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New top level domains – pending success or disaster?

Key words: *Domain, Top Level Domain (TLD), Generic Top Level Domain (gTLD), National Top Level Domain (ccTLD), Domain Name (DN), Domain Name System (DNS), Intellectual Property, ICANN, European Union (EU), EURid.*

Summary:

Our post-modern global society strongly relies on the use of information technologies and the virtual world of the Internet is one of the key aspects. Therefore, the presence on, and the use of, the Internet constitutes an indispensable requirement for the conduct of personal as well as business affairs at the beginning of the 21st century. This ultimately leads to a dramatic increase in the importance of the placement and identification in the e-environment, and to the conversion of domains and domain names into truly valuable assets and precious elements of the intellectual property portfolio of natural persons as well as legal entities. At the same time, neither the Internet in general nor domains and domain names are governed by a unified legal framework replete with a strong enforcement. The dynamic of the evolution and the qualitative as well as quantitative rise of this agenda, along with an ongoing hesitation about its legal regime generate many practical issues. These are most currently linked to the operation of the top level domain of the European Union and to the planned launching of a project allowing an unlimited and unrestricted creation of generic top level domains. There are a myriad of involved issues and this article focuses predominantly on only one of them – the domain name problematic.

The burning question asks whether this new trend, i.e. the emergence of new top level domains with new domain names is a path to the post-modern globalized paradise or instead to hell. Are we steering towards a massive success or disaster? Do we have a golden key or the box of Pandora in our hands? Naturally, no unanimous answer is available at this point and the insufficiency of information, together with the absence of experience dealing with such trends makes the evaluation and forecasting difficult, if not directly impossible. Nevertheless, a good summary review of the status quo and a critical and concise analysis of the top level domain of the European union and of its regime and of the planned generic top level domains .xxx can serve as a valuable instrument. It can also serve as a basis for suggestions, perhaps recommendations or even predictions regarding the outlook of these new domains, and keys for strategic decisions to be taken, most especially by businesses from all corners of the world with respect to their conduct of business through, with, or despite certain domains and domain names.

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Therefore, this article further develops previous more generalized analyses about domain and domain names, presented by, among others, this author. The focus here is strongly oriented towards the most recent perceptions and evaluations of the activities and reports of two crucial projects in this respect – the domain of the European Union and new generic domains open to everyone. To demonstrate pertinent aspects and to anchor them in the relevant setting, this article consists of three parts preceded by an introduction and followed by the conclusion. Introductory comments about the Internet, Domain Name System and pertinent protocols are followed by a short review of the conventional domain spectrum – generic v. national (1.). Thereafter, the focus shifts to an evaluation of six years of a specific top level domain – the domain of the European Union. Then, another new project is offered for scrutiny – the launching of an unlimited number of generic top level domains. The article truly culminates in its conclusion, where the presented information and data are brought together and reconciled as appropriate, while at the same time questions are raised with respect to the future of the European top level domain and new generic domain names, their regimes and their key masters.

Introduction

The overriding phenomenon of the 21st century, the Internet, is a global system built up by computers and their networks which communicate based upon relevant protocols. The virtual and international nature makes the approach to the Internet, and many economic and legal aspects related to the Internet and its use, challenging and causes difficulties with its classification and submission to a certain classical model. At the same time, its critical importance, robust economic and social impact, as well as a number of further factors, results in it becoming more and more imperative to decisively tackle this issue, possibly a bundle of issues, and adopt an appropriate, constructive and pro-active attitude ultimately leading to the selection, application and enforcement of an optimal economic, as well as legal, regime.

One of the core problems and challenges related to the Internet and its use is the issue of identification and liability. Taking into account the character and structure of the Internet, these two intra-related concerns are *per se* complex and do not suggest a tendency towards an easy manner of reconciliation. From a technical point of view, the Internet is a global, worldwide and free connection of network knots through computer networks. Among the mentioned knots are personal computers designated for access to the Internet, server computers for hosting sites and even Internet sites, websites, as such. They have a numeric address determined by the above mentioned protocols - Transmission Control Protocol „TCP“ an Internet Protocol „IP“, i.e. TCP/IP protocol. A word transcription, a domain name, of an IP numeric address is used for practical reasons. The communication between computers, sites and networks is facilitated by a system of special computers proceeding according to set rules and converting a unique numeric address into a unique word address and vice versa (Domain Name System „DNS“).

Thus, a domain name is primarily a word identification of an IP resource, a name and/or address of a personal computer, a server computer or a website. However, a domain name is not an accidental conglomeration of letters. Contrariwise, it has a clear and pre-determined tree structure, including several letters formations separated by dots and ranked according to the level of generality and specialty. Typically the first letters in the formation, placed, at the

very left, concerns a concrete computer and the last letters formation, at the very right, concerns a large group of computers, networks and websites – a top-level domain „TLD“.

