

Domain Names Going Global in 2010

Registrations, Acquisition, and Protection of Domain Names in China

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The domain name system is facing expansion with the inclusion of Chinese domain names, and changes are currently being implemented to meet the needs of an information-driven society and the force of globalization. Registrations, acquisition, and protection of domain names in China should be carefully monitored because domain names with Chinese characters are becoming available upon approval by the Board of Directors of the Internet Corporation for Assigned Names and Numbers (ICANN).

Old Regime — Latin Script Only

Currently, Internet domain names have been restricted to Latin characters, numbers, and connecting symbols since the Domain Name System was created four decades ago. Internet address endings are limited to Latin characters A to Z. For example, ".cn" is the country code for China. This is problematic for non-Latin speaking countries, such as China, which has the highest number of Internet users according to the latest Chinese official statistics on June 30, 2009. Unlike U.S. Internet users, the majority of Chinese Internet users don't recognize the Latin script. Internet users, including professionals in wholesale/retail, government/social communities, education/scientific research communities, and manufacturing must translate their domain names from Chinese to English, or at least to Pinyin, a phonetic spelling system often used online to replace Chinese characters with Latin ones. More often though, the English names do not correspond to the original Chinese meaning, making it difficult for Internet users to remember particular trade names and brands. Contrastingly, however, some Chinese domain name owners employ numbers, which are widely associated with their trade names or brands, or which also have intentional second meanings, as their domain names.

New Regime- ICANN Bringing the Languages of the World to the Global Internet

ICANN has approved the introduction of non-Latin script top level domains (TLDs). The first Internet addresses containing non-Latin characters from start to finish will soon be online upon the approval of the new Internationalized Domain Name (IDN) Fast Track Process, launched in November 2009.¹ This mechanism will soon allow nations and territories to apply for Internet extensions (using country-codes as part of the domain name) reflecting their name, and consisting of characters from their national language. These characters could contain letters or characters from non-

ASCII scripts (for example, Arabic or Chinese), and will be a great step in globalizing the Internet.

New World of Domain Names Available in Key International Markets

Submissions by countries with official non-Latin script based languages constitute the majority of the world's population. China, India, the Arabic nations, and many South East Asian countries all contain large populations that pre-dominantly use languages with non-Latin scripts. These countries began to register TLDs reflecting their names on November 19, 2009, and ICANN has preliminarily approved these registrations as long as the proper fee has been remitted. Because developing Asia is expected to lead the pack in the rebounding economy in 2010, with projected 8.8 percent growth for China in 2010,² the new TLDs are expected to soon go live in key international markets.

".中国" Could Become the First Global TLD after March 2010

China, one supporter of the recent ICANN plan, is also an increasingly important country in the development of the Internet. With the population rate of the Internet rising steadily, the latest report from the China Internet Network Information Center (CNNIC) on June 30, 2009 shows that China remained ahead in three indicators: (1) the number of Internet users (338 million); (2) the number of broadband users (320 million); and (3) registration volume of TLDs (12.96 million). Additionally, the number of mobile Internet users in China has reached 155 million³ with the launch of 3G business.

The Chinese characters ".中国" (meaning "China", pronounced phonetically as "Zhong Guo") could become the first global TLD, based on an application submitted to ICANN by the CNNIC. If the application goes well, no sooner than March 2010, Chinese Internet users can visit websites by typing Chinese characters in the browser's address bar.⁴ However, ".cn" and ".中国" are separate TLDs. In accordance with the Notice of Chinese Internet Domain Name System, promulgated on March, 19, 2008 by the Ministry of Information Industry, three Chinese TLDs, 中国 (which means "China"), 公司 (which means "company"), and 网络 (which means "net") are currently available for registration, in addition to ".cn."

".中国" Could Be a Land-rush for Web Business

Domain names are often likened to door plates or telephone numbers that enable individuals and/or entities to have a presence on the Internet. Commercially, the Chinese TLD may prove to be particularly valuable because it is a blank canvas of Internet space for those applicants who are seeking shorter strings, simple words, and trademark names. CNNIC has adopted the "first come, first served" principle for registrations. Thus, those who are interested in trading overseas, including trademark owners and foreign companies that sell or manufacture products or otherwise do business in China will want to watch this space and develop a strategy to aggressively and defensively register Chinese character domain names in order to

make sure that they own their trade names, brands, trademarks, and simple words in Chinese characters, so that cyber squatters don't register them first and resell them back later.

