

GNSO Draft Final Report on Domain Tasting

STATUS OF THIS DOCUMENT

This is a Draft Final Report on Domain Tasting, prepared by ICANN staff following public comments to the Initial Report, for submission to the GNSO Council on 8 February 2008.

SUMMARY

This report is submitted to the GNSO Council following public comments to the Initial Report, as a required step in this GNSO Policy Development Process on Domain Tasting.

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1 Executive summary

1.1 Background

The practice of domain tasting (using the add grace period to register domain names in order to test their profitability) has escalated significantly in the last two years.

ICANN community stakeholders are increasingly concerned about the negative effects of domain tasting and in the spring of 2007 the At Large Advisory Committee (ALAC) asked that the domain tasting issue be studied further by the ICANN GNSO.

The ALAC request enumerated five areas of potential concern for Internet users:

1. Potential destabilization of the domain name system through excessive operational load on registry systems;
2. Creation of consumer confusion as names quickly appear and disappear, or as users are redirected to advertising or otherwise confusing sites;
3. Potential increased costs and burdens of legitimate registrants and service providers;
4. Facilitation of trademark abuse, where existing dispute resolution mechanisms may not be sufficiently timely or cost-effective for trademark holders to use against short-term infringement; and
5. Facilitation of criminal activity including phishing and pharming.

Following the request from the At-Large Advisory Committee, the GNSO Council called for an Issues Report on Domain Tasting from ICANN Staff in May 2007. This Issues Report, available at <http://gns0.icann.org/issues/domain-tasting/gns0-domain-tasting-report-14jun07.pdf> was discussed at the ICANN San Juan meeting, where the GNSO Council on 27 June 2007 decided to establish an ad hoc group for further fact-finding. The ad hoc group delivered an Outcomes Report on 4 October 2007, available at <http://gns0.icann.org/drafts/gns0-domain-tasting-adhoc-outcomes-report-final.pdf>. These reports, taken together, provide extensive documentation about the volumes and consequences of domain tasting. They also discuss changes that might be made to discourage domain tasting. Three potential mechanisms were discussed in particular: 1) making changes to the add grace period, such as

eliminating the add grace period entirely; 2) making the ICANN transaction fee apply to deletes within the add grace period (see also 1.3 below); and 3) making contractual changes in individual registry agreements with ICANN, such as imposing an “excessive deletion fee” as was done by PIR effective June 2007. These reports also consider other consequences if such mechanisms were implemented, for example certain benefits of the add grace period such as the ability to correct typographical errors and other benefits. Based on these documents and further discussions at the ICANN Los Angeles meeting, the GNSO Council resolved on 31 October 2007 to launch a policy development process on domain tasting.

1.2 Constituency Statements and Public Comments

ICANN's policy development process invites constituency statements at the initiation of each policy development process. The GNSO constituency statements submitted for this report on domain tasting provide a variety of perspectives on the effects of domain tasting, and important insights regarding the mechanisms that should be considered to discourage the practice. While opinions vary, there is a consensus that measures should be considered to reduce domain tasting. Constituency statements received to-date are discussed in Section 4 of this Report, and are set forth in their entirety in Annex 1.

Public comments to the Initial Report of this PDP were invited when that report was posted. The comments received do add nuances to the earlier findings, while rather emphasizing these findings than deviating from them. This is not surprising since ample comments were already received in the preparation of the earlier Outcomes Report. The public comments are discussed in Section 4 of this Report, and are set forth in their entirety in Annex 2.

1.3 Other considerations

In approving the 31 October resolution launching a policy development process on domain tasting, the GNSO Council also encouraged ICANN staff “to apply ICANN's fee collections to names registered and subsequently deregistered during the add-grace period”. ICANN staff has pursued this option and the measure is included in

the proposed budget as recently posted at

<http://www.icann.org/announcements/announcement-2-04feb08.htm> .

It should also be noted that the GNSO Council has launched a design group to prepare proposals for the next steps in this PDP, for Council consideration at the ICANN meeting in New Delhi in February 2008.

2 Objective and Next Steps

This Draft Final Report on domain tasting is prepared as required by the GNSO Policy Development Process as stated in the ICANN Bylaws, Annex A (see <http://www.icann.org/general/bylaws.htm#AnnexA>). It is based on the Initial Report posted for public comment and includes the comments received. It is submitted to the GNSO Council for the Council's deliberations and considerations of further action to take.

3 Background

3.1 Process background

- Following a request from the At-Large Advisory Committee in spring 2007, the GNSO Council called for an Issues Report on Domain Tasting from ICANN Staff in May 2007. This Issues Report, completed on 14 June and available at <http://gns0.icann.org/issues/domain-tasting/gns0-domain-tasting-report-14jun07.pdf> was discussed at the ICANN San Juan meeting, where the GNSO Council on 27 June 2007 (minutes at <http://gns0.icann.org/meetings/minutes-gns0-27jun07.shtml>) resolved to establish an ad hoc group for further fact-finding on the practice of domain tasting.
- The ad hoc group delivered an Outcomes Report on 4 October 2007, available at <http://gns0.icann.org/drafts/gns0-domain-tasting-adhoc-outcomes-report-final.pdf>.
- Further discussions based on the Issues Report and the Outcomes Report during the ICANN LA meeting lead to the Council resolving on 31 October 2007 to launch a PDP on Domain Tasting by passing the resolutions below:

“Resolution 2.

Whereas the issues report on Domain Tasting <http://gns0.icann.org/issues/domain-tasting/gns0-domain-tasting-report-14jun07.pdf> has been released and discussed

and

Whereas, the GNSO Council acknowledges the Final Outcomes Report of the ad hoc group on Domain Tasting, <http://gns0.icann.org/drafts/gns0-domain-tasting-adhoc-outcomes-report-final.pdf>

the Council hereby initiates a Policy Development Process, and pursuant to Sections 4 and 8 of Annex A of the Bylaws,

The GNSO council resolves to initiate a PDP to address the issues set forth in the Issues Report by Staff and in the Outcomes Report of the ad hoc group and encourages staff to apply ICANN's fee collections to names registered and subsequently deregistered during the add-grace period.

Resolution 3.

Whereas, the GNSO Council has resolved to initiate a Policy Development Process on Domain Tasting, and pursuant to Sections 4 and 8 of Annex A of the Bylaws, resolves as follows:

1. *To request that each constituency appoint a representative to solicit the constituency's views on the issues presented in the Issues Report by Staff and in the Outcomes Report of the ad hoc group. Each such representative is asked to submit a Constituency Statement to the ICANN staff manager within thirty-five (35) calendar days of this resolution.*
2. *To request that ICANN Staff take all Constituency Statements, the two prior reports, and other information and compile (and post on the Comment Site) an Initial Report within fifty (50) calendar days of this resolution.*
3. *Thereafter, the PDP shall follow the provisions of Item 9 of Annex A of the Bylaws, in creating a Final Report for Council."*

- Based on constituency statements on the issues and findings from preceding reports, an Initial Report (see <http://gns0.icann.org/issues/domain-tasting/gns0-initial-report-domain-tasting-07jan08.pdf>) was prepared by ICANN staff and posted for public comments from 8 to 28 January 2008, at <http://www.icann.org/announcements/announcement-07jan08.htm>. The comments received in this process have been incorporated in this Draft Final Report for the GNSO Council's consideration of further action to take.
- Ample further process background features in the Issues Report at <http://gns0.icann.org/issues/domain-tasting/gns0-domain-tasting-report-14jun07.pdf>

3.2 Issue Background

- The 14 June GNSO Issues Report ("Issues Report") details several key concerns regarding domain tasting, <http://gns0.icann.org/issues/domain-tasting/gns0-domain-tasting-report-14jun07.pdf>. These include:
 - Potential impact on the stability of the gTLD name space and potentially on the entire DNS;
 - Potential consumer confusion and other concerns about potential negative affects on the consumer experience;
 - Potential increased costs and burdens to legitimate registrants;
 - Potential for facilitation of trademark infringement;
 - Added difficulty for law enforcement to access records and pursue cases of criminal activity; and
 - Potential for other negative consequences (Issues Report at pages 7-13).

- In the Issues Report, ICANN staff recommended that the GNSO Council move forward on a policy development process, including further fact finding and research. Staff also identified a series of questions that might be addressed as part of a fact finding effort (see Issues Report, p. 30). Staff further recommended that other mechanisms be considered to address the domain tasting issue. Staff noted two potential mechanisms in particular: 1) making changes to the add grace period, such as eliminating the add grace period entirely (this could be done in the context of the ICANN budget process); and 2) making contractual changes in individual registry agreements with ICANN, for example to impose an “excess deletion fee” as was requested by PIR in September, 2006 and introduced in June 2007 (see Issues Report p. 27, see also http://www.icann.org/registries/rsep/PIR_request.pdf).
- The 4 October Outcomes Report of the GNSO Ad Hoc Group on Domain Name Tasting (“Outcomes Report”) was developed in response to a 27 June GNSO Council request to provide additional data on the practice of domain tasting. The Outcomes Report reflected significant data gathering and information retrieval including a request for information, analysis of monthly registry reports, responses to a questionnaire from UDRP service providers, and a supplemental request for information conducted by the intellectual property constituency.
- The research and analysis reflected in the Outcomes Report provide an array of information about the practice of domain tasting. First, the Outcomes Report found a marked increase in the practice of domain tasting beginning in early 2005 and accelerating in late 2006 (see Outcomes Report at p. 10). Report data also showed that a very small number of registrars were responsible for the overwhelming majority of deletes within the add grace period (Outcomes Report at p. 12, also p. 18).
- Second, the Ad Hoc Group solicited information about the effects of domain tasting on community stakeholders. Some respondents, including many registrars, noted a number of benefits from the current add grace period. For example, registrants have the ability to correct typographical errors. In addition, registrars may derive net increases in registration revenue, may be

able to engage in early fraud detection and mitigation, address certain customer complaints and other related benefits (Outcomes Report, p. 14, pp. 24-28). That said, a clear majority of respondents view the disadvantages of domain tasting to outweigh any benefits, pointing to consumer confusion and potential fraud, trademark infringement and use in furtherance of criminal activity (Outcomes Report at p. 14, 21). A majority of respondents also see domain tasting as a potential threat to the security and stability of the Internet (Outcomes Report at p. 15). Some view domain tasting as a threat to Internet stability based on the tie between some domain tasting and criminal activity. Others suggest a threat to Internet stability based on the increased transaction load that might result from the rapid turnover of registered names.

- Lastly, the Ad Hoc Group solicited views from community stakeholders about steps that might be taken to reduce the practice of domain tasting, including changes to the add grace period. A majority of respondents support eliminating the add grace period, though there is also some support for imposing a charge on registrars for excessive deletions and for making the ICANN fee apply to names deleted within the add grace period. Those respondents who voiced support for the benefits of an add grace period also emphasized the negative impacts if the add grace period were eliminated (Outcomes Report, p. 28). Most respondents participating in the study also view existing enforcement mechanisms such as the Uniform Dispute Resolution Procedure and judicial proceedings as ineffective against domain tasting (Outcomes Report at p. 22).
- The Outcomes Report also set forth draft Terms of Reference to be considered if the GNSO Council initiates a policy development process on domain tasting. Specifically, the following three terms of reference were suggested:
 1. Review and assess all the effects of domain tasting activities that have been identified.
 2. Judge whether the overall effects justify measures to be taken to impede domain tasting.

3. If the answer to #2 is affirmative, then consider the potential impacts of various measures on the Constituencies, and recommend measures designed to impede domain tasting.
- The Outcomes Report notes in particular that the Public Interest Registry (PIR), the operator of the registry for .org, introduced an “excess deletion fee”. Registrars that delete more than 90% of their registrations within the add grace period are charged a 0.05 USD fee for each domain deleted. Monthly registry statistics show that this measure has reduced such deletes substantially, from 2.4 million in May 2007 to 152,700 in June. Furthermore, at the ICANN meeting in San Juan, a PIR representative stated that most of the domain tasting was performed by two entities, both of which discontinued the practice as a consequence of PIR’s implementation of the fee.
 - A recent development is that both NeuStar and Afilias have filed requests to launch similar measures to PIR’s, see <http://www.icann.org/registries/rsep/> . The NeuStar request is 2008001 (<http://www.icann.org/registries/rsep/biz-proposal-full-version-05feb08.pdf>), while the Afilias request is 2008002 (<http://www.icann.org/registries/rsep/afilias-request-05-feb08.pdf>). The requests are essentially the same except for where Afilias and NeuStar use different billing systems.

4 Discussion of issues

This section features issues and aspects of domain tasting reflected in the statements from the GNSO constituencies and the ALAC for this PDP. These entities are abbreviated in the text as follows (in the order of submission of the constituency statements):

BC - Business and Commercial Users' Constituency

RyC - gTLD Registry Constituency

IPC - Intellectual Property Interests Constituency

ALAC - At-Large Advisory Committee

NCUC - Non-Commercial Users Constituency

ISPC - Internet Service Providers and Connectivity Providers Constituency

RrC - Registrars' Constituency

Annex 1 of this report contains the full text of those constituency statements that have been submitted. These should be read in their entirety. While the constituency statements vary considerably as to themes covered and highlighted, the following section attempts to summarize key constituency views on the effects of domain tasting and whether changes to the add grace period should be made. This section also summarizes further work recommended by the various constituencies, possible actions recommended to curb domain tasting, and the impact of potential measures on the GNSO constituencies. Lastly, this section summarizes public comments reflected in the Outcomes Report. Other information from the Outcomes Report has also been considered in this effort.

4.1 Constituency Views on the Effects of Domain Tasting

The BC notes that domain tasting makes up the majority of domain transactions today and states that the practice is abusive and contrary to goals of creating a fair and open Internet that encourages competition and delivers relevant experiences for all users. The BC states that domain tasting only benefits a small number of registrars and registrants while causing harm to the vast majority of Internet users. Restriction of choice is another adverse effect

noted by the BC, as tens of millions of domain names are caught up in the 5-day AGP at any given time, making them unavailable to interested parties.

The BC notes that the increase in domain tasting is correlated to the increase in domain registrations, and also that too many of those registrations are infringing or otherwise being made in bad faith. The BC adds that examining domain names owned by serial domain tasters shows that the objective is to monetize traffic via PPC advertising. While recognizing that domain name monetization is not illegal, the BC asserts that the combination of tasting and monetization has created an Internet environment that is counterproductive to providing all users with relevant and tailored experiences, and that is conducive to cybersquatting.

The BC emphasizes the potential risks of domain tasting to end users. The BC describes a typical example, in which an unsuspecting user who mis-types a variation of a brand name into a browser bar is linked to irrelevant content, or to a competitor's products, or to other advertisements of the infringed brand owner itself. The BC is also concerned that domain tasting ties up millions of domain names at any given time, leading to fewer choices of domain names as users find that names they want are unavailable. Moreover, noting that domain tasting has primarily taken place in .com, the BC predicts growth of the practice into other TLDs if left unchecked.

The RyC notes that new policies to curb domain tasting could impose new requirements on registries and registrars. Thus the RyC finds it essential to take the following steps before making any policy recommendations: i) clearly define any problems to be solved and validate their existence with accurate data; ii) test proposed solutions to make sure that they have reasonable chances of solving identified problems; iii) minimize the possibility of creating new problems; iv) make best efforts to ensure that anticipated benefits are worth the implementation costs; v) where possible, take advantage of existing mechanisms to solve problems before creating new policy.

The IPC states numerous harmful effects on IPR holders, as the tasted domain names frequently are registered intentionally because they are typographical errors of trademarks, and quotes a recent report identifying domain tasting as a major factor in the recent growth

in “typosquatting”, which causes consumer confusion and erodes brand reputation. According to the IPC, large IPR holders with famous or well-known brands are more likely to be exposed to domain tasting and incur costs for action against the practice, while smaller IPR holders often do not have the resources needed to take such actions. As registrants, IPR holders subsidize domain tasting when any increased costs attributable to domain tasting are passed on by registrars and registries. Harmful effects for IPR holders include lost advertising and sales revenues from parked pages associated with the tasted names, and misdirection of potential customers to competitors, exploiting the goodwill of established brands. Domain tasting also prevents IPR holders from registering and using for legitimate purposes the domain names that are being tasted. Costs for IPR holders are increased by domain tasting as they pay once when “purchasing” the keyword from an advertiser as part of its advertising efforts and pay a second time to the domain taster for directing Internet users via links from parking pages to the IPR holder’s site. IPR holders incur further costs to police tasted domain names, although efforts to police are often unsuccessful. The IPC finds that UDRP and remedies under national law are ineffective against the ephemeral nature of domain tasting. In addition, domain tasting increases IPR holders’ costs for defensive domain registrations, for enforcement and litigation against domain tasters.

The IPC further finds that domain tasting forces Internet users to sort through numerous false hits when searching for legitimate sites, leading to confusion, frustration and waste of time. Users may inadvertently end up doing business with someone other than an intended supplier, be exposed to inferior goods or services, become disappointed and lose confidence in Internet-based commerce. Users may also be diverted to potentially harmful sites, as bad actors may exploit the anonymity facilitated by the temporary nature of tasted names. Individual registrants must also bear costs passed on both by registrars and registries, and by businesses. Domain tasting harms businesses and users by restricting the selection of domain names available to registrants at any point in time. The IPC finds that all the effects of domain tasting combine to reduce the user trust in the DNS and in Internet navigation generally. In the view of the IPC, domain tasting risks turning the DNS into a mostly speculative market. Domain names, intended to be identifiers of businesses and other entities, may become mere commodities of speculative gain.

