

AND THE BEST TOP LEVEL DOMAIN FOR EUROPEAN ENTERPRISES IS ...

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Abstract: The virtualization and dematerialization of private as well as business life, including the conduct of business, are noticeable features of the 21st century. One must bear in mind that e-commerce is the biggest and the fastest growing market in the world.⁵⁰ 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 the DNS database placed on special name computer servers into a verbal (literal) form. Such a unique and symbolic name performs many more functions than merely serving as an address and undeniably has a strong significance for successful business conduct. Thus, the choice of a TLD for a domain to be used for entrepreneurial activities truly matters and definitely should be done while considering key factors, including economic, legal, and technical aspects

Keywords: Internet, domains, e-commerce, EU, national domains

Introduction

The overriding phenomenon of the start of the 21st century, the Internet, is a global system built up by computers and their networks which communicate based upon relevant protocols. The Internet's virtual and international nature makes any approach to it, and the many economic and legal aspects related to the Internet and its use, perplexing and causes difficulties with its classification and submission to a certain classical model. At the same time, its critical importance, serving as both beacon and bulwark, its heavy economic and social impact, as well as other related factors, results in it becoming ever more imperative to decisively tackle this issue, possibly bundle of issues, and take on a relevant, constructive and pro-active attitude ultimately leading to the selection, application and enforcement of an optimal economic, as well as legal, regime.¹

1 MacGREGOR PELIKÁNOVÁ, Radka, 2012. New top level domains – pending success or disaster? *Legal and Economic Issues of Central Europe*, Vol.3/2012, No.1, p.75–81. ISSN

One of the core problems and challenges related to the Internet and its use is the issue of identification and liability. Technically, the Internet is a global, worldwide and free connection of network knots through computer networks. They have a unique numeric address determined by the Transmission Control Protocol (TCP) and Internet Protocol (IP) and a unique in word transcribed address, a domain name. The conversion of numeric and word addresses is facilitated by the Domain Name System (DNS). Each and every knot, connected personal or sever computer, website or (sub)domain, has it's domain name and is located within a pre-set space, called a top level domain (TLD) which is identified by an abbreviation. The domain name has a 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 individual spot (e.g., a computer) and the last letters formation, at the very right, refers to the pertinent TLD.

Domains and domain names are becoming truly valuable assets and precious elements of the intellectual property portfolio, despite the lack of their unified legal framework with a strong enforcement. A European Enterprise can establish it's virtual presence under the auspices of various TLDs, each having it's own regime, set of rules and policies, technical and financial requirements. At the same time, each TLD generates different opportunities and challenges. The obvious, at least the far and away most common, choices lie in several TLDs. Before describing them, it is important to review the general framework and the domain name spectrum *per se* (1.). Traditionally, the business TLD Number 1 for everyone was and remains TLD.com (2.) Since 2005, the EU has been offering a matching alternative – TLD.eu (3.). Naturally, entrepreneurs from the EU can use instead of these two a national TLD, ccTLD, which can be, though not necessarily, a TLD of their state (4). Last, but not least, an evolution during the last year generates a brand new option for everyone, the so-called new gTLDs (5.). This presentation does not offer a conclusive and final one-size-fits-all recommendation, but it is a great resource to generate a map of the domain scenario for business conduct in the EU and it should serve as a jumping-off point for an European enterprise wanting to succeed in the postmodern globalized and Internet 'switched-on' society.

1. Domain name spectrum – ccTLDs and gTLDs

Traditionally, TLDs are grouped and categorized into two types – generic TLDs (gTLDs) and national, i.e. country code, TLDs (ccTLD). Registration within a gTLD presents the opportunity to a natural person or legal entity, irregardless 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 is indica-

tive of 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 tj ISO 3166, e.g. „.cz“, „.de“ či „.uk“.

Since 2006, the two-pronged offer of conventional gTLDs and 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“ – „TLD.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

The current DNS is managed and operated by a not-for-profit public benefit corporation, the Internet Corporation for Assigned Names and Numbers (ICANN). Principal tasks of ICANN include coordination of the DNS, IP, root system functions and the assigning of gTLDs as well as ccTLDs.

These TLDs operate on various models sharing a similar structure. Typically, a TLD has a designated Registry operator, often just called Registry. ICANN and each Registry enters into a Registry Agreement regarding a particular TLD and charging the Registry with the duty to exercise a public service for the Internet community, i.e. a Registry is responsible for the technical operation of this TLD. Registries can partially delegate their functions and as a matter of fact they do so and use the accredited Registrars for the registration of domains and domain names based on a Registrar Agreement, i.e. each TLD Registry has its own standard Registrar Agreement to be concluded with all Registrars. The accreditation of (at least some) Registrars is executed by ICANN. Based on Registration Agreements, Registrars deal with Registrants and holders and other end-users. Thus, the selection of a TLD by a potential Registrant should be followed by his or her decision about which Registrar to use. For example, current gTLDs are served by over 900 independent Registrars who interact with Registrants. Each Registrar develops its own strategies, including the determination of prices and other charges, i.e. different Registrars can charge different prices for the registration of an identical domain name.³

The harmonization, if not directly unification, of TLD systems and their compliance with the fundamental policies is achieved by contractual instruments transposing certain clauses, e.g. Uniform Dispute Resolution Policy (UDRP).