Meanwhile, because the greatest advantage of Chinese domain names lies in the ease of use and ease of memorization, the application and promotion of Chinese domain names will increase the number of netizens and inspire the development of the online economy. Not only will it make a best brand vehicle for Chinese companies that have adopted ".cn" or pre-registered Chinese domain names, but it also will be more favorable for the localization and online marketing of trade companies. Moreover, it is expected that the development of Chinese e-commerce will be indirectly promoted at a scale of several hundred million, making the Internet more valuable than ever in China because of its accessibility and ease of use.

Domain Name Registration in China

Domain name registration is subject to a myriad of the latest Internet-related laws, regulations, polices, and a hierarchical administration system, which includes surveillance on all levels of government in China. Presently, the rules for domain name registration allow Internet users to automatically acquire a corresponding ".中国" domain name in Chinese when registering for a Chinese ".cn" domain name. By the time ".中国" is open, no re-registration is needed for those pre-registered ".中国" domain names. For ".中国" registration, CNNIC accredited Chinese Domain Name registrars are responsible for providing Chinese Domain Name registration services.

A. Registration Requirements:

1. Registries and Registrars

All ".cn" domain names are administered by CNNIC and must be registered through an accredited registrar. A list of CNNIC accredited China Domain Name domestic registrars is available on the CNNIC website. ".cn" is also available to registrants outside of China. A list of CNNIC accredited ".cn" oversea partners is available on CNNIC's website. For example, NeuStar has partnered with CNNIC as the registry for China's ".cn" country-code top-level domain to offer ".cn" registrations to registrars outside of China through a unique "Registry Gateway" solution. It should be noted that CNNIC and NeuStar are registries, and thus don't sell ".cn" domain names to the end users.

2. Registrants

According to Article 14 of CNNIC Implementing Rules of Domain Name Registration, an applicant for domain name registration is required to be a lawfully registered organization capable of attending to its own civil responsibilities. Because registrants need not be residents of China, a company or organization doesn't need a subsidiary in China in order to acquire a ".cn" name.⁵ For oversea registrants, any business or

organization worldwide can register a ".cn" name. According to CNNIC's announcement on December 14, 2009, the registration of Chinese Domain Names is currently not open to individuals and is banned due to a campaign launched by CNNIC to review millions of existing personal websites.⁶

3. The Format Limitations for ".cn" and ".中国"

According to CNNIC rules, an applicant may register a ".cn" domain name with not more than 63 Latin letters containing A-Z, a-z, 0–9, and hyphen (-). Capital and small letters are equivalent. A Chinese Domain Name (containing Chinese characters) must contain at least one Chinese character. An applicant may choose Chinese characters, ASCII letters (A-Z or a-z), numbers (0–9), or hyphen (-) to compose a Chinese Domain Name. The length is limited to 20 characters (letters).

4. Registration Information

According to Article 20 of Administration of China Internet Domain Names Procedures and Notification of Launch Special Governance on Registration Information of Domain Names, issued by CNNIC on December 10, 2009, domain names must contain true, accurate, and complete domain name registration information. Any domain name registration that is untrue, inaccurate, or incomplete will result in the domain name being canceled. Any previously registered domain name reported to have false registration information will either be canceled or requested for correction within a certain grace period.

5. Application Paperwork

According to the Notification of Further Enhancement of Examination on Domain Name Registration Information issued by CNNIC on December 11, 2009, applicants for domain name registration will be required to submit written application forms with business seals, a photocopy of the company business license, and the applicant's identification, along with the real-time online application with the registrars. It should be noted that the new changes to the requirements set forth above in sections A(2), (4), and (5) have not been applied in practice by the CNNIC accredited ".cn" oversea registrars as of December 16, 2009 because those accredited registrars have not been formally notified by CNNIC of those changes.