Conventional domain spectrum – ccTLDs and gTLDs

Traditionally, TLDs are grouped and categorized into two types – generic (international) TLDs „gTLDs“ and country code (national) TLDs „ccTLD“. Registration within a gTLD gives the opportunity to a natural person or legal entity, regardless of their origin, nationality or place of incorporation of business, to obtain a verbal transcription of the concerned numeric address, i.e. a domain of a certain level within a gTLD. The ending abbreviation of such a TLD will indicate the orientation and specialization of lower level domains appertaining to this gTLD, such as „.com“, „.org“, „.net“, „.edu“. If the concerned natural person or legal entity prefers a classification according to the country of origin over the classification according to the specialization, then it is appropriate to opt for an identification at a national basis, within a TLD of a particular state – ccTLD. This means a domain name ending with a two letter code of a country according to the ISO 3166, e.g. „.cz“, „.de“ či „.uk“. Since 2006, the bi-polar offer of 21 gTLDs and 205 ccTLDs has been extended by a new TLD *sui generis* and having a mixed character (apparently more towards ccTLDs than gTLDs) - TLD of the European Union carrying the ending identification abbreviation “.eu“ - „.eu“. At this point, the namespace consists of 22 gTLDs, 250 ccTLDs and 30 international ccTLDs (IDN country code) and that brings the total number of TLDs to about 300.² These TLDs operate on various models. Typically, a TLD has a designated registry operator, often just called “registry”, and a Registry Agreement between the registry operator and ICANN. The registry operator is responsible for the technical operation of the TLD and all names registered in it. The current gTLDs are served by over 900 registrars who interact with registrants, i.e. applicants and holders, to perform domain name registration and other related services.³

Records about registered Internet domains, their holders, beneficiaries and third parties involved with them are kept in the database WHOIS, originally (in ARPANET’s time) called NICKNAME and maintained by DARPA. The vast increase in the number of TLDs and domains in general has necessitated changes incorporated into the WHOIS model. Nevertheless, the main features have remained intact and until now it is possible to research and obtain information about a particular domain by a simple question, asked via online.

Despite the fact that the administration of domains is clearly and strongly hierarchic, it is not a performance of state competency and power. Instead a decentralized and multistakeholder model is used, and functions are performed at every level by a private law entity.

Because the Internet evolved from a network infrastructure created by the Department of Defense, the U.S. government originally owned and operated, primarily through private contractors, such as the Internet Assigned Numbers Authority „IANA“, the key components of network architecture that enabled the domain name system to function. A 1998 Memorandum of Understanding between the Internet Corporation for Assigned Names and Numbers „ICANN“ and the Department of Commerce initiated a process intended to

² BECKSTROM, Rod. Speech – Opening Remarks. *Seminar on New Generic Top-Level Domains*, 8th December 2011, Beijing, China, p.4. <http://www.icann.org/en/presentations/beckstrom-speech-new-gtlds-beijing-08dec11-en.pdf>

³ ICANN. gTLD Applicant Guidebook - Preamble, version 2012-01-11, 11th January 2012 <http://newgtlds.icann.org/en/applicants/agb>

transition the technical DNS coordination and management functions to a private sector not-for-profit entity. While the Department of Commerce has played no role in the internal governance or day-to-day operations of the DNS, ICANN remained accountable to the U.S. government through the MOU, which was superseded in 2006 by a Joint Project Agreement. After the expiration of the Joint Project Agreement in 2009 it was introduced the Affirmation of Commitments, which provides for review panels to periodically assess ICANN processes and activities.⁴

Therefore, the current DNS is managed and operated by a not-for-profit public benefit corporation, ICANN, and local private law entities are registrars and administer the distribution and registration of TLDs at a lower level. Currently, ICANN works with 242 countries and territories in supporting the daily operation of the Internet.⁵

ICANN presents itself as “*a critical global body that works to assure that the Internet remains open, unified and global.*”⁶ Principal tasks of ICANN are coordination of the Domain Name System – “DNS”, IP, root system functions and the assigning of gTLD as well as ccTLD. ICANN is launching a brand new project at this time with the goal of allowing an unlimited increase of gTLDs. Thus, a dramatic growth of actually less than thirty gTLDs should take place in the very near future, and natural persons and legal entities all over the world will be exposed to both its positive as well as negative sides. The consequences will have definitely a significant impact, especially with respect to two key areas - venue of doing business and intellectual property rights protection. Regarding the first one, each business player will be offered additional options to commercialize its outcomes and will need to deepen and extend their own research and analysis in order to make an educated decision about the domain and domain names – should they be within the place of business ccTLD or within a classical gTLD or rather within a newly created and for the pertinent business tailored special gTLD – “TLD.xxx”? Concerning the second one, undoubtedly intellectual property rights’ owners, holders and beneficiaries will have to constantly monitor the situation and make decisions with respect to picking a battle against TLDs.xxx potentially infringing on their rights.