The ALAC also notes the tremendous growth in the volume of domain tasting since early 2005. The ALAC is concerned that the volume of domain tasting could destabilize the domain name system due to the volume and rate of domain name adds and deletes. The ALAC is also very concerned that domain tasting undermines consumer confidence in the DNS. Domain tasting results in increased costs and burdens to legitimate registrants and facilitates trademark abuse which also leads to consumer confusion. The position of the ALAC is that domain tasting is both inappropriate and harmful and should be eliminated.

The NCUC is concerned that some registrants are exploiting the add grace period to avoid paying registration costs, thereby forcing registries to subsidize them. The NCUC notes that this was clearly not the intent of the add grace period, and suggests that action by ICANN may be appropriate to counter the practice. The NCUC also takes note of the benefits that the add grace period may provide to both registrants and registrars and suggests that the implications of eliminating the add grace period be studied further before implementing such a change. The NCUC statement also examines the relationship between domain tasting and trademark infringement, particularly in light of trademark concerns raised by other constituencies. The NCUC notes that existing trademark protection mechanisms remain fully valid in cases of domain tasting that do infringe trademarks, even when the period of infringement is very brief, but that the problem is one of enforcement. This distinction should be kept in mind by the GNSO and by any subsequent working group established to consider policy changes. Many of the responses to the RFI listed problems such as “erosion of brand names,” “erosion of reputation” and “loss of revenues [through] diversion of traffic” as disadvantages of domain tasting. These are problems with infringement, not with domain tasting. While it may be appropriate for ICANN to consider whether its policies unduly encourage infringement or impede enforcement of intellectual property rights, the NCUC cautions against assuming that a revised domain tasting policy will eliminate short term infringement or that all domain tasting necessarily infringes. Insofar as the add grace period allows a registrant to use a domain for a very short time at no cost, it does provide an incentive to a prospective infringer to operate in a manner that frustrates enforcement of trademark rights. The NCUC suggests that this incentive can be removed by implementing a modest restocking fee where no corrective motive can be shown for the deletion. The NCUC recommends that because the bulk of deletions come from a handful of registrars

and because registration fees are only likely to deter an infringer who operates a large number of sites, the approach adopted by PIR is particularly worthy of further consideration.

The ISPC states that domain tasting is deleterious to the stability and security of the Internet and sees the following harmful effects:

1. Domain tasting facilitates the practice of short-term infringement on and dilution of trade marks, as well as phishing. It allows criminals to employ a hit and run strategy wherein domain names may be held at no cost to the registrant for up to 5 days. By dynamically changing registrations, these malefactors can defeat the existing dispute resolution mechanisms which were not designed to deal with such short time frames.
2. The rampant use of domain tasting, and particularly its abuses, gives rise to a huge number of complaints to ISPs, both from individual consumers and businesses. It significantly weakens our customers' trust and faith in the validity of domains and the DNS. This is a stability issue.
3. At any given time millions of domain names are being tasted and there is a high turnover from week to week. This added operational load potentially threatens the stability of the DNS. And, since all but an insignificant percentage of domain name resolutions are performed by ISP domain name servers, the burden of this excess falls on ISP members.

The RrC have a split view, with one group stating that tasting should be curbed as it causes confusion among registrants, erodes consumer confidence and is contrary to good practice, notably by disturbing the stability of domain name registration services, by disturbing other services relying on zone files and third party WHOIS services, and by increasing costs that must be absorbed by others. This group also finds that domain tasting has been allowed to grow to a high-volume practice, without any prior tests or analysis that the "first do no harm" approach would call for.

Others within the RrC state that tasting should not be a matter of concern or action by the GNSO or ICANN as tasting occurs due to market demand, and the market should be

allowed to evolve with demand. This group also finds that it is outside ICANN's remit to regulate market activity.

4.2 Constituency Views Regarding the Add Grace Period

As summarized below, constituency statements considered at length whether changes should be made to the add grace period to discourage domain tasting. Staff notes in the Issues Report that the add grace period was instituted by registries into the registry contracts for .BIZ, .COM, .INFO, .NAME, .NET, .ORG and .PRO, to allow registrars to recover fees to registries if domain names were mistyped during registration. Thus, the grace period did not arise from an ICANN policy process, and its use for domain tasting was not envisioned when the add grace period was implemented.

The BC states that domain tasting is an unforeseen abuse of the add grace period, that the main volume of domain tasting is performed by a select few registrars and/or their customers, and that such registrars are operating outside the guidelines of the RAA. The BC further states that the add grace period provides registrars with an unfair competitive advantage over all other potential registrants since they have the technological capability to quickly add, drop, and identify names of value without incurring any cost, whether on their own account or on behalf of their customers. Domain tasters are able to register very large numbers of names, while only paying for names which apparently will deliver a positive ROI over a paid registration period.

The RyC raises concerns about adopting any single "one size fits all" approach to discouraging domain tasting, and recommends that registries and their sponsors consider a variety of approaches that might be uniquely appropriate to each gTLD.

The IPC states that non-speculating registrars have come to rely on the add grace period for purposes that should be better addressed through other mechanisms. The IPC notes that several ccTLD registries do not have an add grace period and suggests that registrars for these ccTLDs be consulted about such alternative mechanisms. The IPC expects any losses through non-payment by registrants to be more than offset by reduced registrar costs for tasting and kiting transactions. The IPC suggests that registrars could require registrants

to double-verify information and domain name spelling during the registration procedure to reduce the likelihood of typographical errors. Such double-verification is widely used elsewhere in Internet commerce. The IPC further notes that registration agreements for a number of large ICANN-accredited registrars either state that all registration fees are non-refundable or do not identify misspelled domain names as a refundable event. When the add grace period was introduced, domain name registrations were significantly more expensive than they are today. With the current low cost of domain name registration, registrants could well expect no refunds for misspelled domain names. The IPC finds no reason to require the equivalent of an add grace period to address fraud. Many traditional and online businesses provide immediate activation of service with a credit card payment, and do not rely on a 5-day grace period, as exemplified by long distance telephone service providers and Apple's iTUNES® services. The IPC finds that registrars using the add grace period as a "cart hold to provide access to domain names" calls into question whether this is in compliance with Section 3.7.4 of the RAA.

The ALAC finds that while the add grace period was created for the legitimate purpose of enabling the cancellation of accidentally registered domain names, the reduction in domain name registration prices combined with better registrar software eliminates the need for the add grace period in the future. Moreover, the ALAC notes that many registrars and resellers do not even pass this benefit on to registrants. The position of the ALAC is that the domain tasting enabled by the add grace period is both inappropriate and harmful and should be eliminated. The ALAC also highlights other means by which domain tasting might be discouraged, such as fees for excessive deletions and other related options, and notes that some mechanisms could be adopted by individual service providers without any ICANN-initiated policy change. However, the ALAC encourages ICANN to proceed with a policy development process to discourage domain tasting until those actions are actually taken and proven effective.

The NCUC statement also acknowledges the growing problem of domain tasting, caused by exploitation of the add grace period but notes that eliminating the add grace period could also eliminate related benefits to both registrants and registrars. The NCUC encourages the community to consider the option of a modest "excessive delete fee" or "restocking fee" as

alternatives to eliminating the add grace period, noting that this approach gives registrars flexibility to adopt effective practices tailored to their customers and business model, which would also preserve the other advantages of the add grace period.

The ISPCP is concerned that the add grace period is being exploited to test the profitability of domain names and strongly recommends that new policies be adopted to curtail or eliminate this practice.

The RrC state that their constituency is in near unanimous agreement that sun-setting the Add Grace Period (AGP) is not an appropriate action, should the GNSO decide to address tasting activity. The RrC also underlines that many registrars who do not participate in tasting use the AGP in various ways not related to tasting, as detailed in section 4.4 of the Outcomes Report, and that sun-setting the AGP would unnecessarily put additional burdens and costs on registrars and registrants using the AGP for these non-tasting reasons.

4.3 Further Work Suggested by Constituencies

Several constituencies suggest that further work be conducted either prior to or in the course of a policy development process.

The RyC states that further work is needed before policy changes should be made, as follows:

- i) clearly define any problems to be solved and validate their existence with accurate data;
- ii) test proposed solutions to make sure that they have reasonable chances of solving identified problems;
- iii) minimize the possibility of creating new problems;
- iv) make best efforts to ensure that anticipated benefits are worth the implementation costs;
- v) where possible, take advantage of existing mechanisms to solve problems before creating new policy.

The IPC suggests that further information is needed regarding the mechanisms that are used today by ccTLD registrars (without an add grace period) to monitor, test and develop systems, about mechanisms that might have been used by gTLD registrars before

implementation of the add grace period, and what other potential mechanisms might be considered for such purposes.

The NCUC advises strongly against launching a “zone file data study”, an approach mentioned in the Outcomes Report to determine to what extent domain tasting infringes upon trademarks by comparing a sample of add grace period deletes to a list of registered trademarks. The NCUC states that this method would result in excessive findings of infringement based on an erroneous assumption that any unauthorized use of a registered trademark is unlawful. The NCUC notes that trademark law does not categorically ban use of a trademark without the permission of the owner but prohibits uses of trademarks which deceive or confuse consumers, emphasizing that where there is no confusion, there is no infringement. Thus, trademark law does not prohibit the use of the same name or symbol by companies in different fields of commerce, and trademark protections are also limited in geographic reach. Therefore a test for infringement based solely on the fact that a word has been registered with a government trademark office would erroneously conclude that many lawful entities are infringing. ICANN should not take it upon itself to decide these issues for the courts and legislatures of every country. The delicate balance of competing public policies inherent in intellectual property law should instead be left to the courts and political processes to work out.

4.4 Constituency Views Regarding Proposed Actions

The BC recommends a new policy that either removes the add grace period completely, or substantially changes the economics associated with the add grace period so that registrants cannot commercially “test” large quantities of names for free. The BC advocates immediate action to rectify this problem which has been rapidly growing for more than two years. Furthermore, BC states that a practice that allows for the testing and subsequent return of non-profitable purchases is unheard of in nearly every other marketplace and that policies for domain names must become more closely aligned with those of other marketplaces. The BC proposes the following actions, in order of preference:

- 1) Eliminate the AGP, but provide accredited registrars with the ability to test their domain fulfilment systems via a number of test adds/changes/deletes without cost. The number agreed upon should be derived from research on registrars that are not involved in domain tasting. Or,

- 2) Change the economics of domain tasting – The portion of every domain registration fee due to ICANN should be non-refundable, and excess deletes (based on an agreed ratio in a given time period) should result in full payment of all registration fees for the period.

The RyC recommends that further work be done to identify the scope of the problem and that other means to reduce domain tasting be exhausted before introducing new policy. The RyC furthermore expresses support for the suggested terms of reference in the Outcomes Report, although qualified with a minority statement that one policy affecting all registries may not be appropriate.

The RyC suggests pursuing the option of making the ICANN transaction fee apply to domain names deleted during the add grace period and encourages ICANN staff to further explore this option with members of the community with particular focus on registrars and registrants. The RyC adds that it is important to identify other uses of the add grace period not related to tasting and to make sure that registrants are not unduly harmed if the transaction fee is applied to all names deleted during the add grace period. This is tempered by a minority statement within the RyC, stating that it is useful to explore the issue, as long as the option is not projected as a “one size fits all” solution affecting all registries.

Considering the option of introducing excess deletion fees, the RyC notes that one of its members, PIR (.org), has already implemented this approach, but the RyC believes that a one-size-fits-all approach will not work for all registries and sponsors. The RyC therefore suggests that consideration of variations of this approach should be evaluated by individual registries and sponsors, while stating that the results may differ among gTLDs.

The IPC views favourably the option of making the ICANN fee apply to all add grace period deletes, stating that domain tasting reduces ICANN revenues as tasted domains are not subject to this fee. The IPC notes that had the 0.20 USD been levied on each domain name deleted during the add grace period in July 2007 alone, it would have resulted in over 12.5 million USD in revenue, over 25% of the projected revenues in ICANN's FY 2007-2008 budget. The IPC states that ICANN could put such additional revenues to good use by, for example, expediting rollout of IDNs and the introduction of gTLDs. The IPC recognizes that

imposing a fee could reduce the number of registrations and the associated additional revenue, thus achieving a decrease in the incidence of domain tasting.

The ALAC supports any and all actions to eliminate domain tasting. There has been much discussion on this issue among the regional at-large organizations (RALOs) and on the general At Large discussion list. Although not all regions have been similarly active, most views to date favour complete elimination of the add grace period. The ALAC further states that opinions within the user communities range from the North American RALO position that the add grace period is not beneficial to the public good and should be abolished, to the Latin American and Caribbean RALO and the Asia Pacific RALO positions stating, respectively, that action to control domain tasting may be necessary and that the effectiveness of economic tools should be investigated, such as has been successfully used by PIR. The ALAC does recognize that there are other actions which may also be helpful in eliminating domain tasting, including:

- A registry-charged fee for all add grace period uses. The fee would need to be set to effectively eliminate tasting and not just change the dynamics of it.
- A registry-charged fee if add grace period uses exceed some pre-determined threshold per month. The fee could be as much as the full cost of the domain. The threshold would need to be set to catch domain tasters but not work to the detriment of registrars that use the add grace period for legitimate, non-tasting purposes. Similarly, the fee would need to be set to effectively eliminate tasting and not just change the dynamics of it.
- ICANN currently charges registrars 0.20 USD per domain added excluding add grace period deletes. This exclusion could be removed as part of an upcoming ICANN budget process (or perhaps even sooner). Alternately, the exclusion could be removed only if a certain threshold of add grace period uses were reached (there is already an add grace period threshold used in a different registrar fee, so the mechanism exists today). It is unclear if this fee would be sufficient to eliminate domain tasting, but could curtail current levels of tasting activity.
- The RAA currently requires registrars to activate a domain if they have a reasonable expectancy of being paid (3.7.4). This clause could be altered to allow registrars to restrict activation of a domain unless they have a reasonable expectancy of being paid AND retain the fee.

Recognizing that some actions to reduce domain tasting may not require a change to ICANN policy, the ALAC encourages such actions while advocating further GNSO policy development work until such actions are actually taken and prove effective.

The NCUC expresses reservations about whether the add grace period should be removed entirely, noting that the add grace period may provide benefits to both registrants and registrars. However, any reported benefits of the AGP are disputed and further elaboration is needed before recommending specific action. The NCUC encourages consideration of a modest 'excess deletion' fee as an alternative that could penalize registrars with excessive deletes and force them to adopt policies that prevent registrants from exploiting the add grace period. Since registrants looking to avoid paying registration costs will naturally flock to those registrars that are least vigilant against this abuse, registrars would have a substantial incentive to be vigilant against creative disguises of these practices. Unlike direct imposition of a fee on all short-term registrations, this approach gives registrars flexibility to adopt effective practices tailored to their customer base and business model, and preserves the other advantages of the add grace period.

The NCUC concludes that further investigation by the GNSO is needed and action may be required to curb abusive domain name tasting. The issue should remain properly framed rather than assuming that ICANN is responsible for or capable of preventing all short-duration trademark infringement on the web.

The ISPC opposes the exploitation of the add grace period for domain name tasting and urges the GNSO to create new policy to curtail or eliminate this practice.

The RrC is opposed to sun-setting the AGP, for reasons stated in 4.2 above. Among the measures contemplated, the RrC prefers that ICANN make its transaction fee apply to all new registrations except for a reasonable number that are deleted within the AGP. The RrC also finds it acceptable, although not preferred, that the GNSO encourages gTLD registries to only allow AGP refunds on a reasonable number of new registrations, while noting that such action is effective only if all gTLD registries apply it in a reasonably consistent manner.

The RrC also notes that neither of the above actions requires new policy or modifications to existing policy and states that the RrC is generally opposed to a PDP on this issue.

4.5 Impact of Potential Measures on the Constituencies

Constituency statements described the possible effects on the constituencies of implementing changes to discourage domain tasting. The RyC states that if a consensus policy is implemented, registries and sponsors would be required to implement the policy, which may call for amendments to existing registry agreements. Registries and sponsors would likely have to coordinate implementation efforts with registrars. To estimate financial impact on registries and sponsors would require details of a consensus policy and the RyC will cooperate in estimating the financial impact if and when a possible consensus policy is more clearly defined.

Relating to making the ICANN fee apply to deletes within the add grace period, the RyC finds that the impact on registries and sponsors would be minimal as the transaction fee is an issue between ICANN and registrars. Most registries and sponsors already report the names deleted during the add grace period so no new reporting requirements are expected. Any financial impact on registries and sponsors is expected to be minimal.

Concerning introduction of excess deletion fees, the RyC states that the impacts of such an approach, financially or otherwise, would need to be determined individually and that the impacts will probably vary across gTLDs.

The IPC states that taking action to effectively prohibit tasting would negatively impact only a small class of domain name speculators, some of which are ICANN-accredited registrars. The impact of any such measure on the IPC would depend upon the measure chosen, but the IPC expects that elimination of domain tasting should eliminate its harmful effects as experienced by the IPC.

The RrC states that the implementation time for registrars would be negligible in the case that ICANN makes its transaction fee apply to all new registrations except for a reasonable number that are deleted within the AGP. If gTLD registries only allow AGP refunds on a

reasonable number of new registrations, the implementation time for registrars could be substantial depending on how each registry defines its policy. If registrars need to modify their systems and/or services a minimum of 90-days advance notice should be given. Furthermore, the RrC is opposed to sun-setting the AGP, a measure that would unnecessarily put additional burdens and costs on registrars and registrants using the AGP for non-tasting reasons, as explained in 4.2.

