

**March 6, 2013**  
**Fiona M. Alexander**  
**Associate Administrator**  
**Office of International Affairs**  
**National Telecommunications and Information Administration**  
**U.S. Department of Commerce**  
**1401 Constitution Avenue, N.W. Room 4701**  
**Washington, D.C. 20230**  
[ustldnoi@ntia.doc.gov](mailto:ustldnoi@ntia.doc.gov)

**RE: Response to Notice of Inquiry (NOI) on the Policies and Requirements of the usTLD space.**

Dear Ms. Alexander:

The International Trademark Association (INTA) is a more than 134-year-old organization with over 5,900 trademark-based organizations as members in over 190 countries. One of INTA's key goals is the promotion and protection of trademarks as a primary means for consumers to make informed choices regarding the products and services they purchase. INTA's Internet Committee appreciates this opportunity to provide comments on the Policies and Requirements for the usTLD space.

***Question 1.** In general, what are your views on the current policies and requirements that govern the usTLD space? Are they still relevant? Are there ways to update the policies and practices currently utilized in the management of the usTLD that would add value to the space? Please be specific in your response.*

***Internet Committee Comment:***

In our view, the current policies and requirements are generally relevant. The one area of improvement lies in the Nexus policy, discussed in more detail below.

***Question 2.** Are there policies and practices developed or employed by other ccTLDs, ccTLD organizations, and the stakeholder community that could be incorporated into the usTLD space to spur innovation, growth, and use of the usTLD or improve the domain name registrant experience? Please be specific in your response.*

***Internet Committee Comment:***

To the extent that the administration believes it appropriate to spur innovation, growth, and use of the usTLD or improve the domain name registrant experience, our overarching concern is that the expansion is responsible, deliberate, and justified, with attention to overall issues of trademark protection and the rights of trademark owners, potential for malicious conduct, security and stability, and economic impact. However, assuming it is a goal to spur growth of the usTLD, our comments concerning other registries' policies should be considered within this overall context.

The most popular ccTLDs are Germany's .de, administered by DENIC (15.3 million domain names), followed by the United Kingdom's .uk, administered by Nominet (10.3 million domain names):

### ccTLD Top 20 Ranking Q2 2011

	TLD	Country	Count (2011_Q2)	Growth
1	.DE	Germany	14,483,717	1.26%
2	.UK	United Kingdom	9,490,537	1.86%
3	.TK	Tokelau	5,331,003	13.12%
4	.NL	Netherlands	4,513,620	3.34%
5	.EU	European Union	3,362,254	-1.12%
6	.CN	China	3,388,575	3.36%
7	.RU	Russian Federation	3,329,750	2.49%
8	.BR	Brazil	2,547,305	5.49%
9	.AR	Argentina	2,343,659	2.64%
10	.IT	Italy	2,211,244	2.88%
11	.PL	Poland	2,137,965	3.43%
12	.AU	Australia	2,115,387	4.91%
13	.FR	France	2,063,562	3.52%
14	.CA	Canada	1,713,788	3.50%
15	.US	United States	1,701,102	-9.50%
16	.CH	Switzerland	1,594,382	1.99%
17	.ES	Spain	1,354,137	4.55%
18	.JP	Japan	1,220,197	0.77%
19	.BE	Belgium	1,156,953	2.58%
20	.DK	Denmark	1,128,265	1.15%

Source: ZookNIC Internet Intelligence, 2011

A review of the three ccTLDs' policies reveals only one major difference: who can register a domain name.

*(i) .de is less restrictive<sup>1</sup>*

The .de is less restrictive than the usTLD: a registrant is not required to be resident in, or have a close connection with, Germany. However, the registrant must have an administrative contact authorized to accept service for the purpose of the German Code of Civil Procedure.

Specifically, DENIC breaks down ownership and responsibility of a domain name into four groupings: domain holder, administrative contact, technical contact, and zone administrator. Only the first two are of interest. The domain holder is the contractual partner who holds the material rights to the domain. This individual does not need to be domiciled in Germany. The administrative contact must be a natural person who resides in Germany that is authorized to accept service for the purposes of paragraph 184 of the German Code of Civil Procedure. Either the domain holder or the administrative contact must be resident in Germany.

This structure allows for non-German individuals or organizations to register for a .de domain name so long as they have a representative residing in Germany to accept service. This opens up the option for foreign individuals and companies, with no ties to Germany, to register a deTLD.