The economic complexity and general non predictability of future developments of the coexistence of TLDs.xxx are not addressed by a commonly accepted and enforced legal regime. The Internet and domain names are not covered by an expressed regulation by international law or national laws and thus the administration and distribution of TLDs as well as lower level domains are not covered by a substantive law equipped by a simple enforcement through adjudication.

Since conventionally neither international treaties nor national statutes⁷ regulated the administration and distribution of domains and domain names and states have exercised none

⁴ KRUGER, Lennard G. Internet Domain Names: Background and Policy Issues. Congressional Research Service, 7-5700, www.crs.gov, 97-868, March 18, 2011 <http://www.fas.org/sgp/crs/misc/97-868.pdf>

⁵ BECKSTROM, Rod. Speech. The London Conference on Cyberspace, 2nd November 2011, London, UK, p.1. <http://www.icann.org/en/presentations/beckstrom-speech-cybersecurity-london-02nov11-en.pdf>

⁶ BECKSTROM, Rod. Speech. *The London Conference on Cyberspace*, 2nd November 2011, London, UK, p.1. <http://www.icann.org/en/presentations/beckstrom-speech-cybersecurity-london-02nov11-en.pdf>

⁷ The only long lasting exception is the American Anticybersquatting Consumer Protection Act.

or just a limited influence,⁸ various instruments started to be developed by private registry and registrars to mitigate it. One of the best known is the global use of standardized rules, including the broadly and strongly enforced requirement to submit holders of the domain and domain name to various rules and policies. Hence, all registrars must follow the Uniform Domain-Name Dispute-Resolution Policy "UDRP" and this means that not only the domain coordinator ICANN but as well as all domain registrars entrusted by ICANN make sure that applicants and consecutively holders of domain names recognize and respect a certain legal regime and a particular way of dispute settlement. Precisely, discrepancies and conflicts under UDRP are to be submitted to one of the listed providers, i.e. to the WIPO Arbitration and Mediation Center, the Arbitration Center for Internet Disputes at the Czech Arbitration Court, National Arbitration Forum, and Asian Domain Name Dispute Resolution Centre.

Naturally, the emergence of TLDs.xxx re-activate the latent need to understand domain and domain names and find an appropriate legal regime for them. Unfortunately, there are very few academic and/or professional monographic publications attempting to resolve it. As a matter of fact, in the Czech Republic there exists, so far, only one, which is over one decade old and thus slightly obsolete.⁹ More recent books are rather general¹⁰ and merely collecting known and publicly available opinions.¹¹ Occasionally, articles in professional journals try to fill this void. Their focus is oriented towards the legal and economic aspects of TLD.eu,¹² which may be considered as a recent successful project regarding its legal framework, organizational structure as well day-to-day operation and thus the inspiration for all TLDs.¹³ Therefore, it may be instructive to shortly review and present a few critical comments regarding both revolutionary TLDs projects – TLD.eu and TLDs.xxx.

6th anniversary of TLD.eu – a positive experience¹⁴

One of the first milestones towards a new TLDs' horizon took place on the 25th of September, 2000, when the global domain coordinator ICANN approved the granting of the numeric code alfa-2 "eu" and made possible the issuance of the Regulation (EC) No 733/2002 of the European Parliament and of the Council on the implementation of the.eu Top Level Domain – "Regulation 733/2002". Considering the initiative eEurope approved by the Lisbon strategy¹⁵ and the Council resolution 2000/C 293/02 on the organization and

⁸ As a matter of fact, traditionally the only state directly involved in this type of issues, USA, has been criticized for the inherence and requested to withdraw. Even the recent involvement of the EU has a rather moderate extent.

⁹ PELIKÁNOVÁ, Radka, ČERMÁK, Karel. *Právní aspekty doménových jmen*. Praha, ČR: Linde Praha, a.s., 2000, ISBN 80-7201-245-2.

¹⁰ RABAN, Přemysl, MORAVCOVÁ, Marie, STRNAD, Michal, TLOUŠŤOVÁ, Pavla, ZAHRADNÍKOVÁ, Radka. *.eu domain name, .eu doména*. 1. vydání. Praha, ČR : C.H.Beck, 2006, ISBN 80-7179-525-9.

¹¹ DISMAN, Marek: *Právní úprava domény „.EU“*. Praha, ČR: Linde Praha, a.s., 2011, ISBN 978-80-7201-852-9.

¹² MacGREGOR PELIKÁNOVÁ, R. *Právní a ekonomické aspekty domény nejvyšší úrovně .eu*. *Acta MUP*. Praha, ČR: Metropolitní univerzita Praha, ISSN 1804-6932, ročník 2, č. 2/2011, s.14-37

¹³ MacGREGOR PELIKÁNOVÁ, Radka. *Právní a ekonomický úspěch domény nejvyšší úrovně .eu – pravda či mýtus roku 2011? Právo, ekonomika, management*. Ostrava, CZ: Key Publishing, ISSN 1804-3550, Vol.2, 4/2011, p.2-10.

