dotBERLIN GmbH & Co. KG

Policy for the Registration of .berlin Domain Names

dotBERLIN GmbH & Co. KG (subsequently called the "registry") is the registration office for domain names under the generic top level domain (gTLD) .BERLIN.

The .BERLIN TLD is a so-called "community based" top level domain. Domain names may only be registered under the gTLD .BERLIN by a limited group of registrants and are subject to special conditions as is their use.

The operation of .BERLIN requires and is based upon fair and transparent guidelines for the issuing of domain names under .BERLIN. These take account of the requirements to permit the operation and management of the gTLD .BERLIN as specified by the Internet Corporation for Assigned Names and Numbers (ICANN), by the corresponding contract with ICANN as well as by the various interest groups (multi-stakeholder approach).

Overview

dotBERLIN GmbH & Co. KG

1.   The registration contract

When a domain name is registered under the gTLD .BERLIN, the registered domain name will be exclusively issued to the registrants concerned.

The contract about the registration of the domain will be agreed between the registrant and an ICANN-accredited registrar, who must also be accredited with the registry.

There is no contractual relationship between the registry and the registrant. By agreeing a registration contract, the registrar obliges the registrant to accept all of the ICANN consensus policies and the registration guidelines and ensures compliance with them henceforth.

2.   The structure of the name space

The registry will not subdivide the name space under .BERLIN into second level domains. All of the domain names under the gTLD .BERLIN will only be registered as second level domains. It is permissible to set up subdomains (third level domains) beneath registered second level domains but they will solely be the registrant's responsibility.

3.   Characters which can be registered

A domain may only consist of numbers (0 to 9), hyphens, the letters A to Z as well as certain Latin and Cyrillic characters. It may neither begin nor end with a hyphen, nor may it have a hyphen as both its third and fourth characters. The minimum length of a domain is one (1) character; the maximum length is sixty three (63) characters. If the domain contains special characters, the decisive criterion for determining the maximum length is the so-called ACE-encoded form of the domain as defined in Request for Comments 5890.

4.   The priority principle

Provided no special allocation method is foreseen for a domain name, as a basic principle it will be allocated to the person who is entitled to register, whose application arrives first at the registry in a technically correct form and in compliance with the .BERLIN registration guidelines (also called the priority principle or "first come, first served") and will be entered into the .BERLIN registry database.

With the registration, this domain name will no longer be available for other registrations until the registration expires and is not renewed or until the domain is deleted.

5.   Authorisation to register

When registering a domain name under .BERLIN, every registrant irrevocably accepts the registry's registration guidelines, vis-à-vis the registrar responsible for the registration, and agrees to also comply with them in future.

5.1. The person authorised to register

Every natural person, legal entity, organisation or group of persons is entitled to register and use a domain under the .BERLIN top level domain, provided they can show that they have an economic, cultural, historical, social or other connection to the German capital, Berlin, demonstrable by

a) their place of residence or secondary residence, seat or place of business, subsidiary or permanent establishment in Berlin, or
b) a contact with a seat in Berlin, with an entry in the whois database, or
c) some other suitable proof such as a certificate provided by an employer, enrolment at a school or higher education institute or a birth certificate.

It is permissible for a proxy or a privacy service to register a domain name, acting for the actual owner of the domain name.

Anyone may have the registrant's compliance with the registration guidelines checked via a legal or an extra-judicial dispute resolution process.

5.2. Conditions for the content and use of domain names

As the gTLD .BERLIN is a so-called "community based" gTLD, where the registration of domain names is subject to restrictions, a domain name must be put into use within 12 months of registration.

If the registrant sets up a web site which can be reached via the registered domain name, the content of this site must have be directly related to the authorisation to register.

5.3. Checking the authorisation to register

No proof is required from the registrant to apply to register or to register a domain name under .BERLIN.

The registry retains the right, at its own discretion, to check the registration of domains as well as the authorisation to register.

If the details that the registrant supplied during registration are incomplete and do not allow a check to be made, the registry will inform the registrant as well as the responsible registrar. Within 14 days of the information arriving, the registrant has the option of having their entries corrected by the registration office or the registrar.

If, despite being notified, the registrant does not comply with the conditions of registration, the domain name will be deleted.

If the domain name is deleted due to the registrant not complying with the conditions of registration, any registration fees already paid will not be reimbursed.

The registrant is solely responsible for always complying with all of the requirements in the registration guidelines.

6.   Registration

The registrar will electronically send the registrant's registration application for a period of 1 up to ten years via the EPP protocol to the registry's registration system. If registration is successful, confirmation will be sent to the registrar. If registration fails, an error message will be sent to the registrar. Immediately after the registration, the contact data required by ICANN can be called up via a whois request under https://dot.berlin. The registrant must immediately check these entries and if there are any errors, must immediately have them corrected by the registrar. The registrar must notify the registry in good time if a registrant requests the registration of, or notifies their intention of registering more than 10,000 domains at once.