With over 15 million registered domain names, and a strong German consumer confidence in the deTLD, this system seems effective. Businesses that have an interest in selling to Germans, but do not have a close connection to Germany, can take advantage of this agency rule. The use of the deTLD does not indicate the business is German based; rather, it indicates to the German consumer the website is directed at German consumption.

When a German consumer suffers an injury from a product offered by a non-German company operating under a German TLD, a legal structure has been established to effect service on the non-German company by serving the administrative contact in the country. The German courts then take jurisdiction over the company and the legal matter. It is a simple system.

Providing for an agency based system would open the usTLD to a wider range of registrants and encourage greater use of the usTLD. If the proper legal protections are put in place to ensure consumer safety, a rationale for the Nexus policy might potentially be satisfied in other ways.

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<sup>1</sup> <http://www.denic.de/en/denic-domain-guidelines.html>

As an alternative, other ccTLD registries address the issue of organizations that direct websites at lawful local consumption without having a local presence by making the ownership of a national trademark registration a basis for domain registration. For example:

“To be eligible for a domain name in the ‘com.au’ second-level domain, registrants must be:

- a) an Australian registered company; or
- b) trading under a registered business name in any Australian State or Territory; or
- c) an Australian partnership or sole trader; or
- d) a foreign company licensed to trade in Australia; or
- e) *an owner of an Australian Registered Trade Mark; or*
- f) *an applicant for an Australian Registered Trade Mark; or*
- g) an association incorporated in any Australian State or Territory; or
- h) an Australian commercial statutory body.<sup>2</sup> (Emphasis added.)

In order to tie ownership of a .us domain to bona fide offering of goods or services in commerce in the United States, the .us registry could be opened to owners of registered U.S. trademarks. This basis of eligibility is commonly used in other ccTLD registries by U.S. franchisors and those whose brands are used in other countries by licensees, without the owner having its own operations within the country.

(ii) *.uk is the least restrictive*<sup>3</sup>

The .uk space is the least restrictive, and has both open and closed SLDs.

Nominet separates its ccTLD into various second level domains (SLDs). Some of these SLDs are open and some are closed. Under Nominet’s rules, there are two SLDs that are open to any person or corporation. Nominet does not impose restrictions on an applicant’s status for the registration of an open SLD. These open SLDs are: .co.uk and .org.uk. Each of these SLDs have a corresponding Charter that registrants are expected to follow. For instance, .co.uk is intended to be used for commercial purposes, and .org.uk is intended to be used for not-for-profit or public service enterprises.

However, these Charters are non-binding. As Nominet states:

In the SLD Charter of the SLD Rules for the Open SLDs we do set out certain intentions regarding the class of applicant or use of registrations of the Domain Name which we assume you will comply with when applying for a registration of a

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<sup>2</sup> <http://www.auda.org.au/policies/auda-2012-04/>

<sup>3</sup> <http://www.nominet.org.uk/uk-domain-names/registering-uk-domain/choosing-domain-name/rules>

Domain Name within an Open SLD. However, *we do not forbid applications, and will take no action in respect of registrations that do not comply with the SLD Charters.* [emphasis added]

Therefore, though Nominet would prefer only those with commercial purposes use .co.uk, an applicant does not need a commercial purpose to register under this SLD. Further, there is no restriction on who can register a domain name.

The open SLDs are contrasted with .uk's closed SLDs. For instance, to register a domain under .ltd.uk, a registrant must be an incorporated company that is listed on the index of company and corporate names maintained under section 714 of the Companies Act 1985. This means only certain entities are able to obtain a domain name ending in .ltd.uk.

***Question 3.*** *How best could the management of the usTLD be structured to reflect the multistakeholder model of policy development, particularly in developing mechanisms that could engage the usTLD community? Please be specific in your response.*

***Internet Committee Comment:***

In our view, addressing the Nexus issues flagged in these draft comments is the most effective mechanism to engage the usTLD community.

***Question 4.*** *An important aspect of the multistakeholder model of policy development is a focus on transparency. Is there additional information related to the administration and performance of the usTLD contract that should be collected or shared publicly in the interest of transparency? Please provide specific information as to why or why not. If yes, please provide specific suggestions in particular on what that information should be and how that information can be made available.*

***Internet Committee Comment:***

We do not see any particular issue arising around transparency.

***Question 5.*** *Please provide your views of the usTLD Nexus policy. Does it enhance, impede, or have no impact on the innovation and growth of the usTLD space? Please be specific in your response.*

***Internet Committee Comment:***

While growth is not an end in and of itself and should only be encouraged to the extent it is responsible, deliberate, and justified, the usTLD Nexus policy may have the effect of impeding the innovation and growth of the usTLD space.