¹⁴ MacGREGOR PELIKÁNOVÁ, Radka. *Právní a ekonomický úspěch domény nejvyšší úrovně .eu – pravda či mýtus roku 2011? Právo, ekonomika, management*. Ostrava, CZ: Key Publishing, ISSN 1804-3550, Vol.2, 4/2011, p.2-10.

¹⁵ *The inciative eEurope approved by the European council in Lisabon on 23rd and 24th 2000.*

management of the Internet,¹⁶ the Commission moved in 2002 to the realization of this project by extending call 2002/C 208/08 to potential candidates to perform registry functions for TLD.eu. The Commission selected the European Registry for Internet Domain „EURid“ and by Commission Regulation (EC) No 874/2004 laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain and the principles governing registration – „Regulation 874/2004” set general rules for the introduction and functions of TLD.eu and principles governing the registration.

Based on these two most important regulations for TLD.eu, Regulation 733/2002 and Regulation 874/2004, entered the Commission with EURid into an agreement on TLD.eu and registration of its domain names on 12th October 2004. The validity of this agreement has been extended until 12th October 2014. In cooperation with ICANN, EURid managed to arrange for the inclusion of the domain „.eu“ into root DNS in March 2005,¹⁷ i.e. for the technical creation of TLD .eu. The TLD.eu was launched on 7th December 2005 and after the Sunrise Period for priority registrations in the total length of 4 months, the general registration commenced. Thus, since 7th April 2006, any legal entity or natural person from member states of the EU can apply for, and become a holder of, a domain from the TLD.eu.

The regulation of the registration of domain names appertaining to TLD.eu is covered not only by European Union provisions but as well by EURid documents – Domain Name Registration General Conditions (“General Conditions”) and Registration Rules. According to Regulation 874/2004¹⁸ and General conditions, disputes are to be decided by the provider selected for TLD.eu – the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic. The dispute proceedings are governed by Alternative Dispute Resolution Rules – “ADR Rules“ and Supplemental ADR Rules of the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic.¹⁹ A complementary soft-law regulation is represented by the EURid code of conduct from 2007. This legal framework is applied by several organs – the Commission as the creator, EURid as an entrusted registry, private businesses as accredited registrars processing the registration and administration of domain names, and the Arbitration court in Prague as an ADR provider. Relations between these organs are created and determined not only by legislative documents, but also by various contracts and agreements. Thus, many features typical for private law find an application and interested parties as well as holders, or holders to be, of domain names from

¹⁶ „6. RESOLVES TO INSTRUCT THE COMMISSION: ... to set up a European network bringing together the scientific, technical and legal skills that currently exist in the Member States with regard to domain name, address and Internet protocol management.“

¹⁷ Point 3. Communication from the Commission to the European Parliament and the Council COM(2007) 385 – Report on the implementation, functioning and effectiveness of the „.eu“ TLD from 6th July 2007.

¹⁸ Article 22 Alternative dispute resolution (ADR) procedure “1. An ADR procedure may be initiated by any party where: (a) the registration is speculative or abusive within the meaning of Article 21; or (b) a decision taken by the Registry conflicts with this Regulation or with Regulation (EC) No 733/2002. 2. Participation in the ADR procedure shall be compulsory for the holder of a domain name and the Registry. 3. A fee for the ADR shall be paid by the complainant.”

¹⁹ http://eu.adr.eu/adr/adr_rules/index.php

TLD.eu have a set of choices, e.g. which accredited registrars will process their application. Therefore, the regime of domain names from TLD.eu and in particular the relation between the quasi government of the European Union, the Commission, and the private party entrusted with the registration supervision and delegation to registrars, registry EURid, demonstrates strong similarities and parallel with the above mentioned status of ICANN and the rather weak, but still not too be neglected, influence of the USA and the Department of Commerce.

The above mentioned Regulation 733/2002 imposes a duty upon the Commission to regularly prepare and present a Report about use and function of TLD.eu to the European Parliament and Council – „Report about TLD.eu“.²⁰ In total, three Reports about TLD.eu have been published, COM(2007) 385 from 2007,²¹ COM(2009) 303 from 2009²² and COM(2011) 616 from 2011,²³ each comprising approximately 10-15 pages and celebrating an allegedly complete success of TLD.eu. *Scire tuum nihil est, nisi te scire hoc sciat alter.*²⁴ Certainly an objectivization and enlargement of Commission Reports about TLD.eu and Quarterly Progress Reports of EURid²⁵ and their broader presentation and distribution would increase the credibility of the project and enhance the general awareness about TLD.eu.

Parties involved in the running of the TLD.eu should be definitely more open and should be both encouraged and inclined to communicate more with the designated ultimate beneficiaries – natural persons and legal entities from the member states of the European Union. There is an abundance of data and evidence demonstrating that TLD.eu in principal meets pre-set goals. The conducting of business in black numbers allowing for the building up of reserves and the subsequent transfer into the budget of the EU, a general satisfaction of the public from the European Union, and a dispute settlement mechanism addressing and resolving conflicts regarding domain names and intellectual property rights within weeks or just a few months, strongly litigate in this respect.