4.6 Summary of Public Comments from the Outcomes Report

The Ad Hoc Group received over 200 responses to the RFI conducted as part of the Outcomes Report. Most of the respondents represented the interests of intellectual property rights owners and registrants/users. A clear majority of respondents expressed the view that the disadvantages with domain tasting significantly outweigh the benefits. Most respondents are in favour of discouraging domain tasting by eliminating the add grace period, although a number of respondents recommended alternative mechanisms, a number of which are also highlighted in the constituency statements summarized above. Allowing domain name registrations at no cost is regarded by most as facilitating domain tasting and a majority of respondents suggest that ICANN should stipulate minimum registration fees, while some state that such action is outside of ICANN's mandate. A number of respondents provide examples, statistics and suggested sources of additional information.

Graphs based on data from monthly registry reports, mainly from .com and .net, show a marked increase in total number of deletes in recent years and also an increase in the fluctuation of net additions over time. Recent data on deletes within the add grace period show that a small number of registrars are responsible for the overwhelming majority of such deletes.

Input from a group of ccTLD registry operators show that domain tasting is a comparatively rare phenomenon for most in this group. The different main factors put forward for this state of affairs are absence of AGP, monthly pricing modes and provisions for activation on payment. A few have experienced domain tasting and acted against it, while at least one has introduced domain tasting as a service, for a fee.

A submission from a group of registrars indicates several other uses of the AGP unrelated to domain tasting.

4.7 Summary of Public Comments to the Initial Report

The [Initial Report](#) was posted for comments on 8 January 2008, with 28 January 2008 as deadline for contributions. See <http://www.icann.org/announcements/announcement-07jan08.htm> . In total, 67 public comments were submitted, whereof 1 clearly off-topic. All contributions are compiled in Annex 2 to this report and also available in the posted archives at <http://forum.icann.org/lists/domain-tasting-2008/> .

The contributions can be grouped as follows:

a) Short email contributions from individuals, calling for measures to stop or reduce the practice of domain tasting, some suggesting measures like cancelling the AGP, introducing a waiting period, limiting the number of allowable AGP deletes, auditing of registrars, restricting registrar activities and blacklisting of tasted domains. Some comments address the proposed introduction of the ICANN registration fee for all registrations (i.e. not making it refundable for deletes within the AGP) and question such a measure's effectiveness in curbing domain tasting. In total 50 contributions.

b) Documents from groups and associations, notably CADNA, AIPLA, APWG, INTA and ICA. The constituency statement from the Registrars' Constituency (RrC) was also posted here, since it was submitted after the Initial Report was posted. Key content in these contributions:

CADNA - After analyzing the applications and implications of a handful of proposals including restocking fees, ratios, and accreditation revocation (as it pertains to notorious tasters), CADNA contends that abolishing the AGP is the safest and most practical solution to implement.

AIPLA - Effective measures should be adopted to curb the practice of domain tasting. The "business model" of tasters is built around trademark abuse. Even infringements that last only 5 days are harmful to trademark owners.

APWG - A study on the use of domain tasting by phishers shows minimal such use in the time the study was performed. It should be noted, though, that members of the anti-phishing community have had to increase their infrastructure to account for the much larger number of potential phish sites that are being registered by tasters, and this impedes anti-phishing efforts and increases the cost of detecting and mitigating fraudulent behavior.

INTA - Methods that ICANN should implement to eliminate domain name tasting, in descending order of preference: 1. Eliminate the AGP 2. Redefine AGP to significantly restrict the percentage of Deleted names to which it applies 3. Impose the ICANN fee. 4. Endorse imposition of a Registry fee.

ICA - Support for the imposition of a nominal non-refundable registration fee by ICANN, perhaps enhanced by individual actions by gTLD registries.

RrC - Preferred – To recommend that ICANN make the transactional fee component of the variable Registrar fees apply to all new registrations except for a reasonable number that are deleted within the AGP. Acceptable but not preferred – To encourage gTLD Registries to only allow AGP refunds on a reasonable number of new registrations, noting that such action is affective only if all gTLD registries apply it, and do so in a reasonably consistent manner.

c) Comments objecting to a service recently launched by NSI. These comments were prompted by the actuality of that particular topic and do not focus on domain tasting in the strict sense but rather to what is called “domain name front-running”. In total 18 contributions.

d) Comments from a couple of threads on the GA (General Assembly) mailing list, introduced by list members copying their mails to the public comment address. These comments fall into the categories a) and c) above, and some individual comments do depend on the thread context for understanding. Recent GA list email exchanges can be found in archives at <http://gns0.icann.org/mailling-lists/archives/ga-200709/> . In total 29 contributions.

5 Conclusions and Next Steps

The practice of domain tasting is of significant concern to many constituencies and community stakeholders. These concerns were explored during 2007, as reflected in the Issues Report prepared by ICANN staff, and by the extensive research and data gathering conducted by the Ad Hoc Group of the GNSO Council and reflected in the Outcomes Report. Based on these reports, the GNSO Council voted to initiate a policy development process to explore the specific policy changes that should be made to curb domain tasting. The Initial Report, an early step in this process, was posted for public comment for 20 days as prescribed by the ICANN bylaws (see <http://www.icann.org/general/bylaws.htm#AnnexA>). The public comments received, as well as the Registrar Constituency statement (not available when the Initial Report was finalized), do add nuances to earlier findings without essentially altering them. The comments have been incorporated into this “Draft Final Report” submitted to the GNSO Council. The Draft Final Report (along with the preceding Issues Report and Outcomes Report) is a foundation for subsequent actions taken by the GNSO Council in formulating recommendations to the ICANN Board regarding policy changes that should be made to address domain tasting. To further the work on this topic in parallel to the public comment period, the GNSO Council launched a small design group to prepare suggestions for the next steps to take. The results from this group are expected to be presented and discussed at the ICANN New Delhi meeting.

In addition, the resolution approved by the GNSO Council in Los Angeles on 31 October 2007 also encouraged ICANN staff to apply the ICANN registration fee to names registered and subsequently deregistered during the add-grace period (see text of resolution, Sec. 3.1 above). ICANN staff has pursued this option in the context of the upcoming budget cycle and the measure is incorporated in the.

Annex 1 - Constituency Statements

Business Constituency

Statement of the Business Users Constituency, regarding the Domain Tasting PDP, November – 2007

Background

On 31 October 2007, the GNSO Council launched a Policy Development Process (PDP) on domain tasting based upon the Final Outcomes Report of the ad hoc group on Domain Tasting and the ICANN Staff's prior Issues Report on Domain Tasting.

The BC provides this statement in accordance with Council's request for Constituency Impact Statements by 5 December 2007.

Summary

Domain tasting, the practice whereby would-be registrants leverage the 5-day Add Grace Period (AGP) to register domain names free of charge and test their value before deciding whether or not to keep them, is an unforeseen abuse of the AGP. Domain tasting, as is evident from the Verisign .COM monthly add/drop reports, now makes up the majority of domain transactions. While tasting appears to have led to an increase in the number of registered domain names, we believe that the practice is unfair, abusive, and contrary to our collective goals of creating a fair and open Internet that encourages competition and delivers all users relevant and tailored experiences.

Furthermore, based upon the Final Outcomes Report of the ad hoc group on Domain Tasting, we believe that the current practice benefits only a small number of registrars and registrants while causing harm to the vast majority of Internet Users. As such, the BC encourages and supports policy reform aimed at curbing abusive domain name tasting. In line with this, we recommend a new policy that either removes the AGP completely, or substantially changes the economics associated with this grace period so that one cannot commercially "test" large quantities of names for free.

Statement

As demonstrated by the Final Outcomes Report and other research performed to date, domain tasting is harmful and is an unfair business practice. Since accredited registrars have the unique ability to add and drop domains quickly and easily, the abuse of the AGP and the greatest volume of domain tasting is generally practiced by a select few domain name registrars and/or their customers. Since ICANN Staff believes these registrars are operating within the guidelines of the RAA, despite fairly clear language apparently to the contrary, they do not face any repercussions for participating in domain name tasting. Immediate corrective action needs to be taken to address the AGP policy and rectify the current problem which has been ongoing and rapidly expanding for more than two years.

Domain tasting is the practice whereby domain names are “tested” over the 5-day AGP. Valuable domains typically are not deleted during the AGP and thus show up as new registrations. Thus, conversation about domain tasting often leads to a conversation about cybersquatting and its subsequent harms such as trademark infringement, customer confusion and other fraudulent activities. The BC understands that analyzing the impact of domain tasting is inherently problematic since the harms it causes are associated with domain name registrations outside of the AGP. Yet there is no doubt that the increase in domain tasting activity directly correlates to the increase in domain registrations over the past several years. Far too many of those registrations are obviously infringing or otherwise in bad faith, to the profit of registrars and registries, and detriment of everyone else in the internet community.

Domain tasting has largely been confined to the .com TLD to date, leading to some 70 million current registrations, a large portion of which were part of a commercial tasting scheme and are blatantly cybersquatting. The BC fears that if the practice goes unchecked, the same experience will occur in other gTLDs. Indeed we have noticed similar problems in various ccTLDs already.

While the BC recognizes the difficulty in quantifying the negative impacts of tasting and tasted domains, it is evident to the BC that tasting is problematic for the following reasons:

1) The most active domain name tasters are concentrated within a small group of accredited registrars, which have been identified in Verisign's April 2007 .COM registry report (see below graph). Yet this graph may not capture some of the most voluminous tasters, who have obtained numerous registrar accreditations and thus are able to spread their activity amongst those separately accredited entities.

The AGP provides domain name registrars with an unfair competitive advantage over all other potential registrants since they have the technological capability to quickly add, drop, and identify names of value without incurring any cost, whether on their own accounts or on behalf of their customers. Domain tasters are able to register very large numbers, in some cases tens of millions, of names with no risk. They only incur cost of those names which apparently will deliver a positive ROI over the paid registration period (usually one year, but some registrars are offering monthly registrations).

A practice that allows for the testing and subsequent return of non-profitable purchases is unheard of in nearly every other marketplace. The BC believes we must advance domain name policies so that they are more closely aligned with those of other marketplaces.

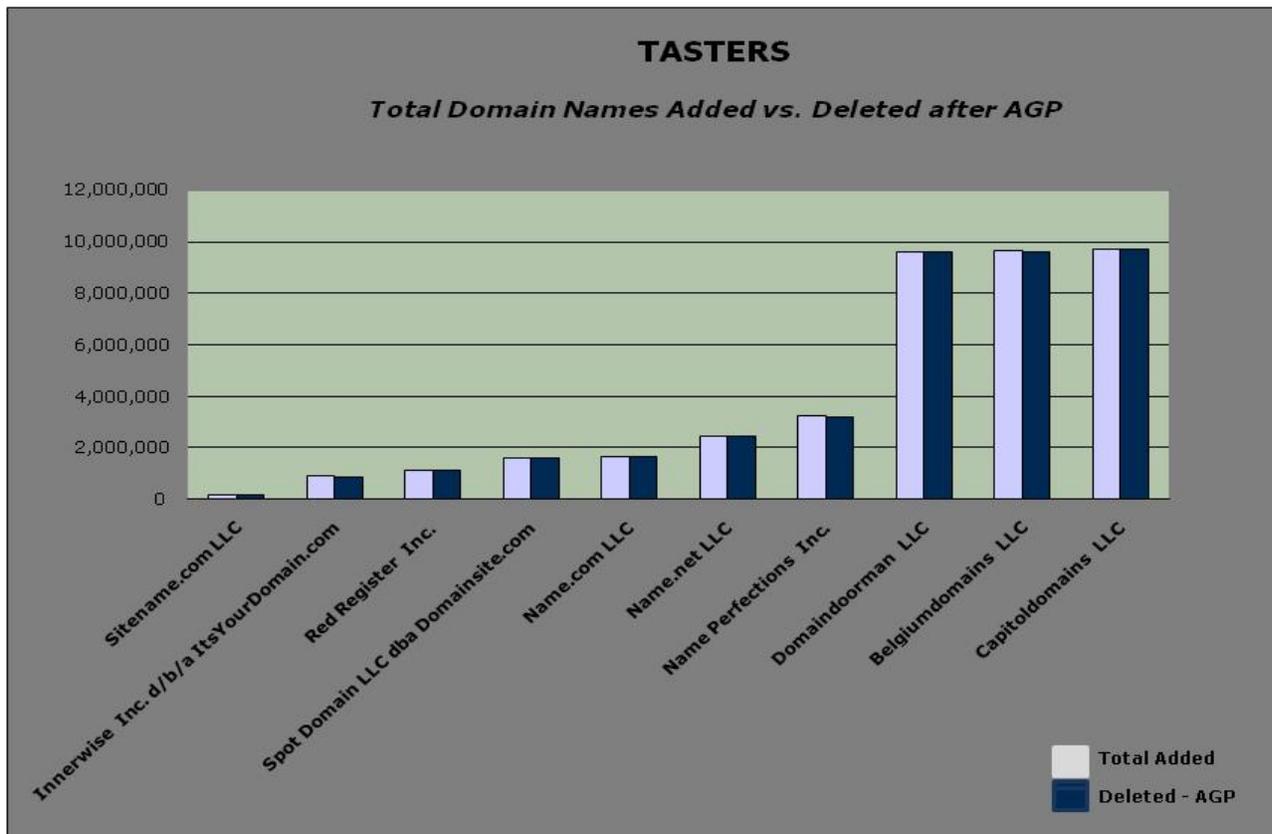


Figure. Created from April 2007 .COM report provided by VeriSign.

- 2) Domain tasting has led to an environment where tens of millions of domain names are caught up in the 5-day AGP at any given time. Because so many domain names are being added and dropped on a regular basis, domain name tasting has led to restricted choice as interested parties including individual registrants, small business, and corporations often find that the names they want are unavailable.
- 3) Examining domain names that are owned by the serial domain tasters noted in Figure 2 demonstrates that tasters are registering names to monetize traffic via PPC advertising. The BC recognizes that the practice of domain name monetization is not illegal, but asserts that the combination of tasting and monetization has created an Internet environment that is counterproductive to providing all users with relevant experiences, and conducive to rampant cybersquatting.

There is no doubt that the large tasters are utilizing domains that correlate to well-known brands, as such domains generally garner more traffic than non-branded domains, since they are backed by advertising and consumer trust. The total number of domain names registered is directly correlated to the rise of domain tasting. The large number of domain names that have been registered to profit from the practice of direct navigation has created customer confusion and an increase in trademark infringement.

As noted previously, it is difficult to find concrete proof that tasting is connected to these issues since domain names that impact consumers and cause brand harm are those which garner traffic and are attractive registrations beyond the AGP. That said, the harm created by domain name tasting is aptly demonstrated simply by typing in any variation of a brand, group, event, or nearly any combination of characters and numbers into a browser bar. More often than not, these Web sites deliver users with links to irrelevant content, to relevant parties that are competitors of the brand in question and/or to advertising of the infringed brand owner itself.

For example:

Samesclub.com - REGISTRAR - CAPITOLDOMAINS, LLC – 11.12.07

mycokerewatds.com – REGISTRAR – CAPITOLDOMAINS, LLC – 11.12.07

Again, it is difficult to be certain whether these names that deliver unexpected content were the result of domain tasting. These examples have been included, however, since they are connected to registrars who are among the most active domain tasters and they both receive thousands of visitors per month. There are thousands of other examples known to BC members.

RECOMMENDATIONS

We propose the following steps, in order of preference, based upon the BC's position that domain tasting is counterproductive, problematic and unfair:

- 1) Eliminate the AGP, but provide accredited registrars with the ability to test their domain fulfillment systems via a number of test adds/changes/deletes without cost. The number agreed upon should be derived from research on registrars that are not involved in domain tasting. Or,
- 2) Change the economics of domain tasting – The portion of every domain registration fee due to ICANN should be non-refundable, and excess deletes (based on an agreed ratio in a given time period) should result in full payment of all registration fees for the period.

Domain tasting

A monetisation practice employed by registrants to use the AGP to register domain names in order to test their profitability. During this period, registrants conduct a cost-benefit analysis to see if the tested domain names return enough traffic to offset the registration fee paid to the registry over the course of the registration period (e.g., currently \$6 US for a .NAME domain name).

Domain kiting

A form of domain tasting which involves continual registration, deletion, and re-registration of the same names in order to avoid paying the registration fees. This practice is sometimes referred to as “domain kiting.” This term has been mistakenly used as being synonymous with domain tasting, but it refers to multiple and often consecutive tasting of the same domain name that avoids paying the registration fee. N.B. there is no guarantee that a registrant who allows a name to drop at the end of the AGP will be successful in re-registering it as other registrants may also compete for the same name.

Phishing

The practice of creating a replica of an existing webpage to fool a user into submitting personal, financial or password data.

Pharming

Re-directing a website’s traffic from the legitimate website to a bogus website for the purpose of stealing personal, financial or other data.

Type-in traffic

“Type-in traffic is a term describing visitors landing at a web site by entering a word or phrase (with no spaces or a hyphen in place of a space) in the web browser's address bar (and adding .com or any other gTLD or ccTLD extension)(Presently); rather than following a hyperlink from another web page, using a browser bookmark, or a search-box search.”¹

Typo-squatting

The practice of registering misspellings of known terms as domain names in order to attract type-in traffic.

UDRP

The Uniform Domain Name Dispute Resolution Policy;

<http://www.icann.org/dndr/udrp/policy.htm>.

