

Sensitive names: the saga of .ram and gTLDs

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With new generic top-level domains close to launch, Lucy Rana takes a look at ways to deal with applications that might be offensive in India.

At the Durban meeting of the Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) in July, India objected to the registration of .ram as a generic TLD (gTLD), the application for which was filed by the automobile giant Chrysler Group LLC.

The objection has its root in the word ram, which is a homonym for the Hindu God Lord Rama (or Ram). Government officials fear that if such a registration were allowed, it could be used to create

domain names such as www.murder.ram or www.sex.ram which may not only hurt the religious sentiments of Hindus but may also raise community tension.

The gTLD process has provided entrepreneurs, businesses, governments and communities around the world an opportunity to obtain a TLD registry of their own choosing, but instances like this have highlighted the flipside.

New domains

On June 20, 2011 ICANN voted to launch the new gTLD programme so as to foster diversity and encourage competition. The characteristic feature of the second generation gTLD is that it can be anything from the name of a company or a country to a sport or an object.

Expanding on the world of .com, .gov, .org and 19 other gTLDs, the new gTLD programme opened the door for all types of words in many different languages and scripts to become TLDs.

The first large-scale expansion of the TLD name space drew 1,930 applications (for 1,409 different new gTLDs) from 60 countries and territories, including 66 geographic name applications and 116 internationalised domain names (IDNs) in non-Latin characters for strings in scripts such as Arabic, Chinese and Cyrillic. Twenty of those are from India, for names including .tata, .infosys, .hdfc and .sbi.

Early warnings

Following the submission of the application and administrative completeness check performed by ICANN, a comment period is provided for the community to review and submit comments on posted application materials. Concurrent with the 60-day comment period, the GAC may issue an Early Warning notice concerning an application. Interestingly, on November 20, 2012, a GAC Early Warning was submitted with respect to the .ram domain. The reasons as cited in the notice are produced below:

“Ram is a deity worshipped in India, in the Hindu religion, with a large following. Ram is worshipped as a Hindu God and is the hero of one of the great epics of the country, the *Ramayana*, which is a globally famous work.

“Section 9(2) of the Indian Trade Mark Act clearly mentions that a mark shall not be registered if it contains or comprises any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India.

“As a result, and based on the provisions of the Indian Trade Mark Act, we believe that the gTLD string .ram should be set aside by ICANN.”

Other GAC Early Warnings with India as filing GAC member are shown in the table below.

The GAC may provide public policy advice directly to the ICANN Board on any application. GAC's Advice on New gTLDs is to be submitted by the close of the objection filing period. A GAC Early Warning is not a prerequisite to using the GAC advice process.

If the board receives GAC Advice on New gTLDs stating that it is the consensus of the GAC that a particular application should not proceed, it will create a strong presumption for the ICANN Board that the application should not be approved. If the board does not act in accordance with this type of advice, it must provide a rationale for doing so.

"In the event of multiple objections, an applicant must prevail in all dispute resolution proceedings concerning the application to proceed to the next relevant stage."

Applicants failing certain elements of the initial evaluation can request an extended evaluation. Where formal objections are filed and filing fees paid during the objection filing period, independent dispute resolution service providers (DRSPs) will initiate and conclude proceedings based on the objections received.

As a result of a dispute resolution proceeding, either the applicant will prevail (in which case the application can proceed to the next relevant stage), or the objector will prevail (in which case either the application will proceed no further or the application will be bound to a contention resolution procedure).

In the event of multiple objections, an applicant must prevail in all dispute resolution proceedings concerning the application to proceed to the next relevant stage.

Background of .ram gTLD

The auto maker Chrysler Group LLC has applied to ICANN for .chrysler, .jeep, .mopar, .ram, .dodge and .srt gTLDs. Chrysler sells a wide of range of trucks under the brand name Ram. The trademark 'Ram' and its variations are registered or pending registration in US in the name of the Chrysler Group LLC.

In India the Chrysler Group is the registered proprietor of the trade mark 'Laramie' in Class 12 *vide* registration no. 793542, though it does not have any pending application for the trademark 'Ram' in Class 12 in India.

Besides .ram, India has also objected to the registration of .indians (filed by Reliance Industries Ltd). Similar objections were also raised against the registration of .guangzhou (IDN in Chinese), .shenzhen (IDN in Chinese), and .spa and .yun.

Remedies

There are three mutually non-exclusive options available to the Indian government: raising an

objection before the GAC, settling the matter with Chrysler Group LLC or initiating the new gTLD dispute resolution procedure with ICANN.

The Indian government has already opted for the first option. The government's primary contention while submitting its objection during the GAC Durban meeting was that under Indian Trade Mark law a trademark is prohibited from registration under Section 9(2)(b) of the Trade Marks Act, 1999 if such mark contains or comprises any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India.

As far as the second option is concerned, Chrysler has shown its willingness to settle the matter. If reports are to be believed, on receiving the Indian government's objection, a team from Chrysler flew to India and met officials of the Department of Electronics and Information Technology with the aim of resolving the objections raised by the government.

It was further reported that Chrysler has proposed to enter in an agreement with the Indian government that it will not sell the .ram domain to anyone and will take down any web address with the .ram gTLD if the Indian government finds it objectionable.

If the Indian government chooses the third option ie, it decides to institute a proceeding under the ICANN's new gTLD dispute resolution procedure, it will be entering unexplored territory. At this juncture, it would be interesting to quote the observation made by Frederick M. Abbott, sole panel expert in the case involving .express gTLD, where he said that "This is a somewhat unusual proceeding in that it involves a procedure that has been newly created for a set of circumstances that is newly created."

It is yet to be seen how the expert panel constituted under the new gTLD dispute resolution procedure would deal with the situation. In any case the ramifications of new gTLD registration, that has the potential to allow registration for practically any word under the sun, are far reaching.

Instances like these and the outcome of the objection would set precedents and standards that are to be borne in mind while opting for registration, so that in the global landscape the chosen domain name overcomes any cultural and linguistic traps and at the same time does not hurt the religious and emotional sentiments of other communities.

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