2 BECKSTROM, Rod. Speech – Opening Remarks. *Seminar on New Generic Top-Level Domains*, 8th December 2011, Beijing, China, p.4. Available at <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. Available at <http://newgtlds.icann.org/en/applicants/agb>

The backbone contractual instruments share these clauses, i.e. they are to be found in Registry Agreements, Registrar Agreements and Registration Agreements. Naturally, along with these “standard” clauses, the Registry for each TLD and its own Registrars develops their own policies and rules and includes them in Registrar Agreements and Registration Agreements. These particularities as well as the implementation and operation itself by a Registry and its Registrars matter! Hence, the name and cost are just some of the factors to be taken into account when selecting a TLD and the particular Registrar!

2. Going globally generic? TLD.com, please!

Among the historically oldest gTLDs created in 1984 was one gTLD which has always been the most popular for business, i.e. TLD.com. It needs to be emphasized that TLD.com is a gTLD open not only to all entrepreneurs and business persons. Its impressive popularity and exponential growth for almost two decades is the reason for an appreciation as well as for a worry about its further smooth operation. A European entrepreneur has the option to register his or her domain within TLD.com and as a matter of fact, due to its massive popularity and proclaimed suitability for business conduct, the registration within TLD.com should be always seriously considered. Nevertheless, even a cursory review of TLD.com shows that TLD.com is definitely not the best solution for everyone.

Originally, the TLD.com was intended to be the TLD for businesses *par excellence*, the low registration requirements and their low enforcement resulted in a non-restriction character of TLD.com since the mid-1990s, i.e. TLD.com became a TLD for everyone. As a matter of fact, during the 1990s there occurred a true boom when TLD.com became the most heavily used TLD for e-commerce, website presentations, email and networking, as a result of which this period was called the *dot.com companies* era. The introduction of additional gTLDs designated for businesses and open to all did not impact seriously this development, and thus it was the political and economic issues, rather than the emergence of the so called concurring TLD.biz in 2012 which impacted the so far *win-win* TLD.com.

Similar to other TLDs, the institutional framework and operation of TLD.com consists of the coordinator ICANN, the Registry Verisign Global Registry Services, and a number of Registrars taking care of registrations and dealing directly and on a daily basis with Registrants. The Registry Agreement for TLD.com was entered by ICANN and Verisign Inc. in 2006,⁴ underwent 5 amendments⁵ and has 10 Appendices, including Appendix No.8 with a model Registrar

4 .com Registry Agreement between ICANN and VeriSign, Inc. March 1, 2006. Available at <http://www.icann.org/en/about/agreements/registries/verisign/registry-agmt-com-22sep10-en.htm>

5 Amendment No.5 to the .com Registry Agreement between ICANN and VeriSign modify-

Agreement, i.e. the Agreement to be entered into by the Verisign Global Registry Services with each of the accredited Registrars. The registration fee charged by the Registry to Registrar for each registered domain is USD 7 and the ultimate fee to be paid for the registration of a domain by the Registrant to Registrar oscillates between USD 10 and 20. Registry Agreement, Registrar Agreements and even Registration Agreements include a UDRP clause and so TLD.com disputes are decided by one of four, by ICANN accredited, ADR providers. One of them is the WIPO Center.

VeriSign's control of principal gTLDs was the subject of much external as well as internal criticism, including from ICANN. Ultimately, VeriSign moved to the decentralization approach and partially reduced its portfolio, while keeping the Registry function for TLD.com and TLD.net. In 2010, Verisign Global Registry Services executed seizure orders issued by the U.S. Immigration and Customs Enforcement agency and turned down a large number of domains within TLD.com that were suspected of being used for the illegal sale and distribution of counterfeit goods. Naturally, this act raises a number of questions and contributes to the discussion about the (in)appropriateness of entrusting the most popular TLD to a private US corporation, and an European Entrepreneur desiring to add his domain to the existing over 100 million domains in TLD.com⁶ should consider it and understand the contractual instruments and pertinent clauses, especially those about technical performance, fee policy and dispute resolution.

3. Going generically European? TLD.eu, please!

The European integration represents a concept predominantly understood as a procedure for unification on an economic level, including the field of information technology. More precisely, European integration should be perceived as a complex phenomenon entailing an abundance of complicated processes in various fields.⁷ The economic area is at this center and the Internet issues are its critical points. Therefore, Europeanization contributes and supports the decision of European enterprises to use the European infrastructure and Internet venues to do business, to go via TLD.eu. The integration requirements contributed to the fact that European law, as the EU law (or law of the EU) and the law of EURATOM,⁸ and European institutions have been heavily endorsing the Europeanization of the domain portfolio of Entrepreneurs from the EU.

ing Appendix 8 of the March 1, 2006. Entered on July 5. 2012. Available at <http://www.icann.org/en/about/agreements/registries/verisign/registry-agmt-amendment-5-05jul12-en.htm>

6 <http://www.whois.sc/internet-statistics/>

7 VEČEŘA, Miloš, 2012. The Process of Europeanization of law in the context of Czech law. *Acta universitatis agriculturae et silviculturae Mendelianae Brunensis*, LX, 60, 2, p.459–464. ISSN 1211-8516.