¹ This is the Wikipedia definition of type-in traffic. Further information is available at http://en.wikipedia.org/wiki/Type_in_traffic

GNSO gTLD Registry Constituency Statement

Issue: **Domain Tasting**
Date: 5 December 2007
Version: 1.0

General RyC Information

- Total # of eligible RyC Members²: 15
- Total # of RyC Members: 15
- Total # of Active RyC Members³: 15
- Minimum requirement for supermajority of Active Members: 10
- Minimum requirement for majority of Active Members: 8
- # of Members that participated in this process: 13
- Names of Members that participated in this process:
 1. DotAsia Organisation (.asia)
 2. DotCooperation (.coop)
 3. Employ Media (.jobs)
 4. Fundació puntCAT (.cat)
 5. Global Name Registry (.name)
 6. mTLD Top Level Domain (.mobi)
 7. Museum Domain Management Association – MuseDoma (.museum)
 8. NeuStar (.biz)
 9. Public Interest Registry (.org)

² All top-level domain sponsors or registry operators that have agreements with ICANN to provide Registry Services in support of one or more gTLDs are eligible for membership upon the “effective date” set forth in the operator’s or sponsor’s agreement (Article III, Membership, ¶ 1). The RyC Articles of Operations can be found at http://www.gldregistries.org/about_us/articles.

³ Per the RyC Articles of Operations, Article III, Membership, ¶ 4: Members shall be classified as “Active” or “Inactive”. A member shall be classified as “Active” unless it is classified as “Inactive” pursuant to the provisions of this paragraph. Members become Inactive by failing to participate in a Constituency meeting or voting process for a total of three consecutive meetings or voting processes or both, or by failing to participate in meetings or voting processes, or both, for six weeks, whichever is shorter. An Inactive member shall have all rights and duties of membership other than being counted as present or absent in the determination of a quorum. An Inactive member may resume Active status at any time by participating in a Constituency meeting or by voting.

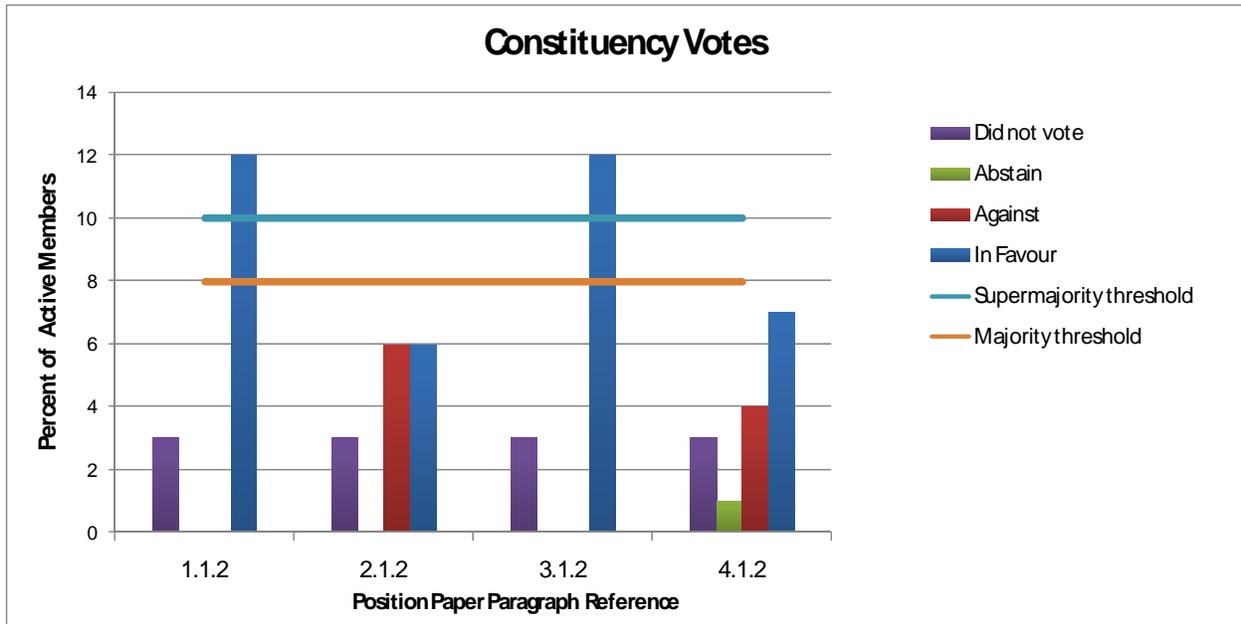
10. RegistryPro (.pro)
11. Societe Internationale de Telecommunication Aeronautiques – SITA (.aero)
12. Telnic (.tel)
13. VeriSign (.com & .net)

- Names & email addresses for points of contact:
 - Chair: David Maher, dmaher@pir.org
 - Vice Chair: Jeff Neuman, Jeff.Neuman@Neustar.us
 - Secretariat: Cherie Stubbs, Cherstubbs@aol.com
 - RyC rep. for this statement: Hakon Haugnes, hakon@haugnes.name

Regarding the issue noted above, the following positions represent the views of the ICANN GNSO gTLD Registry Constituency (RyC) as indicated. Unless indicated otherwise, the RyC positions were arrived at through a combination of RyC email list discussion and RyC meetings (including teleconference meetings).

Summary of voting:

	Voting Summary			
	Position Paper Paragraph Reference			
	1.1.2	2.1.2	3.1.2	4.1.2
In Favour	12	6	12	7
Against	0	6	0	4
Abstain	0	0	0	1
Did not vote	3	3	3	3



1. Position 1

1.1. Position Description:

- 1.1.1. The second sentence of Section 4.1 of the GNSO Issues Report on Domain Tasting⁴ says, "A policy recommendation on this issue could impose new requirements, or institute new prohibitions applicable to contracted parties, which ICANN staff would then implement and enforce through its contracts with registries and/or registrars."
- 1.1.2. The RyC believes that it is essential to do the following before making any policy recommendations: i) clearly define any problems to be solved and validate their existence with accurate data;⁵ ii) test proposed solutions to make sure that they have reasonable chances of solving identified problems; iii) minimize the possibility of creating new problems; iv) make best efforts to ensure that anticipated benefits are worth the implementation costs; v) where possible, take advantage of existing mechanisms to solve problems before creating new policy.

1.2. Level of Support of Active Members: Supermajority

- 1.2.1. # of Members in Favor: 12
- 1.2.2. # of Members Opposed: 0
- 1.2.3. # of Members that Abstained: 0
- 1.2.4. # of Members that did not vote: 3

1.3. Minority Position(s): none

- 1.4. **General impact on the RyC:** If a consensus policy is implemented, registries and sponsors⁶ are required to implement the policy. To the extent that the consensus policy changes existing contractual terms (e.g., the add grace period), there could be a need to amend existing registry agreements. Registries and sponsors that implement

⁴ <http://gns0.icann.org/issues/domain-tasting/gns0-domain-tasting-report-14jun07.pdf>

⁵ Note that the GNSO Ad Hoc Group on Domain Tasting collected data and reported it in its Outcomes Report (<http://gns0.icann.org/drafts/gns0-domain-tasting-adhoc-outcomes-report-final.pdf>)

⁶ Note that some Sponsored Agreements have some exceptions regarding requirements to implement consensus policies.

Initial Report on Domain Tasting

Authors: Olof Nordling, olof.nordling@icann.org, Liz Gasster, liz.gasster@icann.org

the new policy will likely have to coordinate implementation efforts with registrars.

1.5. **Financial impact on the RyC:** It is not possible to estimate financial impact on registries and sponsors without details of a consensus policy. If and when a possible consensus policy is more clearly defined, the RyC will cooperate in estimating the financial impact.

1.6. **Analysis of the period of time that would likely be necessary to implement the policy:** It is not possible to estimate the time required for registries and sponsors to implement a consensus policy before the more details are known about any such policy. If and when a possible consensus policy is more clearly defined, the RyC will cooperate in estimating implementation time.

2. Position 2

2.1. Position Description:

2.1.1. As a possible means to reduce domain tasting, Section 4.2 of the Issues Report discusses the possibility of extending the ICANN new registration transaction fee to name registrations deleted during the add grace period.

2.1.2. The RyC encourages ICANN staff to further explore this option with members of the community with particular focus on registrars and registrants. In doing this it is very important to identify other uses of the add grace period not related to tasting and make sure that registrants are not unduly harmed if the transaction fee is applied to names deleted during the add grace period.

2.2. Level of Support of Active Members: no majority

2.2.1. # of Members in Favor: 6

2.2.2. # of Members Opposed: 6

2.2.3. # of Members that Abstained: 0

2.2.4. # of Members that did not vote: 3

2.3. **Minority Position(s):** To explore the issue is useful, as long as this is not projected as a "one size fits all" solution that would affect all Registries, and there could be other levers than using the add grace period. Members have voted against on this basis.

- 2.4. **General impact on the RyC:** The impact on registries and sponsors would be minimal if any because the transaction fee is an issue between ICANN and registrars. Note that most registries and sponsors already report the names deleted during the add grace period so there probably would be no new reporting requirements.
- 2.5. **Financial impact on the RyC:** If there is any impact on registries and sponsors, it is expected that it would be minimal.
- 2.6. **Analysis of the period of time that would likely be necessary to implement the policy:** It is possible that registries and sponsors would not have any actions if this approach is implemented; even if there are some actions required of registries and sponsors, the time required should be very minimal.

3. Position 3

3.1. Position Description:

- 3.1.1. Section 4.3 of the Issues Report notes that “many of the gTLD registries have contractual provisions which enable them to address the issue of domain tasting on an individual basis.” It goes on to point out that one RyC member, PIR (.org), has already implemented an approach in this regard.
- 3.1.2. The RyC believes that a one-size-fits-all approach will not work for all registries and sponsors. The RyC therefore suggests that consideration of variations of this approach should be evaluated by individual registries and sponsors. It should also be noted that what is successful for one gTLD may not have the same results in another gTLD.

3.2. Level of Support of Active Members: Supermajority

- 3.2.1. # of Members in Favor: 12
- 3.2.2. # of Members Opposed: 0
- 3.2.3. # of Members that Abstained: 0
- 3.2.4. # of Members that did not vote: 3

3.3. Minority Position(s): none

- 3.4. **General impact on the RyC:** The impact of this approach needs to be determined by individual registries and sponsors and it seems reasonable to expect that it will vary across gTLDs.

3.5. **Financial impact on the RyC:** Financial impacts of this approach need to be determined by individual registries and sponsors and it seems reasonable to expect that it will vary across gTLDs.

3.6. **Analysis of the period of time that would likely be necessary to implement the policy:** In the case of PIR's implementation, it took several months, part of which was to provide adequate notice to registrars. Each registry or sponsor would need to determine the time needed and it seems reasonable to expect that any that elect to go this route would give plenty of notice to registrars.

4. Position 4

4.1. Position Description:

4.1.1. The GNSO Ad Hoc Group on Domain Tasting recommended the following terms of reference for a possible PDP on domain tasting: 1) Review and assess all the effects of domain tasting activities that have been identified; 2) Judge whether the overall effects justify measures to be taken to impede domain tasting; and 3) If the answer to 2 is affirmative, then consider the potential impacts of various measures on the Constituencies, and recommend measures designed to impede domain tasting. (See the GNSO Ad Hoc Group on Domain Tasting Outcomes Report at <http://gns0.icann.org/drafts/gns0-domain-tasting-adhoc-outcomes-report-final.pdf>)

4.1.2. The RyC supports these terms of reference

4.2. Level of Support of Active Members: no majority

4.2.1. # of Members in Favor: 7

4.2.2. # of Members Opposed: 4

4.2.3. # of Members that Abstained: 1

4.2.4. # of Members that did not vote: 3

4.3. **Minority Position(s):** The terms of reference should include the consideration that one policy affecting all Registries might not be appropriate. One-size may not fit all. Four members voting "Against" have done so on this basis. One member abstained on the basis that this position conflicts with position 2.

4.4. **General impact on the RyC:** Representatives from RyC member registries or sponsors will need to commit time to participate in the PDP

and the RyC itself will need to cooperative with those representatives by reviewing issues and providing feedback throughout the PDP.

- 4.5. **Financial impact on the RyC:** The RyC itself will not incur any add-on costs in supporting the PDP. Volunteer time is supported by individual registries and sponsors as well as by individuals donating their own time.
- 4.6. **Analysis of the period of time that would likely be necessary to implement the policy:** N/A

IPC Constituency

Intellectual Property Interests Constituency Constituency Statement on Domain Name Tasting December 5, 2007

Pursuant to GNSO Council Resolution 20071031-2, the Intellectual Property Interests Constituency (“IPC”) submits this Constituency Statement on Domain Tasting. The IPC arrived at the positions below in accordance with the requirements of the GNSO Policy Development Process as outlined in the ICANN bylaws. These positions incorporate by reference Section 4.3 of the Outcomes Report of the GNSO Ad Hoc Group on Domain Tasting, October 4, 2007 (hereinafter “Outcomes Report”), and Annex 5 thereto.

I. Constituency Position

A. Domain Tasting Harms Intellectual Property Rights Holders

1. Domain tasting harms holders of intellectual property (“IP”) rights (“IPR”) when, as is often the case, the tasted domain names (“tasted names”) are anticipated typographical errors of trademarks. A recent report by McAfee, Inc. characterizes domain tasting as one of the most significant factors in the recent growth in typosquatting. What’s In a Name: The State of Typosquatting 2007, available at http://us.mcafee.com/root/identitytheft.asp?id=safe_typo&cid=38296#WhatIsDriving. Domain tasting that is also typosquatting causes consumer confusion, erodes brands, and harms the goodwill represented by those brands. See Outcomes Report, page 14 and Annex 2.

2. Domain tasting prevents IPR holders from registering and using for legitimate purposes the tasted domain names (“tasted names”). Outcomes Report, pages 18-19.

3. Large IPR holders and those that own famous or well-known brands are more likely to have their brands/marks be the subject of tasted names. Consequently, they are more likely to incur the greatest costs in preventing and taking action against domain tasting involving typosquatting. On the other hand, smaller IPR holders and those that do not own famous or well-known brands often do not have the resources to take prophylactic measures or aggressively combat domain tasting.

4. Many IPR holders have significant and extensive domain name portfolios. As registrants, IPR holders subsidize domain tasting when any increased costs attributable to domain tasting are passed on by registrars and registries. Outcomes Report, page 15.

5. Many IPR holders suffer the harmful effects of domain tasting on their businesses, including lost advertising and sales revenues from parked landing pages associated with the tasted names, and misdirection of potential customers to direct competitors, who exploit the goodwill of their established brands. Complaint ¶¶ 114-39. *Dell Inc. v. BelgiumDomains, LLC et al.*, Civ 07-22674 (S.D. Fl. filed Oct. 10, 2007); Outcomes Report, pages 135-41.

6. IPR holders are harmed when the tasted names effectively require them to pay twice for keywords. An IPR holder pays once when “purchasing” the keyword from the advertiser as part of its intended advertising efforts. It pays a second time when it pays the taster for directing Internet users via links from parking pages associated with the tasted names to the trademark owner’s site.

7. Domain tasting imposes significant costs on IPR holders to police tasted domain names, and efforts to police are often unsuccessful. The Uniform Domain Name Dispute Resolution Policy (“UDRP”) and remedies under national law are ineffective against domain tasting because of the ephemeral nature of tasted names. Outcomes Report, page 22; Response of the World Intellectual Property Organization to the UDRP Providers RFI in Outcomes Report, pages 113-15.

8. The tremendous incidence of domain tasting increases IPR holders’ costs for prophylactic budgets on defensive domain name registrations, for increased enforcement needs attributable to domain tasting, and for registration of previously tasted names. Outcomes Report, page 22.

9. IPR holders’ responsibility to police their marks will result in increased litigation against those registrants widely known as domain tasters.

B. Domain Tasting Harms Internet Users

1. As a result of tasting, Internet users who seek branded goods, services or information must sort through numerous false hits for tasted names when searching for legitimate sites and suffer confusion, wasted time and frustration: Outcomes Report, pages 14ff.

2. Users sometimes may not be able to navigate through all of the false tasted names and may ultimately do business with someone other than an intended trusted IPR holder or licensee thereof. When the “substitute” entity provides goods or services inferior to those provided by the trusted IPR holder, users are disappointed and consumer confidence in Internet-based commerce is damaged. Outcomes Report, page 14ff; McAfee report.

3. Other times, users seeking goods, services or information may be diverted to unexpected and potentially harmful sites: Outcomes Report, page 14.

4. Embedded viruses, malware, and related illegitimate activity may be associated with sites at tasted names: Outcomes Report, pages 15ff.

5. The temporary nature of tasted names encourages anonymity and discourages identification of registrants of tasted names. Bad actors who seek to do harm on the Internet and decrease their exposure or possible detection by authorities may be attracted to tasting: Outcomes Report, page 15.

6. Individual registrants must also bear those costs passed on both by registrars and registries, and by businesses. See A.4 above.

7. Tasting harms businesses and users because it restricts the choice of available domain names for would be registrants at any point in time: Outcomes Report, page 15.

C. Domain Tasting Harms the Domain Name System Generally

1. All of the foregoing factors combine to reduce the user trust of the domain name system and Internet navigation generally.

2. Domain tasting risks turning the domain name system into a mostly speculative market. Domain names, which are meant to be primarily specific identifiers of businesses and other Internet users, are characterized as becoming mere commodities of speculative gain: Press Release, March 12, 2007, World Intellectual Property Organization, "Cybersquatting Remains on the Rise with Further Risks to Trademarks from New Registration Practices", (http://www.wipo.int/edocs/prdocs/en/2007/wipo_pr_2007_479.html).