7.   Staggered registration

Owners of marks, especially trademarks, are entitled to register domain names during the phases of staggered registration (BERLIN Sunrise and ICANN "Trademark Clearing house" TMCH Sunrise phase), before the general registration (land rush) starts for the gTLD .BERLIN. See the TMCH rules for more detail. Details of the requirements and of the process of staggered registration are specified in the *".BERLIN Sunrise rules"*.

8.   The transfer of domain names

As a basic principle, domain names can be transferred to other registrants.

Registrants taking over a domain name must themselves comply with all of the requirements in the registration guidelines.

If the registration of a domain name is subject to a special award process, transferring it to another registrar may also be subject to special conditions.

9.   The registrant's duties

Apart from what is listed under point 5.3, the registry is not obliged to check whether a registered domain name or its use violates the rights of third parties.

The registrant thus provides a legally binding declaration

-   that they are entitled to register the domain name,
-   that the domain name does not violate or encroach on the rights of any third parties,
-   that the domain name and its (intended) use do not violate the provisions and/or laws and/or regulations of the European Union, the Federal republic of Germany or other relevant laws,
-   that they have not registered or will use the domain name for abusive, speculative or anti-competitive purposes, and that they have checked this.

The registrant agrees not to register domain names

- through which the incorrect impression could arise that it concerns a domain name, content or service provided by Berlin's public authorities,
- which violate ethical principles or criminal law (unlawful domains, racist domains, domains glorifying violence or inciting hatred or liable to corrupt the young, indecent, insulting or otherwise immoral domains) or which endanger Berlin's reputation,
- which contain words or fragments of words which as generally, objectively perceived, could be felt to be indecent. This includes above all swear words, invectives and racist words or words or parts of words which could violate ethical, religious or moral sensibilities.

10. The whois database

All registered domain names will be added to a publicly accessible whois database. In addition to the domain names, the information contractually specified by ICANN is also entered there.

For the admin contact specified in the whois database for a .berlin domain, it must be a natural person, who is authorised to act for the owner of the domain (owner contact) and who is authorised and obliged to make binding decisions concerning the affairs of the domain. For each .berlin domain only one admin contact may be specified. The owner of the domain and the admin contact can be one and the same natural person.

11. Deletion and withdrawal

The registry is entitled to block domains which do not correspond to the registration guidelines and, by adding to the gTLD deletion cycle, to initiate the deletion or to transfer them if

a. the registrar has not paid the domain fees to the registry,

b. the registrant has persistently violated the registration guidelines and, despite warnings and deadlines being set, continues to violate them,

c. the domain name contains an obviously illegal statement,

d. the registrant has agreed in writing, with no restrictions and under penalty of law, to not use the domain name, or for a corresponding injunction they have issued a final statement, or if a corresponding national or international absolute judgement has been passed against them,

e. in an national or international absolute judgement or a tribunal has decided, that the registration of the domain name for the registrant violates the rights of third parties, or the registrant has issued a final statement to a corresponding injunction,

f. the registration of the domain for its owner, taking no account of its actual use, quite obviously violates the rights of a third party, or is in some other way illegal,

g. the use of the domain or its content are obviously abusive and could harm the general public, for example by illegal and fraudulent activities, spam, phishing, pharming, spreading malware, botnet activities, trafficking, child pornography, unusual network activities (e.g. fast flux hosting);

h.   the data for the registrant or the admin contact supplied to the registry are false or the identity of the registrant or admin contact cannot be established from the specified data,

i.   the domain on request from ICANN

j.   the domain is to be transferred to Berlin on request by Berlin for its own purposes, for example due to public interest or a wish for registration.

Without prejudice to more extensive legal rights, as part of the abuse rules required by ICANN for gTLDs *(".BERLIN anti-abuse rules")*, under certain circumstances the registry can remove a domain name and the technical data from the name servers for the gTLD .BERLIN (disconnection), change the contact data, or delete or withdraw a domain name.

12.   Extra-judicial settlement of conflicts

For extra-judicial settlement of conflicts the registry has implemented the procedures envisaged by ICANN of UDRP, URS, ERDRP, PDDRP and RRDRP. With the registration of a domain name, the registrant agrees to be subject to the procedures for the extra-judicial settlement of conflicts envisaged by ICANN and the registry, especially UDRP, URS, ERDRP, PDDRP and RRDRP (LINK).

Notwithstanding that, the national courts can still be used to settle disputes.