8 POREMSKÁ, Michaela, VÍTEK, Bohumil, 2012. European Law as terminological issue. *Acta universitatis agriculturae et silviculturae Mendelianae Brunensis*, LX, 68, 2, p.517–522.

The idea of a TLD for the EU emerged over one decade ago and the proposed TLD.eu demonstrated from its beginning a number of differences in comparison to conventional gTLDs and ccTLDs, and this in regard to openness and requirements as well as the institutional framework. The starting point of this project occurred in 2000, when ICANN approved the granting of the numeric code alfa-2 “eu” and made possible the issuance of 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 strategy⁹ and the Council resolution 2000/C 293/02 on the organization and management of the Internet,¹⁰ the Commission selected the European Registry for Internet Domain „EURid“ to be the Registry for TLD.eu. The Commission Regulation (EC) No 874/2004 laid down public policy rules concerning the implementation and functions of TLD.eu and the principles governing registration (Regulation 874/2004).¹¹

Based on these two highly important regulations for TLD.eu, Regulation 733/2002 and Regulation 874/2004, the European Commission entered, with EURid, into an agreement on TLD.eu and the registration of its domain names and TLD.eu was launched. Thus clearly the traditional triangular contractual framework was extended and ICANN, Registry (EURid), and Registrars were joined by EU organs and institutions. Thus the normally private law decentralized structure for a TLD is significantly modified for TLD.eu.

As a result, since 2006 any legal entity or natural person from a member state of the EU is able to apply for, and become a holder of, a domain from the TLD.eu. The sources for the pertinent legal regime are rules issued by the EU, especially both Regulations, as well as by ICANN and EURid, particularly Domain Name Registration General Conditions (General Conditions) and Registration Rules. According to Regulation 874/2004¹² 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 the Agricultural Chamber of the Czech Republic. The dispute proceedings are governed by Alterna-

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- 9 *The initiative eEurope approved by the European council in Lisbon on 23rd and 24th 2000.*
- 10 „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.“
- 11 MacGREGOR PELIKÁNOVÁ, Radka, 2011. Právní a ekonomický úspěch domény nejvyšší úrovně .eu – pravda či mýtus roku 2011? *Právo, ekonomika, management*, Vol.2, 4/2011, p.2–10. ISSN 1804-3550.
- 12 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.”

tive Dispute Resolution Rules (ADR Rules) and Supplemental ADR Rules of the Arbitration Court attached to the Economic Chamber of the Czech Republic and the Agricultural Chamber of the Czech Republic.¹³ A complementary soft-law regulation is represented by the EURid code of conduct from 2007.

A financial analysis of TLD.eu sounds *prima facie* positive. EURid charges local Registrars only 4 EUR per domain name from TLD.eu, but still operates in the black numbers on its financial statements. Naturally, Registrants and 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 services 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 to those for domain names from ccTLDs. In point of fact, 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.¹⁴ The dispute resolution fee for the use of the ADR mechanism has decreased to 1 300 EUR, but is still criticized as too high for a SME, especially considering that the winning party does not obtain a reimbursement of this fee.

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 growth in the amount of domain name registrations reaches 5–10% annually and the TLD.eu is the 4th most popular ccTLD in the territory of the EU¹⁵ and one of the ten most popular TLDs. 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 over 3.5 million domains within TLD.eu, 150 thousand of which are “Czech”,¹⁶ does not indicate a great success *per se* and a guarantee for the future, especially when one considers that there are over 210 million domain names in gTLDs, including over 100 millions in TLD.com and 13 million of domain names in TLD.net.¹⁷

As a matter of fact, one third of the holders of domain names from TLD.eu are involved in business and it is probably instructive to study how they perceive the EU and the EU’s economic viability and how important (and worthy) it is for them to promote their European identification. According to survey

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

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

15 The largest number of national domain name registrations within the EU is in German TLD („.de“), in Great Britain TLD („.uk“) and in the Netherlands TLD („.nl“).

16 <http://www.eurid.eu/en/about/facts-figures/statistics>

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

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 a SME (small-medium-enterprise). The smoothness of the registration and administration of European domain names is assured by 18 Czech accredited Registrars. Naturally, these are not the only options 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.

In sum, there is an abundance of data and evidence demonstrating that TLD.eu in principal meets pre-set goals, e.g. general satisfaction of the public from the EU with the legal regime as well as organic structure, profitable operation of EURid incentive programs such as a 50% fee reduction in the case of a registration for more than one year and a dispute settlement mechanism addressing and resolving conflicts regarding domain names and intellectual property rights within weeks, or just a few months. In addition, strategic and marketing considerations stimulate businesses to protect their intellectual property portfolio by the registration of “preventive” domain names within TLD.eu.