B. Registration Process for U.S. Registrants

Step 1: Choose an executive registrant. This registrant may be the applicant himself, or he may retain an attorney or contract an agency to conduct the domain name registration.

Step 2: Choose an accredited registrar from online research or from the list posted on CNNIC's website.

Step 3: Clearance Search. Optional avenues are available for conducting clearance searches to determine the availability status of sought after domain names:

1. Searches Available Online

A domain name applicant may search the accredited domain name registrars online and chose one after comparing their credentials and annual service fees. For example, NeuStar provides a list of accredited registrars on its website, which also can be selected to conduct an online clearance search.

2. WHOIS Search

A domain name applicant may conduct a WHOIS clearance search with NeuStar, which is the exclusive registry gateway for ".cn" outside China. The WHOIS websites are <http://www.neustar.com.cn/whois.html> or <http://ewhois.cnnic.net.cn/>. WHOIS search is also available on CNNIC"s website at <http://cnnic.net.cn/en/index/index.htm>.

3. Searches Available through U.S. Trademark Search Tools/Firms

Clearance searches can also be conducted through some U.S. Trademark search tools, such as register.com and marcaria.com. Likewise, search reports can be ordered through some U.S. trademark firms, such as CT Coresearch.

Step 4: Complete the Registration Online

Assuming the sought after domain name is available, the registration application can be completed online. A typical process for completing registration online includes reviewing and agreeing to the domain name registration terms, selecting the period of registration, completing and confirming the registration information, and submitting the payment online during check out by clicking "submit" at the bottom of the online application. Provided the application satisfies the requirements, a notification will be transmitted indicating that the submission has been successfully completed.

C. Issues to Be Addressed:

Annual Service Fees: Annual service fees are charged by registrars, and several offer competitive domain name services. The service fees vary from one registrar to another. A typical range is anywhere from \$9.99 to \$35.00.

Registration Period: Beginning March 17, 2005, CNNIC extended the registration period for domain names from 5 years to 10 years, with the actual operation period of a domain name not exceeding 10 years.

Renew and Deletion: A domain name can be renewed for up to 10 years after the registration in accordance with CNNIC's rules. Renewal dates can be easily monitored by the registrant or their agent, the registration agency, or the registrar with whom the registration application was completed. Usually the registrar will transmit reminder notices via email before domain names expire. Thus, it is imperative that contact information be routinely updated. The importance of monitoring renewal periods is best demonstrated by NeuStar's system, in which all expired domain names having a status of "ok" will be automatically renewed. However, domain names showing a status of "ClientRenewProhibited" cannot be renewed after expiration. Once the expiration date is reached, those domain names will move to "Pending Delete" status for 15 days and will be immediately deleted on the 16th day.⁷

Acquisition and Protection of Domain Names

In the event that clearance results show that a domain name is registered by another, three options are available:

1. Adding additional hyphens, letters/characters, or numbers to create a new name. This strategy can also be used for defensive domain name registration.
2. Negotiating with the domain name owner for possible domain name acquisition, which can be utilized by the owners of the trademark rights as a reverse domain name hijacking strategy. This strategy gives owners of the trademark rights a chance to retrieve the specific domain in a relatively cost-efficient way. Implementation of this strategy may require assistance from an attorney or domain name agency to evaluate the target domain name, and to analyze and negotiate the domain name assignment. If the parties consent to a transfer, a duly signed domain name assignment is required upon the completion of the assignee's due diligence, which provides a record of ownership and transfer to protect the rights of all parties.
3. Pursuing the domain name owner through dispute resolution procedures, which could be used as a strategy for "hostile" registrations. Such an option usually requires strong reasons to consider in terms of whether the purchase party has a huge marketing demand, well-known trademarks, or vast financial support of large companies. However, according to the amendments of the Domain Name Dispute Resolution and the relevant policy of CNNIC, if the registered domain name is already well-known, the owner of that domain name enjoys the legal right. Furthermore, a domain name that is registered and used in bad faith will be transferred. Additionally, for foreign-related domain name dispute cases, the judicial interpretation of the Supreme People's Court explains what constitutes infringement or unfair competition in a domain name dispute case and how to determine whether the defendant has acted in bad faith. Based on the data from the China International Economic Trade Arbitration Committee, in 1191 cases out of the 1383 cases involving ".cn" and Chinese domain names that have been disputed in court, judges have ruled to "transfer the domain name." In other words, the losing ratio for registrants who have registered domains in bad faith is approximately 90 percent.⁸ It should be noted that a registrar will

be required to provide a signed registrant authorization letter to the registry before a transfer can be initiated.⁹