However, the significant increase of registration within TLD.eu is not exclusively due to the nice setting of its legal regime and organic structure and to various incentives such as a 50% fee reduction in the case of a registration for more than one year. Considering strategic and marketing consequences, it becomes extremely likely that a large number of businesses do not have a real choice and the need for the protection of their intellectual property portfolio makes “preventive” domain names registration within TLD.eu necessary for them, regardless of the conditions of such a registration.

²⁰ Regulation 733/2002 – Article 8: “ *Implementation report. The Commission shall submit a report to the European Parliament and the Council on the implementation, effectiveness and functioning of the.eu TLD one year after the adoption of this Regulation and thereafter every two years.* ”

²¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0385:FIN:EN:PDF>

²² http://ec.europa.eu/information_society/policy/doteu/doc/report2009/com_2009_303_en.pdf

²³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0616:FIN:EN:PDF>

²⁴ *Your knowledge is worthless when no one else knows about it.* Persius, Satires.

²⁵ http://www.eurid.eu/files/Q3_2011.pdf

At the same time, it would be remiss to overlook European Union and EURid politics and instruments for increasing security, battling cybersquatting, IPR parasitism, and other malpractices. The platforms to support readiness to address disaster scenarios,²⁶ the phasing of initial registration periods, the cooperation regarding technical updates such as the transition from IPv4 addresses to IPv6 addresses, and financial politics of the registry have proved out to be correct choices. However, the influence and monitoring of the registry EURid with respect to almost one thousand registrars has been the basis for a well based criticism and the (in) famous dispute and court case 6/1255/C Ovidio, Fausto and Gabino regarding the de-blocking of 74 thousand domain names and leading to the court order (injunction) under sanction of 25 thousand EUR for each hour of delay. In other words, the activity of some accredited registrars caused the freezing of bank accounts with the balance of 4.19 millions EUR of the registry EURid.

Fortunately, it can be summarized based on the observation during the 6 years of its existence that the positive trend of the management of TLD.eu by EURid and its accredited registrars has been disturbed by just a few “bad” cases, and that almost 3.5 million domain names from TLD.eu are viable and not disputed instruments for the virtual (often commercial) life of their holders from the European Union. It should be emphasized that there were several thousand domain names registered in bad faith and EURid, and respectively the accredited registrars, took them away from their dishonest holders and offered them again for registration, this time hopefully by good faith applicants.

The independent position and private law status of the registry EURid and the separation of powers, i.e. the lack of an excessive inherence by the Commission in the function of registry and registrars are generally approved. The ongoing introduction of International Domain Names – „IDN“ within TLD.eu seems to be another step in the right direction. The core part of the domain name can be registered in any of the 23 official languages of the European Union, ever since 2009. Hence a small (approx. 2%), but not to be despised, segment of domain names in TLDs includes characters other than from the Latin alphabet. Regretfully, the negotiation with ICANN regarding the extension of the IDN regime as well as to the final part of domain names – the indication about the TLD, i.e. „.eu“ has not yet been satisfactorily concluded. Thus EURid’s request for permission to register the entire domain name in Latin as well as in the Cyrillic and Greek alphabet is still pending. This is definitely unsatisfactory and not in compliance with the EURid promotion campaign with the slogan „*Ambition has an address*“ and a report issued in cooperation with UNESCO about the need to support online multilinguality.

The overall good impression and the thumbs up regarding TLD.eu and the registration and administration of domain names with the abbreviation “.eu” is supported by statistics. The annual growth of the amount of domain name registrations reaches 5-10% and the TLD.eu is

²⁶ „The highlight of Q3 2011 was the business continuity exercise EURid conducted to test its capacity to cope with disaster.“

the 4th most popular ccTLDs in the territory of the European Union²⁷ and one of the ten most popular TLDs in general. Reportedly, TLD.eu is an instrument of European identity which does not destroy national registrations, i.e. the increase of domain name registrations within TLD.eu does not cause a decrease of registrations within ccTLD in the member states (TLD.de, TLD.uk, TLD.nl, etc.). Nevertheless, the total amount of 3.5 million of domain names in TLD.eu does not mean a massive success *per se* and a guarantee for the future, especially since there are over 210 millions of domain names in gTLDs, namely 90 millions in TLD.com and 13 million of domain names in TLD.net.²⁸ As a matter of fact, one third of the holders of domain names from TLD.eu are involved in business and it may be instructive to study how they perceive the European Union and the European's economic viability and how important (and worthy) is for them their European's identification. According to survey data offered by EURid, 45% of respondents consider a domain within TLD.eu as a good investment and 82% of respondents perceive a domain within TLD.eu as an added value for SME (small-medium-enterprise). The positive approval aura applies as well with respect to the registration and operation of DNS for TLD.eu in the Czech republic from which come holders of 103 thousand of domain name from TLD.eu and where there are roughly 12 European domain names ending in ".eu" and 77 national domain names ending in ".cz" per thousand inhabitants. The smoothness of the registration and administration of European domain names are assured by 18 Czech accredited registrars. Naturally, these are not the only option for Czechs desiring to hold a domain name from TLD.eu because the European Union provenience requirement applies only to holders, but not to registrars, and thus natural persons or legal entities can register their domain names in TLD.eu through accredited registrars which are not from the European Union.