D. Only Domain Name Speculators Would be Negatively Impacted by Prohibition of, or Action that Effectively Prohibits, Domain Tasting

1. Prohibiting domain tasting, or taking action to effectively prohibit tasting, would negatively impact only a small class of domain name speculators. This class of domain name speculators includes some ICANN-accredited registrars. Preliminary Injunction, Verizon California, Inc. v. Ultra RPM, Inc., CV 07-2587 PA (C.D. Cal. entered September 10, 2007); Response of the World Intellectual Property Organization to the UDRP Providers RFI in Outcomes Report, pages 113-15;

2. Non-speculating registrars have come to rely on the Add Grace Period ("AGP") for purposes that can – and should – be better addressed through other mechanisms.

a) Several ccTLD registries are identified as not having an AGP. Outcomes Report, page 4. Registrars of domain names in these ccTLDs have presumably developed mechanisms for achieving the "benefits" identified in Section 4.4 of the Outcomes Report. These registrars should be consulted about such alternative mechanisms.

b) Any losses through non-payment by registrants would be expected to be more than offset by the reduction in registrar costs arising from tasting and kiting transactions.

c) Registrars could require registrants to double verify information, including the spelling of a domain name, during the registration procedure. Such double verification is widely used in Internet commerce.

d) The registration agreements for a number of large ICANN-accredited registrars either state that all registration fees are non-refundable or do not identify misspelled domain names as a refundable event.

e) The AGP was first adopted when domain name registrations were significantly more expensive than they are today. The retail price of a domain name registration is now sufficiently low that it is not unreasonable for registrants to expect – in accordance with the registration agreements noted above – that refunds for misspelled domain names will not be forthcoming.

f) Other industries and business do not require the equivalent of an AGP to address fraud. Many traditional bricks and mortar businesses and online businesses provide immediate activation of services with a credit card payment, and do not rely on a 5-day grace period such as the AGP. Long distance telephone service providers and Apple’s iTUNES[®] retail store services are examples of both traditional and online businesses that provide such services.

g) Use of the AGP as a “cart hold to provide access to domain names” calls into question whether the participating registrar is in compliance with Section 3.7.4 of the Registrar Accreditation Agreement.

h) Registrars in ccTLD registries that do not have an AGP presumably find it necessary to monitor, test, and develop systems. Similarly, registrars must have found it necessary to monitor, test, and develop systems before the AGP was widely used. One potential area of fact finding that merits development is what mechanisms are used by registrars in ccTLD registries that do not have an AGP, what mechanisms were used by gTLD registrars before the AGP, and what mechanisms other than the AGP would permit the registrars to monitor, test, and develop systems.

E. Domain Tasting Harms ICANN

1. Domain tasting adversely impacts ICANN by artificially suppressing its revenues because tasted domains are not subject to ICANN fees. For example, levying the \$0.20 per name fee on all domain names deleted during the AGP in July 2007 alone would have resulted in over \$12.5 million in revenue.

TLD	Number of Deletes Add Grace	Revenue if ICANN had levied USD 0.20 per name fee
.com	57,021,555	11,404,311
.net	5,466,679	1,093,336
.org	84,880	16,976
.biz	37,922	7584
.info	109,000	21,800

.pro	?	?
.jobs	71	14
.museum	no report	n/a
.travel	0	0
.cat	232	46
.aero	no report	n/a
.coop	?	?
.mobi	473	95
.name	?	?
TOTAL	62,720,812	USD 12,544,162

That amount, which represents only one month of lost potential revenue, exceeds 25% of the projected revenues under ICANN's approved FY 2007-2008 budget.

ICANN could certainly put such additional revenues to use by, for example, expediting the rollout of IDNs and the introduction of gTLDs; defraying the gTLD application fee for qualified applicants; increasing the number of ICANN fellowships; expanding the number of languages into which ICANN documents are translated and for which real-time translation is available at the meetings; supporting the expenses for travel to the meetings by GNSO and ccNSO Councilors; and innumerable other projects. In the alternative, even if imposing the fee were to reduce the number of registrations, and thus ICANN did not realize the full sum stated above, the levying of the fee could dramatically decrease the incidence of domain tasting.

[There was not unanimous support within the IPC for the preceding paragraph. A small minority expressed the view that ICANN may financially benefit from domain tasting.]

II. Methodology for Reaching Position

The issue of domain tasting has been discussed within the IPC on numerous occasions, including the meetings of the IPC held in conjunction with the San Juan and Los Angeles ICANN Meetings. A draft constituency statement was circulated to IPC officers and leadership on November 27, 2007, and was discussed on a teleconference of the IPC membership, including its officers and GNSO Council representatives, on November 28. Revisions and additions proposed by members and officers via email were discussed via email and incorporated as agreed upon. Additional revisions were subsequently circulated and discussed via email.

III. Impact on Constituency

The impact of the PDP on the IPC depends upon its ultimate outcome. In general, it is expected that elimination of domain tasting should eliminate the harms outlined in Section I above.

IV. Time Period Necessary to Complete Implementation

This depends on the outcome of the PDP.

Respectfully submitted,

Kristina Rosette, IPC GNSO Council Representative for North America
Steve Metalitz, IPC President

ALAC

ALAC “Constituency” statement regarding the PDP on Domain Tasting

Overview:

The ALAC advocates any and all actions that will *quickly* eliminate domain tasting. There has been much discussion on this issue in the RALOs and on the general At Large discussion list. Although not all regions have been similarly active, the preponderance of views to date favour the complete elimination of the AGP.

Rationale:

While the AGP had legitimate roots, the reduction in domain name pricing combined with better registrar software eliminates this need.

Preamble:

The At Large Advisory Committee (ALAC) is pleased to have been asked to submit a statement regarding the newly launched GNSO Policy Development Process (PDP) on Domain Tasting. The ALAC is not yet in a position to thoroughly vet such positions through the Regional At large Organizations (RALOs) and At large Structures (ALSs) but this statement has included significant input from the some RALOs, ALAC members and the At Large community. As work proceeds on the PDP, additional input will be sought from these groups.

Domain tasting is the use of legitimate ICANN-approved processes to register a domain, test if there is any substantial traffic (perhaps because it was recently in use by someone else or is similar to another regularly used domain), and if not, cancel the registration within five days at no net cost to the registrant - an Add Grace Period (AGP) delete.

Domain Tasting and the PDP:

Initial Report on Domain Tasting

Authors: Olof Nordling, olof.nordling@icann.org, Liz Gasster, liz.gasster@icann.org

The issue of domain tasting has been regularly been discussed since the phenomena began in 2005 – and with good reason. In January 2005, before the practice was common, for .com and .net, there were about 1.7 million domains registered and 0.7 million domains deleted for a net increase of 1.0 million domains. By the end of that month, there were just over 40 million total domains registered.

Two years later, at the end of January 2007, the total number of domains had increased by 78% to 72 million domains. However, in January 2007, there were 51 million domains registered and 48 million domains deleted. That is, there was a net increase of 3 million names, but most of the rest were just being “tasted”.

In the period since January 2007, the practice has grown even more. Although the practice is relatively widely used, the majority of tasting was being done by just three registrars, all of which have the same address, telephone number and formation date.

The AGP was originally created to allow domain names that had been accidentally registered to be cancelled. Although a legitimate requirement at the time, the reduction in domain name pricing and better registrar software eliminates any substantive requirement for the AGP as it was originally envisioned. Moreover, many registrars and resellers do not even pass this benefit on to registrants. It was and is the position of the ALAC that the domain tasting enabled by the AGP is both inappropriate and harmful and should be eliminated with due haste.

To this end, the ALAC initiated the formal investigation of domain tasting by requesting that ICANN develop an Issues Report. This was done with the support of several GNSO constituencies. Ultimately, the Issues Report was delivered to the GNSO and it included staff agreement that this was indeed an ICANN policy issue. At the ICANN meeting in Los Angeles, the GNSO decided to undertake a PDP with

the intent of further understanding the effects of domain tasting and if appropriate, recommend measures to impede domain tasting.

The ALAC is not only pleased that the GNSO has taken this action, but is particularly pleased that the action was taken with a 72% vote where only >33% was required to initiate a PDP. This indicated wide GNSO constituency support for *some* action. Although each constituency may have different reasons for supporting the process, it is nonetheless encouraging that the end target is the same.

The GNSO has chosen to solicit constituency statements and most likely will create one or more working groups to further investigate domain tasting.

From the ALAC's perspective, our main concerns were raised in the request for the Issues Report and with the possible exception of the reference to Facilitation of Criminal Activity, the positions remain valid. Specifically:

- Destabilization of the Domain Name System due to volume and rate of domain name adds and deletes;
- Creation of consumer confusion undermining confidence in the Domain Name System;
- Increased costs and burdens to legitimate registrants;
- Facilitation of Trademark Abuse which also leads to consumer confusion.

ALAC Position:

The ALAC advocates any and all actions that will *quickly* eliminate domain tasting. Whilst at this stage there is no unilaterally supported view from all the RALOs at least one RALO (North America) and several ALAC members formally and strongly advocate complete elimination of the AGP, as the optimal way forward.

The ALAC and RALOs have taken the opportunity to consult their user communities over the last several weeks. Active discussion resulted and opinions varied ranging from the North American RALO position that the AGP is not beneficial to the public

good and should be abolished, through to the Latin American and Caribbean RALO and the Asia Pacific RALO positions (as given in previous regional statements) where they respectively stated that “action to control the practice [of domain tasting] may be necessary” and that “the effectiveness of economic tools should be investigated, such as has been successfully used in the PIR.”

ALAC does recognize that there are other actions which could lead to the effective elimination of domain tasting including:

- Application of a registry-charged fee for all AGP uses. The fee would need to be set to effectively eliminate tasting and not just change the dynamics of it.
- Application of a registry-charged fee if AGP uses exceed some threshold per month (this is effectively what PIR did). The fee could be as much as the full cost of the domain. The threshold would need to be set to catch domain tasters but to not cause perceived pain to registrars who use the AGP for legitimate, non-tasting purposes. Similarly, the fee would need to be set to effectively eliminate tasting and not just change the dynamics of it.
- ICANN currently charges registrars \$0.20 per domain added excluding AGP deletes (actually \$0.25 decreased this year by \$0.05). The exclusion could be removed in the next budget (or perhaps even sooner). Alternately, it could be removed only if a threshold of AGP uses were reached (there is already an AGP threshold used in a different registrar fee, so the mechanism is there). It is unclear if this fee would be sufficient to eliminate domain tasting, but it would almost surely alter the phenomena.
- The RAA could be altered to change the clause stating that registrars cannot activate a domain unless they have a reasonable expectancy of being paid (3.7.4) to a clause which requires them to have a reasonable expectancy of being paid AND keep the money.

The ALAC recognizes that some of the possible methods of attacking domain tasting may not require GNSO action at all, but rather may be effected by independent action of one or more parties. Such actions are encouraged. However, until such actions are actually taken and prove effective, the GNSO is encouraged to begin policy development on the issue.

The ALAC will support the PDP in whatever ways are most productive to better understand the impacts of domain tasting and to eliminate it in the shortest possible

time-frame. Should working groups be formed, the ALAC would welcome participation.

Endorsed by the ALAC on December 5th, 2007

Transmitted on behalf of the ALAC to the GNSO via email by Alan Greenberg
December 5th, 2007

Statement
of the
Non-Commercial Users Constituency (NCUC)
on
Domain Name Tasting

7 December 2007

The Final Outcomes Report⁷ of the ad hoc group on domain name tasting suggests a growing trend of registrants exploiting ICANN's Add Grace Period (the "AGP") to receive a full refund on the cost of registration by canceling their domain name registrations within five days. The AGP may have been adopted upon the assumption that all commercial uses of a domain name would require registration for a period longer than five days. Certain registrants, however, have discovered that they can profit from repeated use of extremely short-term registrations through the use of pay-per-click advertising or otherwise. A coordinated response by ICANN may be appropriate to close this loophole. This response, however, should not be disproportionate to the problem nor stem from any misconception of the issue.

Insofar as some registrants are exploiting the AGP to operate without paying any registrations costs, they are effectively forcing the registries to subsidize them. This was clearly not the intended use of the AGP, and action by ICANN may be appropriate to counter this growing practice. It remains to be seen, however, if the AGP should be removed in its entirety. The ad hoc group report indicates that the AGP may provide benefits to both registrants and registrars, and so completely eliminating the AGP risks eliminating these benefits as well. However, any reported benefits of the AGP are disputed and further elaboration is needed before recommending specific action.

⁷ Final Outcomes Report available at: <http://gns0.icann.org/drafts/gns0-domain-tasting-adhoc-outcomes-report-final.pdf>

One possible approach may be similar to that adopted by the Public Interest Registries (PIR) — the imposition of a modest ‘excess deletion’ fee. This approach could penalize those registrars with heavy deletions, thus forcing them to adopt policies that prevent registrants from exploiting the AGP. Since registrants looking to avoid paying registration costs will naturally flock to those registrars least vigilant against this abuse, registrars would have a substantial incentive to be vigilant against creative disguises of these practices. Yet unlike directly imposing a fee on all short-term registrations, this approach gives registrars significant flexibility to adopt effective practices tailored to their customer base and business model, and preserves the other advantages of the AGP.

Intellectual Property Issues

The intellectual property issues discussed in the ad-hoc group's final report warrant special attention. In this context, “intellectual property” refers almost exclusively to trade and service marks, which are often referred to collectively as “trademarks.” The vast majority of the respondents to the RFI identified themselves as either intellectual property rights owners (37.93%) or representatives of intellectual property rights owners (51.23%). Consequently, intellectual property rights feature prominently in the responses.

The problem which domain tasting presents to trademark holders is not that the AGP creates a loophole which makes otherwise infringing activity legal. If a registrant makes use of a trademark in a manner that constitutes infringement, the holder of that trademark is protected through international treaty, the laws of various nations, and through ICANN's own Uniform Dispute Resolution Policy. These protections still apply even if the period of registration is very brief. The problem is instead one of enforcement.

This distinction should be kept in mind by the GNSO and by any subsequent working group established to tackle this issue. Many of the responses to the RFI listed problems such as “erosion of brand names,” “erosion of reputation” and “loss of revenues [through] diversion of

traffic” as disadvantages to domain tasting. These are problems with infringement, not with domain tasting. While it may be appropriate for ICANN to consider whether its policies unduly encourage infringement or impede enforcement of intellectual property rights, it would be a mistake to assume that a revised policy on domain tasting will stamp out short term infringement or that all domain tasting necessarily infringes.

Insofar as the AGP allows a registrant to use a domain for a very short time at no cost it does provide an incentive to a prospective infringer to operate in a manner that frustrates enforcement of trademark rights. This incentive can be removed by implementing a modest restocking fee where no corrective motive can be shown for the deletion. Because the bulk of deletions come from a handful of registrars and because registration fees are only likely to deter an infringer who operates a large number of sites, the approach adopted by PIR (option “C” on the RFI), is particularly worth further consideration.

The Sample Zone File Data Study

ICANN should be particularly careful in crafting any test to identify infringing activity. One proposal in the ad hoc group's report was to determine the percentage of domain tasting that infringed upon trademarks by comparing a sample of deletions to a list of trademarks registered with the United States Patent and Trademark Office (the “USPTO”). This method was termed the “sample zone file data study.” This method would result in erroneous and excessive findings of infringement because it stems from a fundamental misconception of trademark law. Specifically, it relies upon an erroneous assumption that any unauthorized use of a registered trademark is unlawful.

Trademark law does not categorically ban use of a trademark without the permission of the owner. Instead, it prohibits uses of a trademark which deceive or confuse the consumer. Where there is no confusion, there is no infringement. Thus, trademark law does not prohibit the use of the same name or symbol by companies in different fields of commerce, and is limited in terms of its geographical reach. Therefore a test for infringement based solely on the

presence of a word that has been registered with any trademark office would erroneously conclude that many lawful business uses are infringing.

This is easily illustrated by examining one registered trademark. The USPTO lists 125 live registered wordmarks which contain the word “Acme.”⁸ Many of these are simply the word “Acme” with little or no graphical embellishment. Yet hundreds of Corporations, Limited Partnerships, and Limited Liability Companies with names containing the word “Acme” have been registered with the California Secretary of State,⁹ to say nothing of General Partnerships or unincorporated Sole Proprietorships in California or business entities in other jurisdictions. While a few of these businesses may be infringing upon the trademarks of others, the vast majority are undoubtedly operating without any consumer confusion. Moreover, it may be possible to start a new business incorporating the word “Acme” without infringing upon any of those trademarks registered. Under the sample zone data file study, however, any domain incorporating the word “Acme” would be inferred to be infringing merely because this word has been registered with the USPTO.

More significantly, non-commercial uses of a registered trademark would also be determined to be infringing under the test proposed. Under U.S. Law, non-commercial use is particularly unlikely to be found to infringe because there is little chance of confusion. Thus a website critical of Jerry Falwell which used a common misspelling of his domain name (“Fallwell.com” for “Falwell.com”) was ruled to not infringe upon his trademark because the creator intended “only to provide a forum to criticize ideas, not to steal customers.”¹⁰ Since on-line critics of businesses frequently incorporate the name of the criticized business into their domain names (e.g. “paypalsucks.com,” “microsoftsucks.org,” etc.) false findings of infringement are particularly likely under the sample zone file data study discussed in the report.

8 See <http://www.uspto.gov>

9 See <http://kepler.sos.ca.gov/list.html>

10 See *Lamparello v. Falwell*, 420 F.3d 309 (5th Cir. 2005) at 315.

Initial Report on Domain Tasting

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To be sure, an argument can be made that non-infringing domains are less likely to be deleted during the AGP. If that is the case, then it is less likely that these legal uses of registered trademarks would significantly skew the sample zone file data study's conclusions. It would be a mistake, however, to use that argument to justify the proposed test. This test is intended to determine whether infringing use predominates in the practice of domain tasting. To argue that a use of a trademark is probably infringing because it is deleted during the AGP is to assume the outcome the test is intended to determine—a logical fallacy known as “begging the question.”

