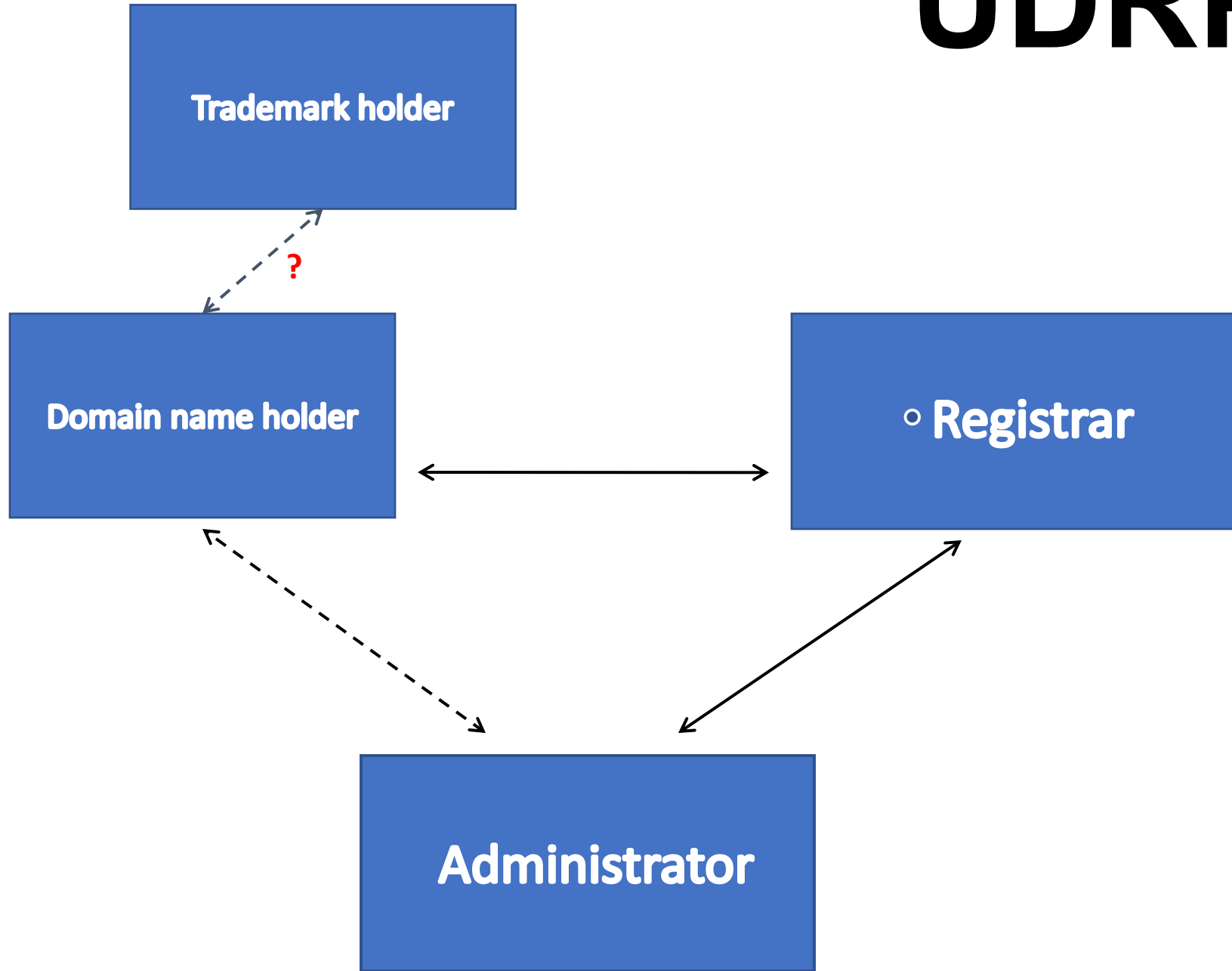
- Arbitration clause in the terms and conditions of registrations
- Third parties have the right (not duty) to file a complaint at a selected arbitration institution
- Arbitration clauses are contained in the majority of domain names