Quo vadis TLD.eu? Are you going to keep up the good work and match, or even supersede, concurring ccTLDs and gTLDs? The answer should definitely take into account the ccTLDs from the EU and *vanity* ccTLDs as well as the concept of the unlimited amount of new gTLDs.

4. Going conventionally or less conventionally national? Cozy and individual rather than large and global? A ccTLD would do it!

One of the obvious choices to conduct business via a TLD is the use of the national TLD of the provenience of the entrepreneur. Naturally, a Czech entrepreneur should consider exploring the TLD.cz which is, since the mid 1990's, a legitimate venue to do business in, and explore the benefits of communication instruments.¹⁸ The current structure and organization of TLD.cz has been strongly marked by its Registry and sponsor, an interest association of legal entities CZ.NIC, z.s.p.o. (CZ.NIC). CZ.NIC is a legal entity created by Internet services providing entities, including the academic association CESNET z.s.p.o., and registered in a Registry kept by the Prague Municipality. Since its beginning in 1998, its key status documents are the Foundation Agreement and Bylaws, the latest version is from June 2012.¹⁹ Perhaps special attention should be paid to

18 HOSTAŠ, Petr. Praxe při registraci národních domén .cz a řešení sporů. In *Sborník příspěvků z konference pořádané na Vysoké škole veřejné správy a mezinárodních vztahů v Praze ve spolupráci s Úřadem průmyslového vlastnictví Praha v pátek dne 22.6.2007*, s.34.

19 More information available at <http://www.nic.cz/> resp. http://www.nic.cz/files/nic/Stanovy20120612-26-schvalene_zneni.pdf

Art.1 of the Bylaws, which includes fundamental provisions, scope of business of CZ.NIC,²⁰ its financing²¹ and its organic structure.²²

Within the scope of its authorization and in accordance with relevant agreements entered into with ICANN²³ and the Czech state,²⁴ CZ.NIC is responsible for key functions, such as maintaining the name server for TLD.cz, actualization of .cz zone and maintaining the compatibility and access to the Internet. Accordingly, CZ.NIC coordinates with respect to the DNS and issues and enforces registration and dispute resolution rules, e.g. it pushes through the arbitration clause empowering the Arbitration Court in Prague. As a matter of fact, in the summer of 2012, CZ.NIC arranged for updating the Registration rules²⁵ and ADR Rules.²⁶

For technical issues, CZ.NIC relies on one of its members and the true precursor, EUNET.²⁷ Further, CZ.NIC uses a decentralized management system and entrusts the registration *per se* to a number of accredited Registrars functioning on a commercial basis and this leads to an increase in the quality of provided

20 Čl. I. Stanov – 4. Předmět podnikání sdružení – 4.1. *Předmětem podnikání sdružení je a) zpracování dat, služby databank, správa sítí; b) služby v oblasti administrativní správy a služby organizačně hospodářské povahy u fyzických a právnických osob. 4.2. V rámci podnikání tak sdružení a) definuje pravidla registrace doménových jmen pod ccTLD CZ, průběžně tato pravidla aktualizuje a vytváří mechanismy pro zabezpečení jejich dodržování. b) zajišťuje registraci doménových jmen druhé úrovně pod ccTLD CZ. c) zajišťuje provoz jmenných serverů pro ccTLD CZ. d) zastupuje ccTLD CZ při koordinaci národních a regionálních registrářů a standardizačních institucí.*

21 Čl. I. Stanov – 5. Financování sdružení – 5.1. *Činnost sdružení je financována z a) vstupních členských příspěvků, b) registračních a udržovacích poplatků za registrace doménových jmen pod ccTLD CZ a c) dalších zdrojů. 5.2. Vstupní členský příspěvek činí 5.000,- Kč. 5.3. Registrační a udržovací poplatky za registrace doménových jmen pod ccTLD CZ jsou stanoveny v cenících, které schvaluje představenstvo sdružení.*

22 Čl. I. Stanov – 6. Orgány sdružení Orgány sdružení jsou ▫ Valná hromada (část III stanov) ▫ Kolegium (část IV stanov) ▫ Představenstvo (část V stanov) ▫ Dozorčí rada

23 Accountability Framework (AF) – Registry Agreement about TLD.cz between CZ.NIC and ICANN on November 1, 2006. Available at <http://www.icann.org/en/about/agreements/cclds> and reflecting Memorandum of Understanding/Joint Project Agreements between U.S. Department of Commerce (DoC) a ICANN from November 25, 1998 and September 29, 2006 and Affirmation of Commitments between U.S. Department of Commerce (DoC) a ICANN from September 30, 2009.

24 Memorandum about the administration of the domain space entered by the Ministerium of Informatics and CZ.NIC on April 21st, 2006, Memorandum about Computer Emergency Response Team – CSIRT.CZ entered by the National Security Authority and CZ.NIC entered on March 28th, 2012 and confirming Memorandum about the infrastructure, the Internet and IPv6 entered by the Ministry of Industry and Commerce and CZ.NIC on June 25th, 2012.