More importantly, ICANN should be careful not to establish a precedent that this fundamentally flawed test establishes infringement. Given the difficulties inherent in enforcing trademark rights against domain tasters, it is possible that some sort of mechanism to screen-out infringing use will be discussed during the policy development process. The test proposed for the sample zone file data study would be manifestly inadequate for this purpose in that it would prevent a great deal of legitimate use.

This last point is particularly significant in light of the fact that trademark law is still adapting to commerce over the Internet. For example, while some U.S. Courts have held that a bad faith intent to make money from a domain containing a famous trademark is sufficient to establish infringement, others have held that such a use must be in connection with some form of goods or service.¹¹ ICANN should not take it upon itself to decide these issues for the courts and legislatures of every country. The delicate balance of competing public policies inherent in intellectual property law should instead be left to the courts and political processes to work out.

Conclusion

Further investigation within the GNSO is needed and action may be required to curb abusive domain name tasting. As the GNSO takes the next step in dealing with this problem it must be careful to ensure that the issue remains properly framed rather than assuming that

¹¹ Compare *Ford Motor Co. v. Greatdomains.Com, Inc.*, 177 F.Supp.2d 635 (E.D.Mich. 2001) with *Intermatic Inc. v. Toeppen*, 947 F.Supp 1227(N.D.Ill. 1996).

Initial Report on Domain Tasting

Authors: Olof Nordling, olof.nordling@icann.org, Liz Gasster, liz.gasster@icann.org

ICANN is responsible for or capable of preventing all short-term trademark infringement on the web. Moreover, while further investigation, discussion, and action is warranted at this point, the proposed sample zone file data study should not be undertaken because it relies on a fundamental misunderstanding of trademark law and sets a dangerous precedent as to what ICANN will consider to be infringing use.

Statement of the ISPCP Constituency on Domain Name Tasting

5 December 2007

The ISPCP Constituency is concerned that the practice of exploiting the AGP (Add Grace Period) to test profitability of domain names (popularly known as "domain name tasting") is deleterious to the stability and security of the Internet. Our objections to domain name tasting stem from the following issues:

1. Domain tasting facilitates the practice of short-term infringement on and dilution of trade marks, as well as phishing. It allows criminals to employ a hit and run strategy wherein domain names may be held at no cost to the registrant for up to 5 days. By dynamically changing registrations, these malefactors can defeat the existing dispute resolution mechanisms *which were not designed to deal with such short time frames.*

2. The rampant use of domain name tasting, and particularly its abuses, gives rise to a huge number of complaints to ISPs, both from individual consumers and businesses. It significantly weakens our customers' trust and faith in the validity of domains and the DNS. This is a stability issue.

3. At any given time millions of domain names are being tasted and there is a high turnover from week to week. This added operational load *potentially *threatens the stability of the DNS. And, since all but an insignificant percentage of name resolution is performed by ISP domain name servers, the burden of this excess falls on the members of our constituency.

The ISPCP Constituency opposes the exploitation of the Domain Name AGP for domain name tasting and urges the GNSO to create new policy to curtail or eliminate this practice.

On behalf of the ISPCP Constituency

Mark McFadden

Secretariat, ISPCP Constituency

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Registrars Constituency

January 26, 2008

The following statement of views was put to a vote and the Registrar Constituency (RC) approved it by majority vote. Votes were cast by 31 of the RC's 65 members, 20 voted in favor, 4 voted against, and 7 abstained.

Registrar Constituency Statement of Views on Domain Name Tasting:

Registrars Constituency (RC) has not reached Supermajority support for a particular position on Domain Name Tasting. Below are statements of the views/positions espoused by RC members.

View 1. Many registrars believe that Tasting should be curbed if not eliminated altogether for one or more of the following reasons:

- a. Tasting is causing general confusion among registrants and potential registrants trying to register domain names.
- b. Tasting is eroding consumer confidence in the security and trustworthiness of domain name registration services and our industry in general.
- c. Tasting is causing an increase in support costs for Registrars.
- d. Tasting violates well-established codes of conduct and good practice intended to ensure security and stability by:
 - i. disturbing the stability of a set of existing services that had been functioning satisfactorily, namely the competitive domain name registration services developed by Registrars;
 - ii. disturbing other existing systems and value added services, for example those relying on Zone files, and various third party WHOIS services;
 - iii. increasing costs that must be absorbed by others not participating in or benefiting from Tasting.
- e. Despite the long held tenet of "First do no harm," there has been no research, testing for potential disruption of existing services, public review, or comment prior to this high volume activity abruptly occurring in the DNS.

In summary, high volume Tasting activity has undermined expectations about reliable behavior and in so doing has reduced trust in the security and stability of the system and has increased costs for registrars, registrants, and others not participating in the activity.

View 2. Many registrars believe that Tasting should not be a matter of concern or action by the GNSO or ICANN for one or more of the following reasons:

- a. Tasting takes place due to market demand, and the market should be allowed to evolve as demand dictates.
- b. ICANN is not a regulatory body, and according to its own bylaws, coordinates policy development reasonably and appropriately related to technical functions of the DNS. ICANN should not be regulating market activity.

Notwithstanding the above, the RC is in near unanimous agreement that sun-setting the Add Grace Period (AGP) is not an appropriate action should the GNSO decide to address Tasting activity. Many Registrars who do not participate in Tasting use the AGP in various ways not related to Tasting, as detailed in section 4.4 of the Outcomes Report of the GNSO Ad Hoc Group on Domain Name Tasting. Report found here:

<http://gns0.icann.org/drafts/gns0-domain-tasting-adhoc-outcomes-report-final.pdf>

Sun-setting the AGP would unnecessarily put additional burdens and costs on Registrars and Registrants using the AGP for these non-Tasting reasons.

To the extent that the GNSO should decide to recommend policy or actions with the intent of curbing or eliminating Tasting activity, RC members are in general agreement that:

Preferred – The GNSO should recommend that ICANN make the transactional fee component of the variable Registrar fees apply to all new registrations except for a reasonable number that are deleted within the AGP. Implementation time for Registrars would be negligible.

Acceptable but not preferred – The GNSO should encourage gTLD Registries to only allow AGP refunds on a reasonable number of new registrations, noting that such action is affective only if all gTLD registries apply it, and do so in a reasonably consistent manner. Implementation time for Registrars could be substantial depending on how each Registry decided to define their policy. If Registrars need to modify their systems and/or services a minimum of 90-days advance notice should be given.

Note that neither of the above actions requires new policy or modifications to existing policy.

Therefore the RC, regardless of their view, is generally opposed to a PDP on this issue.

Annex 2 - Public Comments

Summary

In total, 67 public comments were submitted, whereof 1 clearly off-topic. The contributions can be grouped as follows:

a) Short email contributions from individuals, calling for measures to stop or reduce the practice of domain tasting, some suggesting measures like cancelling the AGP, introducing a waiting period, limiting the number of allowable AGP deletes, auditing of registrars, restricting registrar activities and blacklisting of tasted domains. Some comments address the proposed introduction of the ICANN registration fee for all registrations (i.e. not making it refundable for deletes within the AGP) and question such a measure's effectiveness in curbing domain tasting. In total 50 contributions: JW, JB, RM, TB, BS, BB, IP, JM, DD, SV, FE, ML, DF, GK, MT, KA, BK.

b) Documents from groups and associations, notably CADNA, AIPLA, APWG, INTA and ICA. The constituency statement from the Registrars' Constituency (RrC) was also posted here, since it was submitted after the Initial Report was posted. Key content in these contributions:

CADNA - After analyzing the applications and implications of a handful of proposals including restocking fees, ratios, and accreditation revocation (as it pertains to notorious tasters), CADNA contends that abolishing the AGP is the safest and most practical solution to implement.

AIPLA - Effective measures should be adopted to curb the practice of domain tasting. The "business model" of tasters is built around trademark abuse. Even infringements that last only 5 days are harmful to trademark owners.

APWG - A study on the use of domain tasting by phishers shows minimal such use in the time the study was performed. It should be noted, though, that members of the anti-phishing community have had to increase their infrastructure to account for the much larger number of potential phish sites that are being registered by tasters, and this impedes anti-phishing efforts and increases the cost of detecting and mitigating fraudulent behavior.

INTA - Methods that ICANN should implement to eliminate domain name tasting, in descending order of preference: 1. Eliminate the AGP 2. Redefine AGP to significantly restrict the percentage of Deleted names to which it applies 3. Impose the ICANN fee. 4. Endorse imposition of a Registry fee.

ICA - Support for the imposition of a nominal non-refundable registration fee by ICANN, perhaps enhanced by individual actions by gTLD registries.

RrC - Preferred – To recommend that ICANN make the transactional fee component of the variable Registrar fees apply to all new registrations except for a reasonable number that are deleted within the AGP. Acceptable but not preferred – To encourage gTLD Registries

to only allow AGP refunds on a reasonable number of new registrations, noting that such action is affective only if all gTLD registries apply it, and do so in a reasonably consistent manner.

c) Comments objecting to a service recently launched by NSI. These comments were prompted by the actuality of that particular topic and do not relate to domain tasting in the strict sense but rather to what is called “domain name front-running”. In total 18 contributions: AP, ZE, CS, EJ, JW, SZ, PU, JPo, DA, TT, EB, JPI, SC, CW, LG.

d) Comments from a couple of threads on the GA (General Assembly) mailing list, introduced by list members copying their mails to the public comment address. These comments fall into the categories a) and c) above, and some individual comments do depend on the thread context for understanding. Recent GA list email exchanges can be found in archives at <http://gnso.icann.org/mailling-lists/archives/ga-200709/> . In total 29 contributions: JW, DF, GK, KA.

Contributors, in order of first appearance, with (abbreviation) and [nbr of postings if > 1]:

Anders Petersen (AP)
zejms (ZE)
Chris Stith (CS)
Ed Jones (EJ)
Jeffrey A. Williams (JW) [18]
Steve Zembek (SZ)
Peter Ubriaco (PU)
Joe Portner (JP)
Jimmy Bresee (JB)
Ryan Meyer (RM)
Tyler Barton (TB)
David (DA)
Brad Staszczuk (BS)
Ben Bradshaw (BB)
Tim Triche (TT) [2]
Ed Bindl (EB)
Ian Patterson (IP)
John Maxwell (JM)
Dave Drager (DD)
Scott Vallance (SV)
Jonathan Plona (JP)
Scott Converse (SC)
Christian Winebrenner (CW)
Frank Ellermann (FE)
Matt Ledingham (ML)
Dominik Filipp (DF) [5]
George Kirikos (GK) [4]
Dwayne Rowland (DR)
Larry Grubbs (LG)

McTim (MT)
Karl Auerbach (KA) [2]
Coalition Against Domain Name Abuse (CADNA)
American Intellectual Property Law Association (AIPLA)
Registrar Constituency (RrC) [2, resend]
Anti-Phishing Working Group (APWG)
International Trademark Association (INTA) [2, repeat]
Internet Commerce Association (ICA)
Bill Kerney (BK)

Contributions in order as submitted

1. Anders Petersen
Date: Tue, 8 Jan 2008 15:34:23 -0500

Today's Network Solutions story of how they register every .com domain that people search for on networksolutions.com clearly shows that domain tasting needs to go. Without domain tasting the cost of such abuse would be prohibitively high.
<http://slashdot.org/article.pl?sid=08/01/08/1920215>
Thank you - Best Regards,
Anders Petersen
Pawlik Corp.

2. zejms7j02
Date: 8 Jan 2008 21:42:03 -0000

For one of the reasons why 'Domain Tasting' is a bad thing, see this Slashdot story: <http://slashdot.org/article.pl?sid=08/01/08/1920215>
To see how it works, follow the four easy steps:

1. Make up a string of random characters
2. Go to a registrar and check if the domain is available. If your string is random enough, it probably isn't.
3. Go to networksolutions.com and check if the domain is available.
4. Go to the first registrar and check again.

Surprise! It's already registered, by networksolutions. Please remedy this antisocial behaviour by implementing the following measures:

1. Immediately suspend networksolutions' access to the registry for abusing their access, until they have agreed to stop their abuse.
 2. Implement binding policies for registrars stating they may not use failed dns lookups or whois lookups for registering names, or their access will be removed.
 3. Remove the registration grace period, as it has no legitimate use and does allow abuse.
- Thanks!

3. Chris Stith

Date: Tue, 8 Jan 2008 16:23:07 -0600

NSI has recently been holding hostage the domains checked with their availability testing web site, and allegedly also with their whois tool.

This is an abominable practice and must be stopped by any means necessary, up to and including removing their status as a registrar. It is costing people time and money. Network Solutions even offers the domains for sale at \$35 when they would have originally registered them for \$20, and they keep other registrars from benefitting from the business for days after the initial inquiry as well.

What Network Solutions is doing is predatory and anti-competitive. It harms customers, users, and other registrars. Any other registrar that does the same should likewise be censured and possibly removed from the registrations service arena.

Between top-level domain wild cards and now this, I think Network Solutions has proven they have not the ethics, morals, legal sense, common sense, or community standards of decency within their organization to be trusted with such important duties.

Please see the thread on the popular Slashdot discussion site with evidence of this most recent wrongdoing: <http://slashdot.org/article.pl?sid=08/01/08/1920215>

Christopher E. Stith

4. Ed Jones

Date: Wed, 9 Jan 2008 03:57:54 +0000

'Domain tasting' has been shown to be used by domain registrars to hold domains that have been searched for through 'whois' utilities, such that the domain is then only available through that particular registrar, often at an inflated price.

This practise is obviously anti-competitive and is abuse of the facility.

On the whole, genuine customers would benefit from the removal of the 'domain tasting' facility.

5. Jeffrey A. Williams

Date: Tue, 08 Jan 2008 23:39:48 -0800

All,
Forwarding for your review.
Regards,
Jonathan and all,

Initial Report on Domain Tasting

Authors: Olof Nordling, olof.nordling@icann.org, Liz Gasster, liz.gasster@icann.org

Unfortunately there are very few "Reputable Registrars" and those that are now, may not be later, and such would not be known until after the fact as ICANN doesn't police it's own registrars as history has clearly shown over and over again. Ergo again, such degrades the level of trust registrants, or potential registrants have in registrars with good historical reason, a la Registryfly and GoDaddy.

I agree that the selling of search data by potential registrants is now common place, but remains a very questionably allowable practice by any registrar or registry. Of course with Registrants not adequately represented within the GNSO ICANN structure, such abuses are prevalent and were predicted as well as expected.

Further I do not see/read anywhere in section 3.1(f) were the practice to which you describe Jonathan is specifically permitted, arguably it MAY be ALLOWABLE at best. In any event such a practice still does not meet within the current Trade practices act provisions and as such could be, and perhaps should be challenged accordingly. Contract law does not supersede federal statute.

So again, please cease and desist this practice immediately!

Regards,

(Response on GA list to Jon Nevett)

6. Steve Zembek

Date: Wed, 9 Jan 2008 08:26:28 -0500

I believe they should lose their status as a registrar for their severe abuse of the registration system. This form of abuse is far worse when it is committed by a registrar. They are registering domain names when people check for availability. See this reddit post for further discussion.

<http://reddit.com/info/64xuh/comments/>

-szembek

7. Peter Ubriaco

Date: Wed, 9 Jan 2008 10:40:41 -0500

Ladies and Gentleman,

Regarding abusive domain tasting practices by registrars, I wish to draw your attention to the behavior of Network Solutions in particular.

I simply cannot explain it as well as the hundreds of users at reddit.com. Some users of this community recognized that Network Solutions was tasting domains they were searching for. For example, they registered "YouGuysSeriouslyRegisterEverythingISearch.com" after a user searched for that. Network Solutions registered a number of wildly inappropriate names

Initial Report on Domain Tasting

Authors: Olof Nordling, olof.nordling@icann.org, Liz Gasster, liz.gasster@icann.org

that are of no legitimate value, indicating they are engaging in fully automated domain tasting. The users went a bit overboard and tried literally anything they could think of to see if Network Solutions would acquire the domain. Invariably, Network Solutions registered (tasted) the domain. See the comments here for more examples of domain tasting by Network Solutions: <http://reddit.com/info/64xuh/comments/>

I am strongly opposed to this practice and I believe it is anti-competitive. If I merely use the Network Solutions WHOIS server, I am not expressing an interest to buy the domain or have Network Solutions buy the domain on my behalf. Network Solutions is clearly and knowingly acquiring the domain for the purpose of tasting it -- either selling it to the WHOIS customer (or other interested party) or keeping it for ad revenues.

In either case, this is not in any way in the public interest. Please put a stop to domain tasting practices by registrars. Consider implementing an audit system to identify the worst offenders in this field. Those registrars could then be warned, fined, or banned from the registry entirely.

Thanks and regards,

Peter Ubriaco
IT Analyst

8. Joe Portner
Date: Wed, 9 Jan 2008 08:15:04 -0800

Why don't you take a look at this thread on reddit. This whole "domain tasting" is totally being abused by scumbag companies like network solutions. END IT NOW!
<http://reddit.com/info/64xuh/comments/>

Joseph W. Portner
J.W.P. Incorporated

9. Jimmy Bresee
Date: Wed, 9 Jan 2008 11:50:41 -0500

I'd like to voice my opposition to the current implementation of domain tasting. While a five-day return period is laudable consumer protection, the ability to immediately re-register a domain after return is a system ripe for abuse. By repeatedly re-registering domain names, registrars and others who abuse tasting are getting a free-- if unreliable-- domain name from which to profit. By repeatedly tasting an immense number of domain names, tasters are effectively creating wealth off of the backs of legitimate web page owners and users.