# UDRP





# UDRP



#### 4. Mandatory Administrative Proceeding.

This Paragraph sets forth the type of disputes for which you are required to submit to a mandatory administrative proceeding. These proceedings will be conducted before one of the administrative-dispute-resolution service providers listed at [www.icann.org/en/dndr/udrp/approved-providers.htm](http://www.icann.org/en/dndr/udrp/approved-providers.htm) (each, a "Provider").

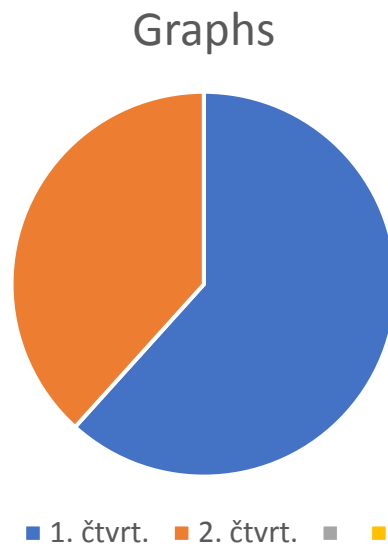
**a. Applicable Disputes.** You are required to submit to a mandatory administrative proceeding in the event that a third party (a "complainant") asserts to the applicable Provider, in compliance with the Rules of Procedure, that

- (i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) you have no rights or legitimate interests in respect of the domain name; and
- (iii) your domain name has been registered and is being used in bad faith.

**Cumulative condition**

# Another problem

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



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

Name	DNS Label
olympic	olympic
olympiad	olympiad
olympique	olympique
olympiade	olympiade
olympisch	olympisch
olimpico	xn--olmpico-8ya
olimpiada	xn--olimpada-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--kxadxcggtff2c
olympic	xn--hycic1e1-7k



# Trademark Clearinghouse

The screenshot shows the homepage of the Trademark Clearinghouse. At the top, there is a navigation menu 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 header. Below the navigation, a green banner reads: 'Need support? An official TMCH agent can assist you in a language of choice.' The main content area features a central box with the heading 'The Trademark Clearinghouse: Protect your trademark online' and text explaining the expansion of the domain name system. Below this, there are quick links for 'Beginner's guide', 'Announcements', 'Full Calendar', and 'Contact an official TMCH agent'. To the right, there are buttons for 'LOG IN TO YOUR ACCOUNT', 'CREATE AN ACCOUNT', 'GET SUPPORT VIA AN AGENT', 'SUNRISE CALENDAR', 'BECOME AN OFFICIAL AGENT', and 'HELP & SUPPORT'. At the bottom, there are social media links for Twitter and LinkedIn, and a Twitter feed showing a tweet from @tmchinfo about the sunrise period for .BARCELONA.

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

AWAITING SUNRISE LAUNCH .SALON

AWAITING SUNRISE LAUNCH .GROUP

AWAITING SUNRISE LAUNCH .PROMO

COMING UP

No updates in the last 15 days. Check [the full calendar](#) for a total overview.

LAUNCHED

SUNRISE PERIOD ACTIVE .homes

CLOSING

SUNRISE PERIOD ACTIVE .mom

# SUNRISE PERIODS

The interface features a top navigation bar with four status filters: **AWAITING SUNRISE LAUNCH** (yellow), **SUNRISE PERIOD ACTIVE** (green), **CLAIMS NOTIFICATION ACTIVE** (teal), and **ONGOING NOTIFICATION** (light blue). A purple **FULL CALENDAR** button is located on the right.