Restrictions on Internet Content and Commercial Activities

Domain Names and Internet Contents: An organization or individual is prohibited from registering or using domain names that violate the interests of the state, the society, and the public, and certain pre-reserved words are protected for the interest of the state and the public. Article 19 of Administration of China Internet Domain Names Procedures prohibits the production, duplication, or dissemination of content that, among other things, contradicts the Constitution, compromises state security, incites ethnic hatred, or propagates obscenity, pornography, gambling, violence etc.

Advertising: According to the PRC Advertising Law, advertisements may not be disseminated without having been censored. According to the PRC Anti-Unfair Competition law, no advertising creating misleading or false information is allowed with respect to quality, manufacturing components, functions, uses, producer, period of validity, place of origin, etc.

Selling Cultural Products and/or Engaging in Commercial Internet Information Services through a Website: Internet content providers in China are subject to PRC Telecommunications Regulations, the Administration of Internet Information Services Procedure, and The Administration of Culture on the Internet Tentative Provisions. The existing PRC legislation on prohibited Internet content is reinforced on Internet commercial activities and Internet information services.

Homepage Requirements and Level of Scrutiny: According to Article 12 of Administration of Internet Information Services Measures, Internet information service providers are required to post their operating permit numbers or record-filing numbers in a prominent place on the home pages of their websites. Under the Administration of Culture on the Internet Tentative Provisions, only Internet information service providers that have obtained approval from the Ministry of Culture or its local counterparts and telecommunications authorities may engage in Internet cultural activities.

Copyrighted Materials: The dissemination of copyrighted materials over the Internet is subject to the Administrative Protection of Copyright on the Internet, jointly promulgated by the National Copyright Administration (NCA) and the Ministry of Information Industry (MII). In accordance with the Regulations for the Protection of the Broadcast Rights over Information Networks, when a copyright owner discovers certain infringing material on the Internet, the owner may provide a 'take-down' notice to the Internet service provider with preliminary evidence that such material infringes upon the copyrighted works.

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¹ See "ICANN Bringing the Languages of the World to the Global Internet" (Oct. 30, 2009), available at <http://www.icann.org/en/announcements/announcement-30oct09-en.htm> (last visited on Dec. 21, 2009).

² See "Economic growth expected for China in 2010: UN report," *Xinhuanet* (Dec. 2, 2009), available at http://news.xinhuanet.com/english/2009-12/03/content_12578674.htm (last visited on Dec. 21, 2009).

³ See "CNNIC publishes 24th Statistical Report on Internet Development in China," available at <http://www.cnnic.net.cn/html/Dir/2009/07/28/5644.htm> (last visited on Dec. 21, 2009).

⁴ See "'中国' to be top level domain name," *CCTV.com* (Nov. 17, 2009), available at <http://english.cctv.com/program/worldwidewatch/20091117/104228.shtml> (last visited on Dec. 21, 2009).

⁵ See http://www.neustar.com.cn/faqs/index.html#policy_market_inChina (last visited on Dec. 21, 2009).

⁶ See "China tightens control on domain name registration," *China Daily* (Dec. 14, 2009), available at http://www.chinadaily.com.cn/china/2009-12/14/content_9174767.htm (last visited on Dec. 21, 2009).

⁷ See http://www.neustar.com.cn/faqs/index.html#ip_rights_protection (last visited on Dec. 21, 2009).

⁸ See <http://www.chinacourt.org/html/article/200912/10/385380.shtml> (last visited on Dec. 21, 2009).

⁹ See http://www.neustar.com.cn/faqs/index.html#ip_rights_protection (last visited on Dec. 21, 2009).