25 http://www.nic.cz/files/nic/doc/Pravidla_registrace_CZ_DSDng_20120601.pdf

26 http://www.nic.cz/files/nic/Pravidla_ADR_20120401.pdf

27 TRAPL, Vojtěch. Právní problematika národní domény .cz. In Sborník příspěvků z konference pořádané na Vysoké škole veřejné správy a mezinárodních vztahů v Praze ve spolupráci s Úřadem průmyslového vlastnictví Praha v pátek dne 22.6.2007, p.10.

services and a decrease in the fees to be paid by the ultimate clients, Registrants.²⁸ Currently, almost fifty Registrars assist with the registration and administration of nearly one million domains registered within TLD.cz.²⁹

The ration of one domain within TLD.cz for every ten Czech citizens suggests that Czech entrepreneurs go “national”. As mentioned above, they use extensively as well the quasi-national, or more specifically supra-nationally regional, TLD.eu, i.e. over 150 thousand domain names within TLD.eu are registered for Czechs.³⁰ Nevertheless, the majority of Czech entrepreneurs ignore the fact that there are more options and opportunities for them within the ccTLDs spectrum. One of the overlooked possibilities is the use of ccTLDs with commercial licenses, especially *vanity* ccTLDs. Entrepreneurs in neighboring countries show more initiative, open mindedness and knowledge and they go ahead and increasingly use domains from very exotic island countries. This can be demonstrated by the ccTLD of the islands of Tokelau and Teletok in the South Pacific – TLD.tk, which was created in 1997 and whose sponsor is the state government of Tokelau and Teletok and whose Registry is Dot TK, resp. BV Dot TK.³¹ The TLD.tk has undergone a successful evolution and the number of its active domains in 2012 exceeded the number of active domains of the tremendously popular conventional ccTLD belonging to Great Britain, TLD.uk.³² The exponential growth should continue and it is even suggested that TLD.tk will pass the most popular ccTLD., TLD.de.³³ The great prospects of TLD.tk are well based since the registration is open, almost no requirements are imposed and the entire operation

28 HERCJUK, Tomáš. *Domény a kontextová reklama: bakalářská práce* č.TH Praha, ČR, 2012. Metropolitní univerzita Praha. Vedoucí práce JUDr. Vladimír Zamrzla, s.6.

29 More informatik available at <http://www.nic.cz/> resp. http://www.nic.cz/files/nic/Stanovy20120612-26-schvalene_zneni.pdf

30 <http://www.eurid.eu/en/about/facts-figures/statistics>

31 More information availalbe at the internet page Dot TK <http://www.dot.tk/en/index.html?lang=en>

32 .UK domain hits 10 million milestone – 10 million .uk domain names currently registered. *Domain Name Wire*, March 16, 2012. Available at <http://domainnamewire.com/2012/03/16/uk-domain-hits-10-million-milestone/> – *Today .uk domain registry Nominet announced that the .uk domain crossed the 10 million domain milestone this week. The domain name swarvemagazine.co.uk, registered on March 12, represented the 10 millionth domain. Of course, more than 10 million domains have been registered to date, but this is the base of currently registered .uk domain names. The .uk domain ranks fourth in the world for size, following .com, .de (Germany), and .net, according to VeriSign's latest domain industry report. That makes it number two for country code domain names, with .tk for Tokelau nipping at its heels.....*

33 BERKENS, Michael H., 2012. The Inside Story of the Fastest Growing TLD.TK Adding 1M Registrations Per Month It's Free & Soon # 1. *The Domains*, March 17, 2012. Available at <http://www.thedomains.com/2012/03/17/the-inside-story-of-the-fastest-growing-tld-tk-adding-1m-registrations-per-month-its-free-soon-1/> – „The extension is is .TK and its the ccTLD of the tiny island nation of Tokelau located in the South Pacific, population 1,268... the worlds 2nd largest ccTLD ... and not long after that will pass .De to become the number one ccTLD...”

is profit generating despite the collection of fees from Registrants.³⁴ Thus more or less any person without paying any fee³⁵ can register and become a holder, i.e. Registrant, of a domain within TLD.tk. In addition, IDN and an active protection against domain hijacking is provided. Further, the TLD.tk policy limits speculations with domain name registrations by requiring an active www use³⁶ and by applying a unique anti-abuse program,³⁷ which allows a fast identification, immediately followed by the confiscation of the fraudulent domain.³⁸

Such an attractive offer is gladly accepted by many entrepreneurs from all over the world, especially from China, Vietnam, India, and Russia. The number of active domains within TLD.tk passed 11 millions and every day is increased by approximately 40 thousand new domains. Provided this trend continues, then in the beginning of 2013 the number of domains within TLD.tk should reach 17 million. Inasmuch as the most popular ccTLD in the EU, TLD.de, has “only” 15 million domains and does not grow aggressively, it seems that *Dot TK*, especially its very proactive director and skillful business and marketing expert,