A financial analysis of TLD.eu sounds *prima facia* good. The registry EURid charges local registrars only 4 EUR per domain name from TLD.eu, but still keeps black numbers on its financial statements. Naturally, the holders get domain names from their registrars with a surcharge, i.e. registrars charge them more than 4 EUR to cover their expenses and any possible added service offered as a package, such as a domain name plus a website design and setting. The final prices vary, but generally seem to be affordable and similar for those for domain names from ccTLDs. Actually, the addition of 30 IDNs from 20 countries and territories in the DNS root zone has driven the average annual registration fee down from 35 USD to 7 USD.²⁹ The dispute resolution fee for the use of the ADR mechanism has decreased to 1 300 EUR, but still are an object of criticism as too high for SME, especially considering that the winning party does not obtain a reimbursement.

Quo vadis TLD.eu, EURid, and accredited registrars? Are you going to keep up the good work and match, or even supersede, concurring ccTLDs and gTLDs? The answer should

²⁷ The largest number of national domain name registrations within EU is in German TLD (".de"), in Great Britain TLD (".uk") and in Dutch TLD (".nl").

²⁸ GOLDSBOROUGH, Reid. World of Website Addresses Poised for Dramatic Expansion. *Community College Week – Technology Today*. 7/25/2011, ISSN 1041-5726, p.31.

²⁹ BECKSTROM, Rod. Speech. *The London Conference on Cyberspace*, 2nd November 2011, London, UK, p.3. <http://www.icann.org/en/presentations/beckstrom-speech-cybersecurity-london-02nov11-en.pdf>

definitely take into account the concept of the unlimited amount of gTLDs which was approved by ICANN in 2008 and which should be fully materialized in the coming months.

Emergence of TLDs.xxx – a potential for another positive experience???

One of the landmarks in the new TLD's march forward occurred in 2008 when ICANN approved the project of the de-limitation of gTLDs, i.e. a program allowing unlimited registration of gTLDs.

The program has its origins in the carefully deliberated policy development work by the ICANN community. In October 2007, the Generic Names Supporting Organization "GNSO", one of the groups coordinating global Internet policy at ICANN, formally completed its policy development work on new gTLDs and approved a set of 19 policy recommendations. A large public was engaged in discussions for over one and half years on questions and issues related to new gTLDs. This opinion exchange process led to the above mentioned decision of the ICANN Board of Directors to adopt the community-developed policy in June 2008.³⁰

Thus, the stabilized amount of 21 gTLDs in 2010³¹ and of 22 gTLDs in 2012 has been open to radical changes. Certain private parties, natural persons as well as legal entities, joyfully embraced this new opportunity and are eagerly getting ready to apply for and to hold attractive gTLDs, such as „car“, „eco“, „hotel“, „shop“.³² The length of the registration process, the launching difficulties and the cost reaching 185 thousands USD³³ are not about to deter them. Other private parties are much more reluctant or even opposed, as they are suspicious about speculation³⁴ and abuses by applicants and greediness from ICANN.

ICANN is determined to maintain a friendly and open-minded appearance and thus had invited all stakeholders to express their opinions, suggestions, and concerns regarding the gTLD.xxx project.³⁵ At the same time, ICANN representatives went on to provide strong promotion speeches. The President and CEO of ICANN, Rod Beckstrom, delivered such a speech on 12th December 2011 in Moscow, Russia.³⁶ He described the project of gTLD.xxx to be launched as “*one of the biggest developments in the Internet's history*” and as a program “*carefully crafted by the global Internet community to help ICANN fulfill its*

³⁰ ICANN. gTLD Applicant Guidebook - Preamble, version 2012-01-11, 11th January 2012
<http://newgtlds.icann.org/en/applicants/agb>

³¹ ALRAMAHI, Moe. New gTLDs – Pandora's Box is open. *International Review of Law, Computers & Technology*. July 2010, Vol. 24, No. 2, ISSN 1360-0869, p.183-192.

³² HATCH, David. No ICANN Do. *National Journal*. 5/21/2011, ISSN 0360-4217, p.15. FOX, Maggie. ICANN OKs Domain-Name Free-For-All. *Congress Daily*. 6/20/2011, ISSN 1936-6132, p.4.

³³ ROUBEIN, Rachel. Cities could cash in on new domain extension. *USA TODAY*. 7/13/2011, ISSN 0734-7456.

ROSENFELD, Everett. The End of THE .Com Era. *Time*. 7/4/2011, Vol. 178, Issue 1, ISSN 0040-781X, p.25.