Below the filters is a search and sorting section with the following fields and options:

- SEARCH TLD NAME, INFO, REGISTRY:** Input field with placeholder text "E.g., .03/17/2016".
- SUNRISE OPENS AFTER:** Input field with placeholder text "E.g., .03/17/2016".
- SUNRISE CLOSES AFTER:** Input field with placeholder text "E.g., .03/17/2016".
- SORT BY:** Dropdown menu set to "Sunrise start".
- ORDER:** Dropdown menu set to "Desc".
- FILTER:** Button to apply search criteria.

The main content area is organized into sections based on sunrise start dates:

- Sunrise starting: 2016 - May**
  - Category: **AWAITING SUNRISE LAUNCH** (yellow header)
  - Domain: **.insurance** (blue link)
  - Starts: Mon, 9 May '16
- Sunrise starting: 2016 - April**
  - Category: **AWAITING SUNRISE LAUNCH** (yellow header)
  - Domain: **.promo** (blue link) with a red **PROMO** badge
  - Starts: Thu, 14 April '16
  - Domain: **.motorcycles** (blue link) with a grey **motorcycles** badge
  - Starts: Wed, 6 April '16
- Sunrise starting: 2016 - March**
  - Category: **SUNRISE PERIOD ACTIVE** (green header)
  - Domain: **.homes** (blue link) with a grey **HOMES Trusted Domain** badge
  - Closes: Fri, 6 May '16
  - Domain: **.vip** (blue link)
  - 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](http://svycarskehodinky.cz), [google.com](http://google.com), [wikipedia.org](http://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](http://Paroubeknamars.cz)
- [bushsucks.com](http://bushsucks.com)
- [Ihategates.com](http://Ihategates.com) (inactive)
  
- [Juliaroberts.com](http://Juliaroberts.com)
- [Britneyspears.com](http://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?

# .eu domain

- Established „by law“
  - 733/2002/EC
- To accelerate e-commerce
- Promote common market
- Accelerate benefits of information society



# Structure of the .eu domain

REGISTRY

**REGISTRARS**

USERS

# REGISTRY (sponsor)

- Administers the .eu domain
- EURid
  - Non profit company
  - Established under Belgian law



**Your ambition  
has an address**

Register your .eu domain today!  
[www.ambitionhasanaddress.eu](http://www.ambitionhasanaddress.eu)

**EURid**  
[www.eurid.eu](http://www.eurid.eu)

**.eu**  
Your European Identity

# Registrars

- Independent entities
- Have to be accredited by the registry
- Do not have to be European
- Currently cca 900 accredited registrars



# USERS - Eligibility criteria (Art 3)

undertaking having its registered office, central administration or principal place of business within the Community, or

organisation established within the Community without prejudice to the application of national law, or

natural person resident within the Community;

# Policy rules (874/2004)

- Requirements for domain name applications
- Requirements for registrars
- Requirements for registrar accreditation
- Languages
- Registration procedures

# Language

- For any communication by the Registry that affects the rights of a party in conjunction with a registration, such as the grant, transfer, cancellation or revocation of a domain, the Registry shall ensure that these communications are possible in all official languages.

Protection of rights in .eu  
domain

# Protection of rights

1. “sunrise periods”

2. Alternative  
dispute  
resolution

# Sunrise periods

- 1<sup>st</sup> period
  - only registered national and Community trademarks, geographical indications, public authorities
- 2<sup>nd</sup> period
  - names that can be registered in the first part as well as names based on all other prior rights
- 3<sup>rd</sup> period – all other users