34 BERKENS, Michael H., 2012. The Inside Story of the Fastest Growing TLD.TK Adding 1M Registrations Per Month It's Free & Soon # 1. *The Domains*, March 17, 2012. Available at <http://www.thedomains.com/2012/03/17/the-inside-story-of-the-fastest-growing-tld-tk-adding-1m-registrations-per-month-its-free-soon-1/> – „All previously owned, non-renewed domain names, plus those that were taken back by the registry for non-compliance with its rules wind up being owned and retained by the registry. There are 45 Million domains owned by the registry. Those 45 Million domain names generate 5 Million visitors a day. Yes million. That traffic is monetized by the registry by parked pages (yes the same type of pages they do not allow registrants to have on .TK domains). The registry declined to say how much money was being generated from those parked pages but they did say that the .TK registry was now the second largest revenue producer for the country.“

35 Note.: approximately half million of domains from TLD.tk are „special“, e.g. for one letter or one number domain name is charged the Annual fee of USD 2 500. Further not renewed or confiscated domain names belong to *Dot TK* (in this case the passive holding is allowed!) Currently, there are 45 millions and are visited every day by 5 millions people and the paid access to them is a big source for financing TLD.tk.

36 BERKENS, Michael H., 2012. The Inside Story of the Fastest Growing TLD.TK Adding 1M Registrations Per Month It's Free & Soon # 1. *The Domains*, March 17, 2012. Available on <http://www.thedomains.com/2012/03/17/the-inside-story-of-the-fastest-growing-tld-tk-adding-1m-registrations-per-month-its-free-soon-1/> – „You can register your domain name for between 1–12 months however you need to have the domain live, with content, not simply parked or within 72 hours of registration or the domain will be taken away.“

37 Note.: a reinforced monitoring version is provided for a fee of až USD 799 monthly.

38 BERKENS, Michael H., 2012. The Inside Story of the Fastest Growing TLD.TK Adding 1M Registrations Per Month It's Free & Soon # 1. *The Domains*, March 17, 2012. Available on <http://www.thedomains.com/2012/03/17/the-inside-story-of-the-fastest-growing-tld-tk-adding-1m-registrations-per-month-its-free-soon-1/> – „The .TK Registry has an immediate take down policy for abuse including any domain they find engaging in Spam, the distribution of Malware or viruses and doesn't allow any domain to be used for phishing. The .Tk Registry uses a combination of people checking on 1,200 domains per hour to see if they are in compliance along with content filter and virus software...“

Joost Zuurbier, and the government of Tuvalu should be able soon to proudly announce that their TLD.tk is number one ccTLD.³⁹

5. Going as free and as new as possible? A new gTLD just for you!

After a quarter century of great functioning of gTLDs there occurred a revolutionary moment for the DNS when, in January 2012, there was launched a project of unlimited new gTLDs. The DNS became open to everyone for freely applicable new TLDs, i.e. open to quasi everyone for quasi anything.⁴⁰ After years of hesitations, the events start to move rapidly.

Some private parties, natural persons as well as legal entities, gladly embraced this new opportunity and are eagerly preparing to apply for and to hold attractive gTLDs, such as „car“, „eco“, „hotel“, „shop“.⁴¹ The length of the registration process, the launching difficulties and the cost reaching 185 thousands USD⁴² are not about to deter them. Other private parties are much more reluctant or even opposed, as they are suspicious about speculation⁴³ and abuses by applicants and greediness from ICANN.

ICANN is determined to maintain a friendly and open-minded appearance and thus had invited and kept inviting all stakeholders to express their opin-

39 TRIK, Marcel, van der MEER, Maurice, ZUURBIER, Joost, DALRYMPLE-SMITH, Hugo, GODRECHE, Jeremie, 2012. Dot TK has grown to the second largest country code top level domain. *Domain Daily*. Palo Alto (CA), USA : Freedom Registry, 25.June 2012 – „*The exponential growth of Dot TK continues because of its free domain name registration process while all other top level domain registries require a nominal charge per year and some level of administrative bureaucracy. Furthermore, Dot TK allows internationalized domain names (IDN) – ... Dot TK expects to reach the 17 millionth active domain name registration before the end of this year...*“

40 ARTHUR, Charles, 2011. ICANN announces huge expansion of web domain names from 2012. *The Guardian*, June 20, 2011. ISSN 0621-3077. Available at <http://www.guardian.co.uk/technology/2011/jun/20/icann-domains-expansion-announced> – „*ICann's decision follows years of discussion and debate, and went through more than seven revisions. ICann insists that strong efforts were made to address the concerns of all interested parties, and to ensure that the security, stability and resiliency of the internet are not compromised. The move is the biggest change to the internet's domain naming system since ".com" was introduced 26 years ago, which opened out the formerly academic and military system to commercial use. ICann will receive applications for new domain names for 90 days from 12 January 2012. The fee is \$185,000, and the form for application is 360 pages long. It will also begin an awareness campaign pointing out that it has introduced the new scheme.*“

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

42 ROUBEIN, Rachel. Cities could cash in on new domain extensit, 2011. *USA TODAY*. 7/13/2011, ISSN 0734-7456. ROSENFELD, Everett, 2011. The End of the .com Era. *Time*. 7/4/2011, Vol. 178, Issue 1, p.25. ISSN 0040-781X.