This policy is restrictive, as it requires a registrant to be (i) an United States citizen, permanent resident, or one whose primary place of domicile is in the United States, (ii) an entity or organization incorporated or organized in the United States, or (iii) a foreign entity or organization that has a bona fide presence in the United States (although having an office or property in the U.S. is not required if the registrant “regularly engage[s] in lawful activities (sales of goods or services or other business, commercial or non-commercial including not-for-profit activities) in the United States”.<sup>4</sup>

As noted in Question no. 2, other ccTLDs have less restrictive policies and much more dynamic ccTLD spaces. One, however, may not necessarily be related to the other, as the tepid adoption of the .us space may be more related to the common preference for the .com TLD among U.S. companies.

The stated purpose of the Nexus policy is “to ensure that only those individuals or organizations that have a substantive lawful connection to the United States are permitted to register for usTLD domain names.” However, in a globalized economy, a person without a close connection to the United States can have a legitimate interest in doing business under a usTLD. The assertion that country boundaries matter may be of decreasing relevance in a medium where boundaries do not exist—so long as the policies continue to embody best practices in terms of ensuring that registrants offering goods and services to U.S. customers are subject to jurisdiction and legal recourse in U.S. courts.

Additionally, the U.S. is one of the world’s largest consumer markets, and is particularly active in purchasing online. While care should be taken in making any ccTLD less restrictive to limit any increase in the likelihood of malicious conduct, a non-US company shouldn’t be prevented from adding a .us name to its domain portfolio in order to compete in the U.S., any more than a U.S.-based company should be prevented from acquiring a .de name for a site directed to German consumers. If anything, principles of comity suggest that, with reasonable controls, the U.S. should ensure that the .us registry be as open to foreign companies as other responsible ccTLD registries are to U.S. registrants.

In our view, resolving the Nexus issue would open the usTLD to a broader range of registrants and encourage greater use of the usTLD. Putting into place enforcement mechanisms such as those described above for the .de or .com.au space may assist in satisfying the rationale for the Nexus policy in a less restrictive manner.

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<sup>4</sup> <http://www.neustar.us/the-ustld-nexus-requirements/>

***Question 6.** What updates could be made to the current usTLD WHOIS policy and practices that could benefit the usTLD registrants, law enforcement, and the broader user community?*

***Internet Committee Comment:***

We support the full availability of data required by the Department of Commerce for the .us TLD. These requirements are still relevant and should be maintained.

We support Thick WHOIS services in general, as this ensures consistent, accessible data and faster queries, and provides necessary protections should a registrar cease to operate, and we strongly recommend that the Thick WHOIS requirement be maintained in the .us TLD. Thick WHOIS is a valuable tool for intellectual property owners, law enforcement, organizations fighting spam, phishing, and other online abuse, and the internet community in general. Moreover, we support the current policy of conducting “spot checks” of the WHOIS data in .us registrations to ensure compliance with the .us Nexus requirements, and those checks should extend to verification of all contact information in the WHOIS record, and the frequency of occurrence of these checks should be made publicly available.

Our committee is also in support of the current "no proxies" rule of the .us TLD. If at some point in time proxy accreditation rules are developed (either by ICANN or at the .us level), it is our recommendation that those rules require that the proxy be accredited and that the proxy fulfill a U.S. nexus requirement by providing proof of a bona fide presence or residence within the United States along with conducting routine checks on a regular basis to ensure continued compliance. We are also supportive of the .us TLD policy preventing private domain name registrations.

Thank you for considering our views on these important issues. Should you have any questions regarding our submission, please contact INTA's External Relations Manager, Claudio DiGangi at: [cdigangi@inta.org](mailto:cdigangi@inta.org).

Sincerely,



Alan Drewsen, Chief Executive Officer (CEO)  
International Trademark Association

## **About INTA & The Internet Committee**

During the last decade, INTA has served as a leading voice for trademark owners in the development of cyberspace, including as a founding member of ICANN's Intellectual Property Constituency (IPC). INTA's Internet Committee is a group of nearly two hundred trademark owners and professionals from around the world charged with evaluating treaties, laws, regulations and procedures relating to domain name assignment, use of trademarks on the Internet, and unfair competition on the Internet, whose mission is to advance the balanced protection of trademarks on the Internet.