In my opinion, ICANN should not allow this practice to continue. Large tasters are making money at no expense, and providing no value to the internet as a whole. Please, in keeping

with the populist nature of the Internet, make large scale tasters pay the same as everyone else to have an internet presence.

To this end, I would propose a waiting period after the return of the domain name. By denying registration of the domain name to anyone for a period of, say, 30 days, you would eliminate much of the abuse of tasting while still protecting consumers.

Thank you,
Jimmy Bresee

10. Ryan Meyer
Date: Wed, 9 Jan 2008 11:35:43 -0600

To Whom It May Concern,

It would be absurd to think that anyone supports domain tasting except for the scum that are making hefty profits from it. The real issue is not tasting, but the squatters themselves.

I should not have to BID for my domain name simply because some squatter (who is making \$8/mo from the domain) knows that I'm desperate for mycompany.com. These people are simply in a dishonest business.

While the removal of "domain tasting" would significantly damage their business model, and force them to limit their domain purchases, it would not put them out of business. However, any action is better than no action.

I urge you to close this loophole.

Sincerely,
Ryan Meyer
Meyer Technology Group

11. Tyler Barton
Date: Wed, 9 Jan 2008 11:36:52 -0600

There is no question in my mind that domain tasting is not something that should be allowed. It's a gameable system that only benefits spammers and scammers.

12. david
Date: Wed, 09 Jan 2008 11:15:50 -0700

This is an absolute horrible business move on Network Solutions part, and I can not believe ICANN is letting them abuse the system. I support ICANN in more ways than one and was

under the impression my fee's I pay for domain name registration would support a better action against a company that conducts business in this manner. They are, in fact holding domain names "ransom" to create revenue. You search names through their whoIS and can not register that said domain name from another registrar. What if you are comparing pricing between registrars? You have to let them sit on the domain and hold up a business or new startup? Who is to say they will be available after the 5 day "hold" ? I recall the Chairman of NetSol tell us not to worry about this about 3 months ago and talked AGAINST the practice. Now they are initiating it. Shame on you NetSol, and shame on you too ICANN.

Danny

FireSky Design

13. Brad Staszczuk

Date: Wed, 9 Jan 2008 14:40:08 -0600

This is of course a discussion of domain "tasting" which ultimately comes down to domain 'squatting' for the purposes of generating ad revenue. While ICANN cannot do much about third party individuals or companies profiting this way, it can surely prevent the registrars, who are able to get a couple days worth of traffic statistics out of the 'tasting' to tell if it will be profitable.

For example, an new shop owner of "Charles' Bakery" tries to register charlesbakery.com, only to find that it is already taken - not for legitimate use - but by a registrar who is only serving up ads and offering to happily sell charlesbakery.com for a mere \$500. Why \$500? Well cause they are making a residual monthly income of \$20 from people clicking on the 'links' trying to find the site they actually wanted.

Now, what is the right thing to do for the sake of the internet? Let registrars fill every unclaimed corner of the internet world with spam to further pad their extremely greedy pockets? Or putting a system in place that PREVENTS registrars from holding domains after they expire and PREVENTS registrars from scooping up every conceivable domain under the sun to get a "taste" of their value from adverts.

I think the answer is clear.

Brad Staszczuk

14. Ben Bradshaw

Date: Thu, 10 Jan 2008 10:15:29 +1200

First of all thank you for the opportunity to comment on Domain Tasting.

The concept of tasting is not a bad one, however it is being badly abused by domain registrars themselves. I refer mostly to Network Solutions, however I am sure they are no

the only ones. It is clear that Network Solutions has no intention of making a website on the domains they are registering, instead they lock the domain to themselves for the 5 day grace period. This practice damages the credibility of the Domain Name System. If a search of the DNS results in that domain being taken, who nobody will want to search it in case they lose their name.

I registered my domain through a registrar that does not follow this practice, in fact I searched many different names using a few New Zealand registrars before purchasing. I did not have to consider front-running, nor should I have to.

I do not see the potential benefits outweighing the potential issues with tasting. I would request either strict regulation of tasting to ensure honest testing and swift resolution of issues such as those with Network Solutions or preferably removal of the entire system. A paid grace period is also an option. A reduced cost for 5 days may reduce the mass registrations that plague the system.

I do not see the cost of a single domain name as substantial, especially when considering how much an advertiser can make. I am also biased due to the fact that I don't intent to taste a domain name, but I can suffer as a result of the system existing. I believe most individuals fall into this category however.

In summary, I would prefer to see the ability to taste removed, or at minimum restricted, either by cost or by control.

Thank you
Ben Bradshaw

15. Tim Triche

Date: Wed, 9 Jan 2008 14:03:46 -0800

When a registrar (such as NSI) does 'domain tasting' themselves, in order to lock-in searchers to their own, more expensive registrar services, the practice effectively breaks the entire competitive registration system. One cannot obtain information about a desired domain name through Network Solutions without implicitly locking-in to their registrar services. Given that a 4-5 day lockup period may mean losing the domain name and business opportunity forever, this sort of egregious misbehavior on NSI's part is doubly shameful.

As usual, NSI reveals their own morals to be at least as poor as those who squat on domains for fun and profit, and due to the implicit trust placed in a registrar (via the whois mechanism), they're actually a bit worse. This practice is abhorrent in the context of an open network addressing system and should not be permitted; registrars who engage in such conduct should no longer be permitted to act as registrars at all!

It is primarily due to this sort of continued misbehavior, along with the exorbitant pricing structure at Network Solutions, that I long ago switched all of my domains to Joker.com, and

I have never for one moment looked back. The competitive registrar framework was partly a result of NSI misbehavior to begin with; thankfully, it provides a mechanism to prevent further misbehavior by removing the profit motive.

16. Ed Bindl

Date: Wed, 9 Jan 2008 17:07:58 -0500

What if there were a limit imposed on how many times this grace period could be used. Say there is a company, lets call them Network Polutions, that is abusing this. Impose a limit of say 10 times a year this can be done. This allows the people who are legitimately using to continue on, but the Network Polutions of the world can no longer abuse it.

17. Tim Triche

Date: Wed, 9 Jan 2008 14:08:00 -0800

Removing the squatter-friendly 'grace period' for domain registrations would remove any legitimate excuse NetSol may have for engaging in their own domain squatting. Should they continue, the logical result to such an egregious breach of the public trust would be to remove their ability to act as a registrar, as should be the case for any registrar who engages in such behavior.

It is gratuitous to note that Network Solutions continually appears to be striving to break the Internet's implicit social contracts for a few bucks.

18. Ian Patterson

Date: Wed, 9 Jan 2008 14:21:12 -0800

Hello,

I work for a registrar. While I enjoy the ability to delete a domain, if the registrant changes their mind, or it was registered using fraudulent credit card info, I think what NetworkSolutions is doing is terrible.

It's an abuse, I feel. And I think I'd feel this way even if my own company were to try it and profit from it. It's one thing to pick a name, register it, see if it generates traffic, and delete it again. It's a little shady, perhaps. But it's another to buy, sell, or steal search info and take other people's ideas, then try to lock up the domain so they have to pay a ransom to get it.

I'd like if domain tasting could be prohibited while still allowing legitimate use of the domain.delete function.

Thanks,

Ian

19. John Maxwell

Date: Wed, 9 Jan 2008 17:01:24 -0800

I am strongly against domain tasting. My feeling is that domains should be owned by people who plan to use them, not the magnates looking to monopolize them. Practically all of the good domain names are squatted on, forcing startups to come up with bizarre variations-- take flickr and reddit. Removing domain tasting will make life harder for magnates and make life easier for website creators.

20. Dave Drager

Date: Wed, 09 Jan 2008 20:45:02 -0500

This email is in response to the request for comments regarding "Domain Tasting" where a registrar looks for domain inquiries and temporarily (5 days) registers the domain on their behalf to see if the domain incurs enough traffic to sustain the registration.

There are a few major reasons why this practice should be restricted and prohibited:

- The 5-day add grace period locks the domain to a particular registrar during that time; thus hindering competition;
- Adds to consumer confusion - consumers believe their domain has been registered and "stolen";
- Solely benefits the registrar - considers outsiders to be a source of revenue and nothing else.

Although the initial report indicates only a few registrars are currently performing 'domain tasting', keeping this rule with cause the proliferation of this practice. Adding a fee for initial domain registration and deletion; or prohibiting this practice, should close this loophole and prevent registrars from performing this action.

Thank you for your consideration in this matter.

Dave Drager

21. Scott Vallance

Date: Thu, 10 Jan 2008 12:42:58 +1030

Domain tasting is almost never used by those who legitimately want to host content on the web. ICANNs function is to regulate the domain name market, allowing for a fair provisioning of domain names. This fair provisioning ensures that clients respect the top level domain server system instead of using their own domain name systems and fragmenting the internet.

Free registration in the guise of domain tasting entirely defeats the purpose of ICANN. If there is no cost to registrants there is no reason for registrants to choose names carefully and purposefully. The space of domain names is then at the mercy of whoever abuses domain tasting the most.

The idea that domain tasting is a service to the community is laughable. The administration costs of these free domains are borne by legitimate users, none of whom benefit from the tasting. Indeed the tasting is likely to be used to extort unreasonable sums from them for domains they desire. If its desirable to allocate domains to registrants for short periods of time then the registrant should pay for it.

Domain tasting is entirely contrary to ICANN's purpose. I urge ICANN to reconsider allowing free registration of any kind, lest the majority of the community see it in their interest to establish an alternative domain name structure.

Scott Vallance.

22. Jonathan Plona
Date: Wed, 9 Jan 2008 21:29:32 -0500

It sounds like a good idea, but in practice it has become a way for domain registering services (NetworkSolutions in particular) to snap up domains that are about to be registered. This is certainly not fair to individuals wanting to register a domain. Squatting is a bad thing.

23. Scott Converse
Date: Wed, 9 Jan 2008 19:57:45 -0700

I would like to see Network Solutions investigated for Domain Tasting. If found to be active in this practice, I would like to see you take away their ability to issue domain names on the internet. At the very least, punitive action against them (or anyone active in this somewhat slimy activity).

SC

24. Jeffrey A. Williams
Date: Wed, 09 Jan 2008 21:36:37 -0800

George and all,

Well lets hope that the Bod takes appropriate action ASAP. I am not holding my breath that they will however...

Regards,

(In GA list response to George Kirikos:
Initial Report on Domain Tasting

Authors: Olof Nordling, olof.nordling@icann.org, Liz Gasster, liz.gasster@icann.org

Hi folks (especially lurking ICANN Board members),
According to the Registrar Accreditation Agreement, section 4.3.4:
<http://www.icann.org/registrars/ra-agreement-17may01.htm>

"4.3.4 A specification or policy established by the ICANN Board of Directors on a temporary basis, without a prior recommendation by the council of an ICANN Supporting Organization, shall also be considered to be a Consensus Policy if adopted by the ICANN Board of Directors by a vote of at least two-thirds of its members, so long as the Board reasonably determines that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the operational stability of Registrar Services, Registry Services, the DNS, or the Internet, and that the proposed specification or policy is as narrowly tailored as feasible to achieve those objectives."

I believe with NSI's recent actions, one can argue that ICANN needs to step in to maintain the operational stability of Registrar Services. If NSI is permitted to continue their behaviour, other registrars will be compelled to do the same, monkey-see, monkey do. That would be instability, a disruptive change of registrar services from the status quo.

To define it as narrowly as possible, one can simply make the policy/specification be that the ICANN fee is non-refundable even during the add-grace period. One can specify it is established for a period of 90 days, and renew it for up to a year. One needs a two-thirds majority of Board members to establish a temporary consensus policy in this manner. By the end of the year, the GNSO council would probably have a consensus policy via the PDP in the right direction, to support the temporary policy enacted by the Board.

The time for inaction is over. As Vint might say, "Make it so."
Sincerely,
George Kirikos

25. Christian Winebrenner

Date: Thu, 10 Jan 2008 00:05:35 -0600

The point of purchasing domains has never been one whereby which someone "checks" to see if they can monetize the domain from just slapping ads on it; indeed, even if it was, it's highly unlikely that a potential owner of a domain could accomplish this "tasting" in the short period provided. Thus, it would seem that allowing tasting provides for a negligible, at best, benefit to the community.

On the other hand, behavior like that most recently exhibited by NSI whereby a registrar instantly registers all domains that are queried via WHOIS, especially when the company in question has such close ties to the registry for the TLD in question, causes significant harm to the community. A large part of the purpose of decentralizing the domain registration process into registries and registrars was to provide for more competition - something that is most certainly NOT occurring when NSI goes ahead and registers a domain you query via their WHOIS system, effectively forcing you to register it at their (higher) price or wait and hope that no one else takes it whenever it gets released again.

In light of such behavior, the potential for abuse of the "tasting" process seems high, with little to no benefit for consumers, and I feel it should be discontinued, or that the registrar that is "tasting" a domain should have to pay the significantly more - between half and all of the registration rate - to the registry, even if they release it later, in order to discourage abuse.

Regards,

Initial Report on Domain Tasting

Authors: Olof Nordling, olof.nordling@icann.org, Liz Gasster, liz.gasster@icann.org

Christian Winebrenner

26. Frank Ellermann
Date: Thu, 10 Jan 2008 09:32:17 +0100

Please stop this practice. ICANN is not supposed to "accredit" domain grabbers or to help spammers.

Frank

<http://omnibox.blogspot.com/2008/01/icann-ombudsman.html>

27. Matt Ledingham
Date: Thu, 10 Jan 2008 12:05:44 -0700

The suggestions, to charge a non-refundable amount and/or limiting the amount of refunds by any one registrar, will stop these activities. Please impliment these suggestions.

Domain name tasting is really hurting the domain name experience, especially for people that aren't professional domainers, that are just trying to establish an online presence.

Front Running is hurting the Internet too. It is completely unfair that Network solutions is registering the domain name ideas of it's searchers, and holding them hostage. Also, they expose these names to the world, and they in no way ensure that the person that ultimately registers the names is the original searcher. They act like they are protecting their customers, but in fact it is just the opposite.

28. Jeffrey A. Williams
Date: Thu, 10 Jan 2008 14:13:32 -0800

George and all,

I agree with you here George as to a actual solution that is workable. I don't agree that ICANN cannot or should not be monitoring their ACCREDITED Registrars or Registries logs. They should do so on a regular basis.

As to Bod members whom may have conflicts with registries, if such a situation exists, that Bod member should immediately resign due to that very COI.

Regards,

(In GA list response to George Kirikos:

Initial Report on Domain Tasting

Authors: Olof Nordling, olof.nordling@icann.org, Liz Gasster, liz.gasster@icann.org

"Hi Dominik,
Dominik Filipp <dominik.filipp@xxxxxxx> wrote:
> we could perhaps find a better solution. To distinguish between the
> two things, NSI and domain tasting, and address them accordingly.
>
That's the problem, though, that there's no basis upon which to distinguish the two things. It encourages an arms race amongst registrars, which destabilizes the registration system.
Consider the case now in the courts between Dell and Belgium Domains:
<http://www.domainnamenews.com/legal-issues/dell-computer-vs-trademark-infringing-domainers/1323>

In theory, a phantom registrar who wanted to take advantage of the AGP loophole can point to the NSI example, and then have phantom clients performing phantom searches, leading to phantom cart holds. I do not believe ICANN will start auditing registrar webserver logs, or would have any basis to do so.

> In the NSI case ICANN should send an official cease-and-desist letter to
> stop the practice. In case of domain tasting to follow the existing policy development
> process and to find a fundamental solution, e.g. the cancellation of AGP, which, by the > way, has gained the majority support in the contributor's straw poll.
>

I'm glad we agree, as does the majority, on what the fundamental solution is, namely elimination of the AGP, either directly or indirectly by making it uneconomic for mass-automated purposes. It's just a matter of the ICANN Board finally deciding to take action now, while the PDP crawls forward.

Think of the headlines and positive PR -- "ICANN takes decisive action to halt front-running." Time to seize a golden opportunity to do something right. I'd love to know which Board members would actually vote *against* doing so -- I suspect it would be a unanimous vote to end the practice, perhaps with a few abstentions for those who have conflicts with registry operators.

Sincerely,
George Kirikos")

29. Jeffrey A. Williams
Date: Thu, 10 Jan 2008 14:22:00 -0800

George and all,

I disagree that using a \$0.25 fee to address this problem will be effective or is fair to potential legitimate registrants/users. NSI and any other Registrars or Registries should be made/forced to discontinue this practice and police adequately without additional cost, their operations and ICANN which has oversight responsibility should be held directly responsible for correcting/eliminating this errant practice as after all, it was ICANN that created the problem in the first place even after being warned long in advance.

Regards,

(Response on GA list to George Kirikos)

30. Jeffrey A. Williams
Date: Thu, 10 Jan 2008 14:29:12 -0800

Jonathon and all,

Well glad to see that NSI has at least taken some good steps thus far. Well done, but not yet good enough! Again, changing or increasing transactions fees to address tasted names is a irresponsible and unnecessary punitive response to further address the tasting problem however and one that will only temporarily reduce, not eliminate the practice.

Regards,

(Response on GA list to Jon Nevett)

31. Dominik Filipp

Date: Fri, 11 Jan 2008 11:59:00 +0100

Jeff,

I fully agree. \$0.20 re-registration fee is an insufficient solution. I am always feeling some sort of domain speculation in mind when listening to such proposals. If I cannot order a pizza and then cancel the order just paying \$0.20 fine, why should have I an extra privilege regarding domain names?