13.   Restrictions on the transfer of domain names

Apart from the transfer restrictions from the procedures for the extra-judicial settlement of conflicts, the registry offers the "appeal procedure". With this procedure, during the extra-judicial or legal dispute, third parties (subsequently called the claimant), whose rights are infringed by the domain name, can block the transfer of the domain name to a new registrant.

a.   The rules of the .BERLIN appeal procedure envisage that the claimant applies to the registry for an appeal entry. With this application, the claimant must show that they can take up the rights to a domain or that a domain or its content infringes their rights, and that they will assert these rights with the owner of the domain within twelve (12) months. If the claimant cannot get a judgement from a court or a tribunal within this period or a mutually acceptable agreement of the dispute with the registrant of the domain name, the claimant can have the appeal entry extended by twelve (12) months if they can show that they have used legal means against the owner of the domain. The appeal entry can at most be extended to a period of three years.

b.   A domain which has an associated appeal entry may still be used by its owner, but may not be transferred to a third party.

c.   To make an appeal entry, the registrars accredited with the registry will make an electronic form available on their web site, in which the claimant has to prove their identity and present their claims, substantiating them with uploadable proofs.

d.   If the appeal entry submitted to the registry has been declared as valid following examination, then the claimant, the owner of the domain and the admin contact will be notified about the

entry. In the public whois database, the registry will set the status of the entry to LOCKED so that it cannot be transferred to another owner or registrar.

e. The registry will charge the registrar submitting the appeal a non-returnable administration fee of currently € 300. The fee is due when the appeal is submitted and must have been received by the registry no later than 14 days after the submission.

f. If the dispute between the claimant and the owner of the domain ends, then the claimant must immediately notify the registrar of this, who will then immediately notify the registry.

g. If the claimant does not prove to the registrar within the three year period that they have won their case against the registrant in a court or tribunal, or have come to a mutually acceptable agreement with the registrant, the application for the appeal will be repealed.

h. While the appeal is pending, if the claimant proves to the registrar with a decision from a court or tribunal or from a mutually acceptable agreement that the domain name must be deleted or transferred to the claimant, then the registrar must delete or transfer the domain name.

i. The registry will not transfer a domain name. The claimant may register the deleted domain name via a registrar who is accredited with the registry.

14. Glossary

a. <u>Consensus policies</u>: Agreements between ICANN, ICANN-accredited registrars and gTLD registries, published under http://www.icann.org/en/resources/registrars/consensus-policies

b. <u>Domain</u>: A domain is a contiguous part of the hierarchical domain name system (DNS). For the domain www.domain.tld "tld" is the top level, "domain" is the second level and "www" the third level.

c. <u>Domain name</u>: The domain name is the so-called second level of a domain.

d. <u>Domain Name System (DNS)</u>: The DNS is a worldwide hierarchical directory service, distributed over thousands of servers, which manages the zones of the Internet's name space. The DNS is mainly used to convert domain names into IP addresses.

e. <u>Generic Top Level Domain (gTLD)</u>: Domains at the highest hierarchical level of a domain name system, which are subject to a contract between the registry (the operator) and ICANN as well as being subject to the ICANN's consensus policies.

f. <u>Internet Corporation for Assigned Names and Numbers (ICANN)</u>: This is a private company, set up according to the principles of the "Californian non-profit public benefit corporation law for charitable and public purposes" and which is not subject to any direct control by state governments or by any intergovernmental organisation. According to its articles of association, ICANN is responsible for controlling the make-up and assignment or the domains and IP address system numbers. ICANN derives its responsibilities from a contract with the US government: http://www.icann.org/en/about/agreements/aoc/affirmation-of-commitments-30sep09-en.htm.

g. <u>Name space</u>: The term "name space" describes the total of all second level domain names beneath a top level domain.

h. <u>Registrant</u>: The term "registrant" identifies a natural person or a legal entity, who functions as the owner of a domain name, which they have registered with a registrar.

i. <u>Registrar</u>: The term "registrar" identifies a legal entity that registers a domain name for someone requesting the domain and is authorised to do that by an accreditation at ICANN.

j. <u>Registry</u>: The term "registry" identifies a legal entity which organises and manages a gTLD, including the maintenance of the corresponding databases and the associated public enquiry services (whois), the registration of domain names, the operation of domain name register and the operation of the name server for the gTLD.

k. <u>Sunrise</u>: Sunrise corresponds to the registration period during the introduction of a new gTLD, during which the owners of certain rights to a mark are given preference if they wish to register them.

l. <u>UDRP, URS, ERDRP, PDDRP and RRDRP</u>: These are extra-judicial conflict resolution procedures for domain disputes in the area of generic top level domains (gTLDs). Further information on the arbitration procedures at ICANN can be found under http://www.icann.org/en/help/dndr

m. <u>WHOIS</u>: This is a database maintained by the registry, which serves to make exact, correct and up to date information available about the owners of domains (registrants) and other contacts.