



Overview

Evaluation of the New gTLDs: Policy and Legal Issues

Presentation at the Kuala Lumpur ICANN
Meeting

by

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Background

- Board selected 7 proposals for new gTLDs in Nov. 2000 as first expansion of DNS since 1980s

- Order of launch:
 - .info
 - .biz
 - .name
 - .museum
 - .coop
 - .aero
 - .pro

Background - continued

- Board decided evaluation of “proof-of-concept” important even prior to launch
- Formed New TLD Evaluation Process Planning Task Force (NTEPPTF)(Task Force)
- Task Force decided 7 questions, among others, would take priority in evaluation
- Overall goal was to assess how well “proof-of-concept” idea worked in practice

Evaluation of Policy & Legal Issues

- 7 questions are subject of report submitted to ICANN last week

- Focus is on:
 - Effectiveness of intellectual property protections
 - Compliance with registration restrictions
 - Competitiveness issues
 - Reasonableness of legal framework
 - Other legal/regulatory issues

- Additional priority questions – on technical and process issues – will be addressed by others later



Methodology

- Each question had unique methodology

- In general:
 - Interviews with more than 80 representatives from Registries, Registrars, ICANN Board and Staff, ICANN constituencies, NGOs, IOs and governments

 - Data sampling

 - Statistical analysis

 - Industry and market research

 - Public comment fora



Legal and Functional Aspects of the Start-Up Periods

- How effective have startup mechanisms been in protecting trademark owners against cybersquatting and other abusive registrations?
- How effective were the different start-up mechanisms employed, from a functional perspective? To what extent did they achieve their objectives or, conversely, cause consumer confusion, delays, legal issues, operational problems, or other impediments to smooth implementation?
- Have there been any unusual number of disputes during the startup period and how well have they been addressed?

- Generally effective at protecting trademark owners but raised other concerns
- Sunrise period, without screening or verification, led to serious abuses
- Claims process fairer to non-trademark holders, but complex to use and understand
- Defensive registrations inconsistent with unrestricted TLD
- Land rush allocation methods enabled gaming of system

Compliance by Restricted, Un-sponsored gTLDs with their Registration Requirements

- How often and how successfully have advance filtering and other mechanisms for enforcement of registration restrictions been used, both in sponsored gTLDs and in restricted un-sponsored gTLDs?

Note: Compliance with registration restrictions for .aero, .coop and .museum addressed in Summit's Report on Compliance by Sponsored gTLDs with the Registration Requirements of their Charters (<http://www.icann.org/committees/ntepptf/stld-compliance-report-25feb03.htm>). This Evaluation therefore focuses on .biz and .name.

- Interviews raised questions about enforcement
- Data sampling estimated number of questionable registrations
- No obligation for registries to verify, but simpler screening methods possible
- Could also recognize difficulty of restrictions on global TLDs (as was done with .com, .net and .org)



Effect of New gTLDs on Scope & Competitiveness of Domain Name Market

○ What effect have the new gTLDs had on the scope and competitiveness of the domain name market, in terms of opening new markets, and in their effect on existing TLDs and registrants?

- Overall positive impact
- Not significant in terms of market share
- Degree of choice varies
- Indications of new registrants and new uses
- Major contribution: facilities-based competition
- Innovation plays supporting role



Reasonableness of the Legal Framework

○ How well do the agreements provide a [reasonable] framework for the addition of future TLDs?

- Understandable to have been cautious at outset - level of detail may not be necessary going forward
- Had been insistence on adherence to new gTLD proposals - in hindsight some flexibility would have been useful
- Divergence from insistence on uniformity among agreements might also have been helpful
- Future TLD agreements should be streamlined and flexible enough to address routine issues

Legal & Regulatory Issues Arising from the New gTLDs

○ Have the new gTLDs encountered any legal or regulatory problems that were not considered at the outset, and, if so, how could they have been avoided?

- Other than start-up (already addressed) not many legal or regulatory issues
- Registries indicated no major lawsuits in this category and no evidence found indicating otherwise
- Other issues that did arise included country names, alternate roots, data privacy, TLD compatibility and (for .aero) migration from “.int”



Conclusion

- Launching a new registry is not for the faint of heart

- Experiences of 7 – and wisdom community as a whole has gained – should provide valuable assistance to those TLDs that follow

- Acknowledgements
 - Appreciation to many for participating in interviews
 - Special commendation to new gTLDs for their cooperation