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

ions, suggestions, and concerns regarding the new gTLD.⁴⁴ At the same time, the well established standing of key leaders and representatives of ICANN is fairly obvious. The last President and CEO of ICANN, Rod Beckstrom, delivered a pertinent speech on 12th December 2011 in Moscow, Russia.⁴⁵ He described the launching of new gTLDs 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 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 patently obvious that the enthusiasm concerning new gTLDs and about the regime does not radiate from everyone and even the website of ICANN reveals many dissenting and discontented postings, while ICANN itself admits that there are risks (and issues) involved.⁴⁶

So far almost two thousand new gTLDs have been applied for (and paid). The review, objections, evaluation, and registration process regarding the first cohort is culminating at the very moment of the drafting of this presentation and shortly the first new gTLDs should be cleared and ready for delegation.

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. As the exclusive service provider of dispute resolution services for trademarks, the WIPO Arbitration and Mediation Center has sufficient resources for this new procedure and accommodates the Trademark Rights Protection Mechanism for new gTLDs.⁴⁷ The process is rather expensive, since the fee for a legal right objection case reaches 10 thousand USD.⁴⁸

The introduction of new gTLDs is a dynamic process with the vivid participation of the Internet community, heated discussions and resulting numerous ongoing and *ad hoc* changes. 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? Are we going to “*Catch lightning in a bottle*”, as Baseball Hall-of-Famer Leo Durocher used to say, or be struck by it? Naturally, no unanimous answer is available at this point and the insufficiency of informa-

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

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

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

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

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

tion, together with the lack of experience dealing with such trends makes the evaluation and forecasting difficult, if not directly impossible.

Conclusion

The virtualization and dematerialization of private as well as business life, including the conduct of business, are noticeable features of the 21st century. One must bear in mind that e-commerce is the biggest and the fastest growing market in the world.⁴⁹ 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 the DNS database placed on special name computer servers⁵⁰ into a verbal (literal) form. Such a unique and symbolic name⁵¹ performs many more functions than merely serving as an address and undeniably has a strong significance for successful business conduct. Thus, the choice of a TLD for a domain to be used for entrepreneurial activities truly matters and definitely should be done while considering key factors, including economic, legal, and technical aspects.

Conceptually, it is necessary to admit that TLD regimes and the DNS setting and application are on the edge of International law and National law as well as between 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.⁵²

Since conventionally neither international treaties nor national statutes⁵³ regulated the administration and distribution of domains and domain names and states have exercised none or just a limited influence,⁵⁴ various instruments started to be developed by the coordinator ICANN and private Registry and Registrars to mitigate it. One of the best known is the global use of standardized rules, such as UDRP, and four listed ADR providers, i.e. to the WIPO Arbitration

49 CORTÉS, Pablo, 2011. 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, p.1. ISSN 0967-0769.

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

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

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

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

54 As a matter of fact, traditionally the only state directly involved in these types of issues, the USA, has been criticized for the interference and was requested to withdraw. Even the recent involvement of the EU has a rather moderate extent.

and Mediation Center, the Arbitration Center for Internet Disputes at the Czech Arbitration Court, National Arbitration Forum, and the Asian Domain Name Dispute Resolution Centre.

The EU is aware of this trend and understands intellectual property rights, including the denomination rights,⁵⁵ as an important instrument for (de)regulation and support of all four cornerstone freedoms – movement of persons, goods, services, and capital.⁵⁶ Thus, the EU offers and endorses the TLD.eu operated by EURid and accredited Registrars. Undoubtedly, TLD.eu is a domain to be considered by entrepreneurs from the EU along with the traditional first business domain option, TLD.com. Nevertheless, both of them are truly big domains with a heavy and rigid regime. Thus an entrepreneur focusing on flexibility and local significance may prefer ccTLDs, either conventionally their own ccTLD or any appropriate *vanity ccTLD*. For a Czech entrepreneur these options are the old reliable TLD.cz operated by CZ.NIC and a very dynamic, thus maybe not completely stable, TLD.tk. A list of TLD options after January 2012 would be incomplete without the new gTLDs.

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.com about to protect its leading position? Is TLD.eu going to keep up the good work? Is the era of ccTLDs over? Are *new gTLDs* about to become a great move in the right direction? If yes, for whom, and how? Are the applicable or just suggested 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 *new TLDs*?

In today's rapidly changing, tension-filled world, we are confronted with an increasing number of various concepts of knowledge, methods, etc., and it is extremely challenging to go ahead with communication, unification and/or integration.⁵⁷ Although there are many issues, challenges, and questions, there is, as well, a healthy potential for (at least some) positive answers and for the achievement of an efficient and effective virtual presence and communication.

Let's observe the evolution of this economic, legal and technical adventure involving more than 1.6 billion people using the Internet,⁵⁸ and their attitude

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

56 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.