³⁴ FINKEL, Ed. The XXX Factor: New Domain Names Could Lead to Trademark Problems for Businesses. *ABA Journal*. November 2011, Vol. 97, Issue 11, ISSN 0747-0088, p.28.

³⁵ <http://www.icann.org/en/news/announcements/announcement-06jan12-en.htm>

³⁶ Beckstrom, Rod. Speech - Opening Remarks. *New Generic To-Level Domains*, 12th December, 2011, Moscow, Russia, p.5. <http://www.icann.org/en/presentations/beckstrom-speech-moscow-12dec11-en.pdf>

mission to increase consumer choice, competition and innovation.” Obviously, these statements are not unanimously shared and just a mere cursory check of opinions presented on the Internet renders it, beyond any doubt, clear that the enthusiasm concerning gTLD.xxx and about its regime does not radiate from everyone and even the website of ICANN reveals some dissenting and discontented postings, while ICANN itself admits that there are risks (and issues) involved.³⁷

The “down to business” gTLD.xxx schedule is on pace ever since 12th January 2012, when ICANN started to accept new gTLDs applications.³⁸ Since holding a new gTLD means a control of part of the Internet, the granting of gTLD.xxx must meet rather strict technical and financial requirements, including replying to fifty different questions, the presentation of a business plan, demonstration of the capacity to run an Internet registry with respect to the planned gTLD.xxx and the payment of the application fee in the amount of 185 thousand USD. A special online TLD application system – “TAS” has been established and does not allow for an application of a holder to be of a gTLD.xxx without the satisfaction of the mentioned requirement. Thus applicants go through scrutiny to be registered and to be allowed to apply, i.e. they must first register before making their application. If they want to be in the 1st cohort, they need to complete the registration by 29th March 2012 and submit the application by 12th April 2012. Thereafter, essential elements of all applications will be checked, and on 1st May 2012 ICANN will reveal the applied for TLDs and their applicants. The application comment process and objection period will follow. The comment process will be open to anyone desiring to raise any comments and will be closed on 30th June 2012. The objection period, to submit a formal objection to any new gTLD.xxx applications, will last approximately 7 months and thus will be terminated just before the end of the year 2012. Shortly before that, in November 2012, will be finished the evaluation, and its outcome will be presented. It is reassuring that probably the best ADR provider with respect to domain names, the WIPO Arbitration and Mediation Center, continues to advise ICANN based on the UDRP experience and suggests pre- and post-delegation procedures. Thus the first pre-delegation cases could be filed with the WIPO Center by trademark owners against gTLD.xxx applicants in the 2nd part of 2012. As the exclusive service provider of dispute resolution services for trademark, the WIPO Arbitration and Mediation Center is making available extensive party resources for this new procedure and accommodates the Trademark Rights Protection Mechanism for New gTLDs.³⁹ The process is rather expensive, since the fee for a legal right objection case reaches 10 thousand USD.⁴⁰

Generally speaking, applications for gTLDs.xxx will have followed various paths according to their complexity and to any comments and objections raised. According to the smoothest scenario, the first new gTLDs.xxx will clear the process late in 2012 and will be ready for

³⁷ <http://www.icann.org/en/news/announcements/announcement-09jan12-en.htm>

³⁸ <http://newgtlds.icann.org/en/announcements-and-media/announcement-23jan12-en>

³⁹ WIPO. Press Conference Release: *WIPO Prepares for Launch of New gTLDs while Cybersquatting Cases Continued to Rise*, PR/2012/704. Geneva, March 6, 2012 - http://www.wipo.int/pressroom/en/articles/2012/article_0002.html

⁴⁰ WIPO Schedule of Fees for New gTLD Dispute Resolution - <http://archive.icann.org/en/topics/new-gtlds/wipo-fees-clean-19sep11-en.pdf>

delegation in early 2012. Naturally, other applications will take much more time and effort to achieve success, and their applicants will have to wait much longer.

Conclusion

The virtualization and dematerialization of the private as well as business life, including the conduct of business, are noticeable features of the 21st century. It is worthy to keep in mind that e-commerce is the biggest and the fastest growing market in the world.⁴¹ It is indispensable to consider the domain as a space on the Internet and the domain name as an Internet code address of a computer knot (IP numeric address) converted through DNS database placed on special name computer servers⁴² into a verbal (literal) form. Such a unique and symbolic name⁴³ performs many more functions than just to serve as an address.

The European Union is aware of this trend and understands the intellectual property rights, including the denomination rights,⁴⁴ as an important instrument for (de)regulation and support of all four cornerstone freedoms – movement of persons, goods, services, and capital.⁴⁵ The European Commission, European registry EURid, and accredited registrars have demonstrated over the last six years a strong commitment to support TLD.eu and, despite several errors, the overall evaluation of their work should be rather positive. Thus the project TLD.eu should be labeled good, but not excellent as exaggeratedly suggested by Commissions' and EURid's reports.