# Alternative dispute resolution

# 2 POSSIBLE ADR PROCEDURES

Rightholder vs.  
domain name  
holder

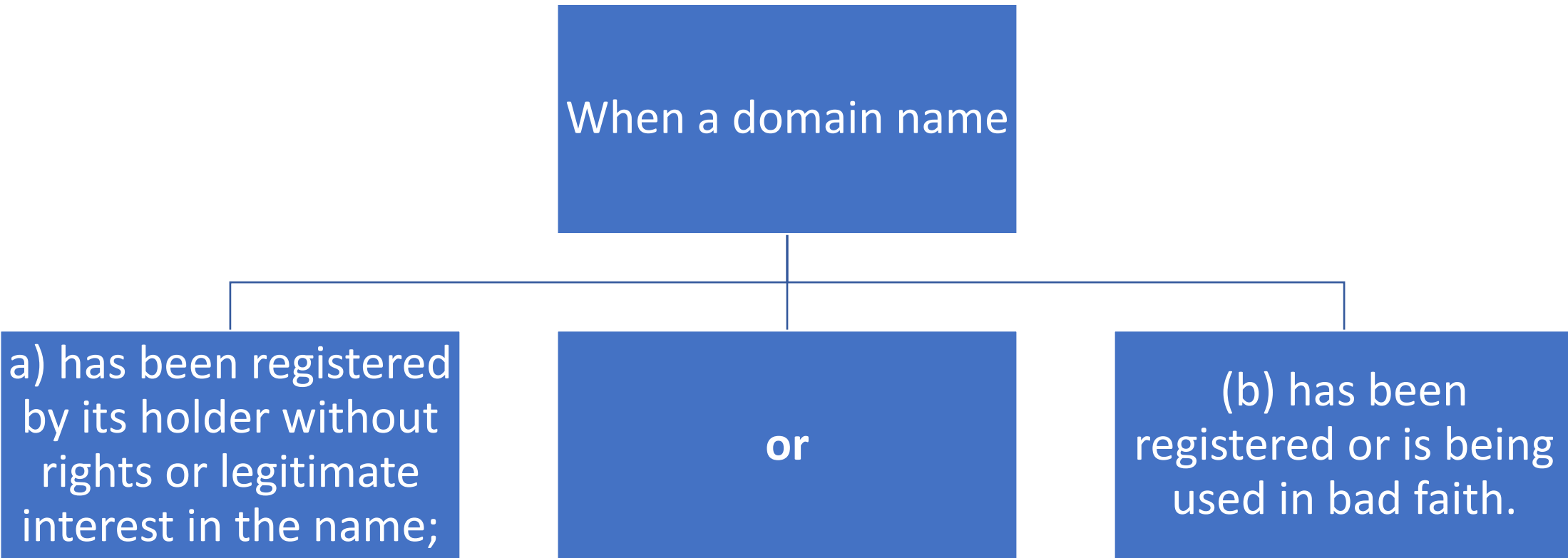
Domain name  
applicant vs.  
registry



# Rightholder vs. User

- Compulsory for the holder of a domain name and the Registry.
  - Not for the Rightholder
- Question of “speculative or abusive registration”

# Speculative or abusive registration is



# Legitimate interest

- (a) the holder has used the name for the offering of goods or services
- (b) the holder has been commonly known by the name,
  - even in the absence of a right recognised by law
- (c) the holder is making a legitimate and non-commercial or fair use of the domain name,
  - without intent to mislead consumers
  - or harm the reputation of a name on which a right is recognised or established by national and/or Community law.

# Bad faith

- (a) registered primarily for the purpose of selling, renting, or transferring to the holder of a protected name
- (b) prevent the holder from reflecting this name in a corresponding domain name,
  - provided that:
    - (i) a pattern of such conduct by the registrant can be demonstrated;
    - (ii) the domain name has not been used in a relevant way for at least two years
- (c) primarily for the purpose of disrupting the professional activities of a competitor; or
- (d) intentionally used to attract Internet users, for commercial gain, by creating a likelihood of confusion
- (e) the domain name registered is a personal name for which no demonstrable link exists

# Comparison ADR and UDRP

## UDRP

1. Confusing similarity
2. No legitimate interest
3. Bad faith

## ADR

- 1. Confusing Similarity
- 2 No legitimate interest
  
- or
  
- 1 Confusing Similarity
- 2 Bad Faith