57 URBANOVÁ, Martina, DUNDELOVÁ, Jana, ROZBOŘIL, Blahoslav, 2012. Knowledge society in 21st century. *Acta universitatis agriculturae et silviculturae Mendelianae Brunensis*, LX, 70, 2, p.533–537. ISSN 1211-8516.

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

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 *new gTLD*.⁵⁹ The first American Nobel laureate in economics and probably the foremost academic economist of the 20th century, Paul A. Samuelson made/had a point with his statement "*I don't care who writes a nation's laws — or crafts its advanced treatises — if I can write its economics textbooks,*"⁶⁰ but regarding the choosing of the best domain venue for business the legal framework really matters, at least as much as do the economic and technical considerations and criteria.

References

- ALRAMAHI, Moe, 2010. New gTLDs – Pandora's Box is open. *International Review of Law, Computers & Technology*. Vol. 24, No. 2, p.183–192. ISSN 1360–0869.
- ARTHUR, Charles, 2011. ICANN announces huge expansion of web domain names from 2012. *The Guardian*, June 20, 2011. ISSN 0621-3077. Dostupné na <http://www.guardian.co.uk/technology/2011/jun/20/icann-domains-expansion-announced>
- BECKSTROM, Rod. Speech – Opening Remarks. *Seminar on New Generic Top-Level Domains*, 8th December 2011, Beijing, China, p.4. Available on <http://www.icann.org/en/presentations/beckstrom-speech-new-gtlds-beijing-08dec11-en.pdf>
- BERKENS, Michael H., 2012. The Inside Story of the Fastest Growing TLD.TK Adding 1M Registrations Per Month It's Free & Soon # 1. *The Domains*, March 17, 2012. Dostupné na <http://www.thedomains.com/2012/03/17/the-inside-story-of-the-fastest-growing-tld-tk-adding-1m-registrations-per-month-its-free-soon-1/>
- CORTÉS, Pablo, 2011. 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, p.1. ISSN 0967-0769.
- FINKEL, Ed. The XXX Factor, 2011. New Domain Names Could Lead to Trademark Problems for Businesses. *ABA Journal*. November 2011, Vol. 97, Issue 11, p.28. ISSN 0747-0088.
- FOX, Maggie, 2011. ICANN OKs Domain-Name Free-For-All. *Congress Daily*. 6/20/2011, p.4. ISSN 1936-6132.
- GOLDSBOROUGH, Reid, 2011. World of Website Addresses Poised for Dramatic Expansion. *Community College Week – Technology Today*. 7/25/2011, p.31. ISSN 1041-5726.

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

60 WEINSTEIN, Michael M., 2009. Paul A. Samuelson, Economist, Dies at 94. *The New York Times*, December 13, 2009. Available at <http://www.nytimes.com/2009/12/14/business/economy/14samuelson.html?pagewanted=all&r=0>

- HATCH, David, 2011. No ICANN Do. *National Journal*. 5/21/2011, p.15. ISSN 0360-4217.
- MacGREGOR PELIKÁNOVÁ, Radka, 2009. Jakou definici průmyslového vlastnictví potřebujeme? *Právní fórum*, 2/2009, s. 45 a násl. ISSN 1214-7966.
- MacGREGOR PELIKÁNOVÁ, Radka, 2010. Intellectual property rights and their enforcement in the Czech Republic. *Journal on Legal and Economic Issues of Central Europe*. Vol.1, No.1, p.15. ISSN 2043-085X.
- MacGREGOR PELIKÁNOVÁ, Radka, 2011. Právní a ekonomický úspěch domény nejvyšší úrovně .eu – pravda či mýtus roku 2011? *Právo, ekonomika, management*, Vol.2, 4/2011, p.2–10. ISSN 1804-3550.
- MacGREGOR PELIKÁNOVÁ, Radka, 2012: New top level domains – pending success or disaster? *Legal and Economic Issues of Central Europe*, Vol.3/2012, No.1, p.75–81. ISSN 2043-085X.
- POREMSKÁ, Michaela, VÍTEK, Bohumil, 2012. European Law as terminological issue. *Acta universitatis agriculturae et silviculturae Mendelianae Brunensis*, LX, 68, 2, p.517–522. ISSN 1211-8516.
- ROUBEIN, Rachel, 2011. Cities could cash in on new domain extensit. *USA TODAY*. 7/13/2011, ISSN 0734-7456.
- ROSENFELD, Everett, 2011. The End of the .com Era. *Time*. 7/4/2011, Vol. 178, Issue 1, p.25. ISSN 0040-781X.
- VEČEŘA, Miloš, 2012. The Process of Europeanization of law in the context of Czech law. *Acta universitatis agriculturae et silviculturae Mendelianae Brunensis*, LX, 60, 2, p.459–464. ISSN 1211-8516.
- WOOD, Nick, 2011. Should you apply for a gLTD? *Managing Intellectual Property*. 2011/July, August 2011, p.28–30. ISSN 0960-5002.