It is regrettable that such valuable assets as TLDs and respective domain names and their regimes do not enjoy more attention by the professional press. There are very few analysis about the competency and operation of the European Commission, European registry EURid and accredited registrars for TLD.eu and ICANN and registrars for ccTLDs and gTLDs. Their multistakeholder model, separation and delegation of power, issued rules, etc. deserve a deep analysis and probably appreciation suggesting to use them as examples and inspirations for other projects. At the same time, there is still room for improvement, and the repeated calls for initiatives and improvements should be taken seriously by both sides, i.e. ICANN and EURid as well as the public at large.

Recently and with respect to new domains and domain names Rod Beckstrom stated very correctly that the *“Power of the Internet to change our lives is breathtaking...We are about to open a door that will lead to even greater innovation and choice, laying the path to the*

⁴¹ CORTÉS, P. Developing Online Dispute REsolution for Consumers in the EU: A Proposal for the REgulation of Accredited Providers. *International Journal of Law and IT*. 3/1/2011, Vol. 19, Issue 1, ISSN 0967-0769, p.1.

⁴² KOŠČÍK, Michal. *Doménové spory* – Diplomová práce. Brno, ČR: Právnická fakulta Masarykovy univerzity – Katedra právní teorie, 2006/2007, s.8.

⁴³ AUGUSTIN, Adam. *Doménová jména a jejich užití při podnikání* – Diplomová práce č.5. Praha, ČR: Metropolitní univerzita Praha, 2009, s.2-4.

⁴⁴ MacGREGOR PELIKÁNOVÁ, R. Intellectual property rights and their enforcement in the Czech Republic. *Journal on Legal and Economic Issues of Central Europe*. 2010, Vol.1, No.1, ISSN 2043-085X, s.15.

⁴⁵ VOJČÍK, Peter. Priemyselné práva na označenie a podnikanie. In JAKL, L. (Ed.). *Právni ochrana duševního vlastnictví při podnikání* – Soubor vědeckých prací. Praha, ČR: Metropolitní univerzita Praha, 2011, ISBN 978-80-86855-71-4, s.30-31.

Internet of tomorrow – the greatest potential unifying force of modern times.”⁴⁶ Clearly, ICANN attempts to keep a positive tone and its meetings are opportunities to “spread the good news”. Hence, there are no doubts about the ICANN general attitude as well as the special attitude with respect to gTLDs.xxx during Meeting 44, which will take place in June 2012 in Prague.⁴⁷ Similarly, the voices from the European Union and EURid are more than happy about TLD.eu.

Conceptually, it is necessary to admit that TLD regimes and the DNS setting and application are at the edge between the International law and National law as well as between the Public law and Private law. They are products neither of the state’s will nor of a private organization’s will. They manifestly have supported the perception of industrial property as a conglomerate of public and private elements, i.e. as it has been done consistently by certain authors.⁴⁸

Despite the lack of professional interest, or maybe due to such a lack, TLDs and DNS have been developing successfully in recent years and it will be extremely interesting to observe what the future will bring. Is TLD.eu going to keep up the good work? Are gTLD.xxx about to become a great move in the right direction? If yes, for whom? And how? Are the rules and conditions fair and objective as proclaimed? What is the future of the dispute settlement regarding domain names, especially those from TLD.eu and gTLDs.xxx?

There are definitely many questions and, as well, a healthy potential for a good hope for (at least some) positive answers. Let’s observe the evolution of this economic, legal and technical adventure involving more than 1.6 billions people using the Internet,⁴⁹ and their attitude and preferences regarding the Sophie’s choice about which domain to use for the registration of their computers and networks, i.e. to go either with gTLD or ccTLD or TLD.eu or gTLD.xxx.⁵⁰ *Est rerum omnium magister usus.*⁵¹

⁴⁶Beckstrom, Rod. Opening Remarks. New Generic Top-Level Domains, 12th December, 2011, Moscow, Russia <http://www.icann.org/en/presentations/beckstrom-speech-moscow-12dec11-en.pdf>

⁴⁷ <http://meetings.icann.org/>

⁴⁸ SLOVÁKOVÁ, Zuzana. *Průmyslové vlastnictví*. 2.doplňené a rozšířené vydání. Praha, ČR: LexisNexis CZ s.r.o., 2006, ISBN 80-86920-08-9, s.14 a MacGREGOR PELIKÁNOVÁ, Radka. *Jakou definici průmyslového vlastnictví potřebujeme?* Právní fórum, 2/2009, ISSN 1214-7966, s. 45 a násl.

⁴⁹ ALRAMAHI, Moe. New gTLDs – Pandora’s Box is open. *International Review of Law, Computers & Technology*. July 2010, Vol. 24, No. 2, ISSN 1360-0869, p.183-192.

⁵⁰ WOOD, Nick. Should you apply for a gTLD? *Managing Intellectual Property*. 211/July, August 2011, ISSN 0960-5002, p.28-30.

⁵¹ *Experience is the teacher of all things.*