As far as we know, the AGP concept was never officially addressed or discussed during the .com registry agreement process. No one knows, or wants to say what actually happened behind the closed doors during the agreement approval. Therefore, in my opinion, the AGP has no legitimate background to be further supported. It is just a neverending source of problems, despite of all proclaimed 'benefits' it allegedly brings.

Dominik

(Response on GA list to Jeff Williams)

32. George Kirikos

Date: Fri, 11 Jan 2008 10:04:28 -0800 (PST)

Hello,

The economics of pizzas and domain names are entirely different. A pizza has labour, material and delivery costs that are far above 20 cents. A domain name is an electronic record in a database where the marginal costs are close to zero for the registry operator, far below 20 cents.

A 20 cent fee would make any speculation totally uneconomic for domain names. This is borne out by the fact that on the order of 99%+ of tasted domains get deleted during the AGP.

Suppose that one tastes 1 million names. If 99% are deleted, and 1% are kept:

A] Tasting is free:

Cost to taster is $10,000 * \$6.62 + 990,000 * \$0 = \$66,200$

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Authors: Olof Nordling, olof.nordling@icann.org, Liz Gasster, liz.gasster@icann.org

(in first year).

B] Non-refundable 20 cent fee:

Cost to taster is $10,000 * \$6.62 + 990,000 * \$0.20 = \$264,200$

The cost to the taster has increased by 300%. On a per successful name basis, the average cost is now \$26.42.

The numbers are even more horrible to the taster if the ratio is 99.7% (i.e. 1 in 300 profitable names), etc.

The risk/reward is also entirely different. Under "A", there is essentially zero risk to the taster, because suppose that less than 1% of the names were profitable, then their costs scale linearly with the number of good names they discover. Under "B", if in a scan of 1 million names they find a tiny amount of good names, they're still on the hook for a minimum of \$200,000. Now the payoff is entirely non-linear, and the risk/reward ratio is terrible.

PIR has essentially eliminated tasting in .org with their non-refundable fee. The same would happen in .com/net should ICANN move forward. It's simple economics, which the automated tasters understand, but it seems some folks don't.

Sincerely,

George Kirikos

(Response on GA list to Dominik Filipp, above)

33. Jeffrey A. Williams

Date: Fri, 11 Jan 2008 13:22:11 -0800

Roberto and all,

Glad to read that you agree, Roberto. Maybe you can promote same with your fellow Bod members?

On a side note, seems to me that a revamping of the registrars and registries contract agreements to reflect a more comprehensive solution that ban's all forms of Tasting.

Regards,

(Response on GA list to Roberto Gaetano, agreeing with Dominik Filipp, above):

34. Jeffrey A. Williams

Date: Fri, 11 Jan 2008 13:35:57 -0800

George and all,

Your math is good and your intent for such a "Tasting fee" is fine as well, however such a fee for such an practice does not directly address the problem, but rather addresses the symptom. Better would be to hold registrars and registries directly responsible through a policy that has penalties for Tasting AND for Tasters whom are caught to be severely punished in a more comprehensive way...

Regards,

(in response on GA list to George Kirikos, above)

35. George Kirikos

Date: Fri, 11 Jan 2008 12:34:07 -0800 (PST)

Hi Karl,

(In response on GA list to Karl Auerbach:

> One chunk of information that is very much needed to intelligently
> discuss these matters is a believable list of the cost elements at
> the registry level of a domain name registration cycle.

>

> By my estimate it is on the order of a few units of \$0.01(US), others
> have estimated it a bit higher, ICANN pegs it at around \$7.00(US).)

It's relatively simple to provide an upper bound. According to the most recent .com registry monthly report from VeriSign (September 2007):

<http://www.icann.org/tlds/monthly-reports/index.html>

<http://www.icann.org/tlds/monthly-reports/com-net/verisign-200709.pdf>

There are several registrars that account for millions of add-grace period deletes. Let's take one example, Belgium Domains. On page 17, they had 37,829 "net-adds-1-yr", at \$6.42 each for revenues of \$242,862.18 to VeriSign. On page 18, they had 12,449,184 "deleted-domains-grace.". That's a 1:300 ratio (which supports the 99.7% percentage I had mentioned in a prior message).

If registry costs were 3 cents per "deleted-domains-grace", then VeriSign's costs for the "deleted-domains-grace" would be $\$0.03 \times 12,449,184 = \$373,475.52$, which means VeriSign would be losing money from this registrar. You can be assured they're NOT losing money from this registrar, or they'd be howling to implement a fee like PIR did.

(> If the cost elements are very low (my estimates) than rapid
> registration/de-registration may not offload costs onto the community)

You ignore externalities imposed on others, e.g. trademark, legal costs, etc.

(> And, if the cost elements are low, then on what grounds is ICANN

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> imposing a registry fee that is inconsistent with the costs?)

Of course ICAN isn't imposing a registry fee that has anything to do with costs. A tender process would bring the wholesale registry price of .com domains to \$2/yr or less, as we all know, with little change in QoS.

(> ICANN has long needed to perform an independent, highly detailed, and
> believable audit of the *actual* costs of registry services, clearly
> separating out the various cost elements and in particular separating
> out the front-office (name registration) costs from the back-office
> (name server) costs. (It would also be useful to know the details of
> the costs of complying with ICANN's regulatory system.)

When ICANN was "selling" their settlement with VeriSign, they had conference calls with various constituencies. I asked the General Counsel to estimate what the cost of the settlements was to the community (i.e. 7% increases in the future, etc.), so one can do a cost-benefit analysis of the settlement, vs continuing to fight the lawsuit. He had no answer, even while everyone with half a brain was estimating it to be in the billions of dollars.

Sincerely,

George Kirikos

36. George Kirikos

Date: Fri, 11 Jan 2008 14:02:54 -0800 (PST)

Hello,

(In response on the GA list to Roberto Gaetano:

> The point was not on economics, but on the fact that the expectation of
> being able to cancel an economic transaction at zero cost is uncommon in the
> real world. What is the marginal cost of cancelling a reservation in a hotel
> or a flight? From the operational POV, not much different from the
> cancellation of a domain name record. However, you have very strict rules
> for cancellation of rooms and seats.
>

> I am sure everybody understands the economics. PIR has eliminated the tasting with > their non-refundable fee in the same way airlines have eliminated the no-show with a > fee that is non-refundable in case of cancellation. So what?)

The point was that at:

<http://gnso.icann.org/mailing-lists/archives/ga-200709/msg00858.html>

you wrote that "I fully agree. \$0.20 re-registration fee is an insufficient solution."

That's clearly not true --- it would be entirely sufficient, as it has been for PIR. If one wanted to make the entire \$6.62 fee be non-refundable, that would work too, naturally. But it's certainly true that \$0.20 is sufficient to eliminate the problem, and a higher number is just over-kill.

As I mentioned in the initial post at:

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Authors: Olof Nordling, olof.nordling@icann.org, Liz Gasster, liz.gasster@icann.org

<http://gns0.icann.org/mailling-lists/archives/ga-200709/msg00840.html>
any temporary policy must be "narrowly tailored as feasible to achieve those objectives." If you want to whack it with a nuclear bomb, that's fine, but using a small hammer will do the trick, and is "narrowly tailored."

What policy do you feel would be minimally "sufficient" if you don't think the 20 cent fee does enough??

Sincerely,

George Kirikos

37. George Kirikos <gkirikos@xxxxxxxx>
Date: Fri, 11 Jan 2008 16:19:40 -0800 (PST)

Hi Roberto,

(In response on the GA list to Roberto Gaetano:
> Personally, I don't want to get into the debate on whether a specific amount
> is sufficient or not, my point is only that I don't see any problem in
> *having* a non-refundable fee of some sort, much the same way it happens in
> real life for many other similar cancellation of transactions.)

Ahhh, ok. Then we're in complete agreement.

Have a nice evening and weekend, folks.

Sincerely,

George Kirikos

38. Jeffrey A. Williams
Date: Fri, 11 Jan 2008 21:39:00 -0800

Karl and all,

Excellent thoughts and remarks regarding actual vs dream land costs. ICANN's estimate as to registry costs is outrageous at \$7.00US. As a guess only, seems to me that your estimate at a few pennies is likely closer to accurate. Agreed that ICANN needs to have its whole financial audits independently done or IMHO at least independently verified.

Frankly though, as ICANN itself is responsible for From Running/Tasting in the first place, seems to me that a huge amount of \$\$ is due all current registrants for this activity being hoist upon registrants, in the form of a rebate! Of course I realize this will likely never happen, but it should.

Regards,

(Response on the GA list to Karl Auerbach)

39. Jeffrey A. Williams

Date: Fri, 11 Jan 2008 22:00:56 -0800

Roberto and all,

Of course there is a cost. We all know that. What is more important that the costs were generated by a lack of good RIR policy which many pointed out many times in the past and were either ignored, not understood, or not recognized/believed at that time. Secondly, it is ICANN's lack of dealing with this problem early on when elaborated upon at length, that has now become a very real and recognizable problem...

Regards,

(Response on the GA list to Roberto Gaetano)

40. Jeffrey A. Williams

Date: Fri, 11 Jan 2008 22:30:05 -0800

Roberto and all,

First, all, please trim your CC's and TO's before sending a response on this thread.

Roberto, again, respectively, you still miss the point I believe. The point is that why should registrants pay any fee what so ever? What's the justification when it isn't and never has been a registrant generated problem in the first place? Registries should never have the authority or even ability to put any Domain name on hold that has been reserved or queried, or even that has recently expired taking into account the grace period of course. Any registrant, or would be registrant, should have the ability to choose their own registrar of choice without restriction. These I believe are the most relevant points. Sure there is a cost for front running/tasting. But those costs were created by ICANN's poor RIR's not registrants or would be registrants. Registrars also should not bare the costs of an ICANN past Bod error in judgment. ICANN should bare those costs from it's own funds or make mandatory a solution, both short term, and long term. Hence requiring such solutions being solicited via public comment, and/or by the GNSO council via the relevant constituencies such as they are....

From where I sit, ICANN created/allowed for Tasting/Front Running, ICANN should pay for the damage which has resulted.

Regards,

(Response on the GA list to Roberto Gaetano)

Initial Report on Domain Tasting

Authors: Olof Nordling, olof.nordling@icann.org, Liz Gasster, liz.gasster@icann.org

41. Dwayne Rowland
Date: Sat, 12 Jan 2008 21:12:24 -0500

Hi,

I've read the reports and find no reference to the real reason domain tasting exist today. That is the "instant activation" of a new name. The solution is very very simple. New registrations should not be activated and placed into the zone files for five days or until the registrars confirms the registration by making it non-refundable. Someone somewhere must be counting these five days!

I believe current status and operation methods are in place now to effect this small change.

Thanks
Dwayne Rowland
Exody.com

42. Dominik Filipp
Date: Mon, 14 Jan 2008 12:44:04 +0100

George,

your math is basically correct, but there are several other factors worth noticing. Keep in mind that successful tasters have already built up a rich portfolio of extremely valuable names constantly bringing remarkable PPC revenue and make a fortune on auctions. That is, successful tasters have already collected a big pocket out of which they can cover speculation costs under the 'new tasting model' counting \$0.20 fee in. No doubt it is a complication for tasters and it will require redefinition of tasting activity but it still can be kept alive. Although it decreases the overall number of tasted names the practice can be refined to stay workable. I can imagine that the average cost \$26.42 per successfully tasted domain/year can be considered acceptable for rich tasters at least for a certain period, say 1 year, during which the new model can be refined, calibrated and eventually tuned up. They simply can afford it regardless of possible temporary financial loss.

The characteristics of the new possibly viable tasting model considering the \$0.20 re-registration fee could be:

1. Refinement of the domain selection model based on improving domain appraisal methods. The overall number of tasted domains has to be decreased but many domains can be found profitable for PPC or auction purposes. Remember, that tasters have gained a rich experience of financial history and profitability of many, many domains inspected so far. No one else can compare with their ability to evaluate the market power of domains.

2. Due to the mentioned above, various domain search techniques have to be improved. The list of pending delete domains delivered in advance, an extended form of aggressive spy lookups to be developed, the whois lookup lists massively ordered and delivered from registries... upon which the smart appraisal methods will be eventually applied to get a result list of domains suitable for tasting.

3. All names successfully sold on auctions or names bringing revenue out of PPC advertising will then contribute to a 'risk budget' supporting the tasting of such selected new domains. Once the positive ballance is achieved, the tasting will survive.

The number of tasted names under the new condition (\$0.20 fee) will be decreased, that is for sure. But it is not eliminated as a phenomenon. After a while, some tasting registrars can make the tasting methods effective enough to become successful in grabbing many valuable names.No one knows how many.

As for the PIR's provision, even if applying the re-registration fee for .ORG domains might (have) lead to the elimination of the tasting effort for those domains, .COMs is a whole different thing. The importance of .COM and .ORG domains is simply uncomparable.

Dominik

(Response on GA list to George Kirikos)

43. Jeffrey A. Williams

Date: Mon, 14 Jan 2008 14:24:55 -0800

Dominik and all,

Although your approach has some merit, it only serves to encourage further Domain name tasting which should be eliminated all together.

A better method to address Tasting is to require all registries that have the historical data of Tasted Domain names turn over that data to ICANN and have ICANN require that those Tasted domain names be turned over or made not resolvable by the registry of record.

Regards,

(Response on GA list to Dominik Filipp)

44. Dominik Filipp

Date: Tue, 15 Jan 2008 10:18:33 +0100

Jeff,

right. And the best method could be to eliminate the source of domain tasting, which is the AGP concept. Simple, straightforward, not requiring any additional effort or supervision.

Initial Report on Domain Tasting

Authors: Olof Nordling, olof.nordling@icann.org, Liz Gasster, liz.gasster@icann.org

Dominik

(Response on GA list to Jeff Williams)

45. Jeffrey A. Williams
Date: Tue, 15 Jan 2008 03:44:10 -0800

Dominik and all,

From a practical and credibility standpoint, I could care less, as I am sure a number of Admins., registrants, and small business registrants in particular, whether or not additional supervision is required or additional effort is required as long as Front Running/ Tasting is stopped immediately! If indeed AGP is simple, straightforward, does not require additional effort or supervision, fine, but I doubt that is the actual case.

What this all boils down to is a lack of ICANN staff willingness, ability, and credibility to do the oversight it is charged with over its Registries and Registrars. RegistryFly proved that, and the immediate aftermath emphasized same very clearly. Of course as many of the Bod approved policies have not had and do not have broad Stakeholder support, it is by me, and could be understood well by others why this paradigm is extant presently.

What it appears that the ICANN staff want's to do is move up the policy wonk ladder rather than do the actual WORK involved in implementing and overseeing the policies it effects. That's just poor leadership and worse credibility. Results and effect, trumps rhetoric and political correct policy wonking every time!

Regards,

(Response on GA list to Dominik Filipp)

46. Jeffrey A. Williams
Date: Tue, 15 Jan 2008 16:41:32 -0800

Dominik and all,

You may be right, but I for one don't want to see ICANN's creditability further eroded, but rather would like to see same greatly improved lest all stakeholders are further imposed upon by government regulation and legislation that may or may not be advantageous or even broadly reasonable.

Kindest but regretful regards,

(Response on GA list to Dominik Filipp)

47. Larry Grubbs

Date: Wed, 16 Jan 2008 13:05:34 -0500

I don't know if this belongs under domain tasting or not, but I discovered today that Network Solutions is using a domain name that I have registered with MyDomain. If you enter www.nobuzzwords.com, you are directed to a landing page for NWS that says: "Coming Soon. This site is under construction." The page is in color with an attractive layout and contains several menu tabs to click on. When you click on a tab, you are taken to another page branded as NOBUZZWORDS.COM that features numerous links related to the menu tab.

I have no doubt that NWS is using my domain name that is not registered with NWS to make money for NWS without my permission and without compensation. Is this a legitimate, ethical practice?

Larry Grubbs

(plus 3 attachments with screen shots)

48. Jeffrey A. Williams

Date: Thu, 17 Jan 2008 12:46:46 -0800

Ted and all,

I fully recognize that blacklisting tasted domain names intentionally has drawbacks as you rightly point out. Yet, sooner or later those Domain names and their associated IP addresses will eventually be blacklisted outside of ICANN policy and thereby become very difficult to rehabilitate at some date later after a full investigation by ICANN can be reasonably conducted and the guilty parties identified to the extent possible and appropriate action taken. Once said investigation has been completed, the offending Tasters dealt with [hopefully harshly]. Then, those blacklisted Domain names can be released as "Clean" domain names and at that time re-registered in the proper positive use manner.

Otherwise, the future of these tasted Domain names may never be removed from some black listing services nor shall their associated IP addresses. I believe that this is a far worse, likely, scenario if a process/policy such as I am suggesting is not implemented, AND, Domain name Tasters will not be effectively, if at all, dealt with in an effective manor.

Regards,

(Response on GA list)

49. McTim

Date: Thu, 24 Jan 2008 14:13:27 +0300

Initial Report on Domain Tasting

Authors: Olof Nordling, olof.nordling@icann.org, Liz Gasster, liz.gasster@icann.org

I find myself in agreement with the ISPCP constituency on this issue.
The AGP is being abused, the loophole should be closed.
Cheers,

McTim
\$ whois -h whois.afrinic.net

50. Karl Auerbach
Date: Thu, 24 Jan 2008 09:53:08 -0800

A few short comments:

1. One essential question has never been asked, much less has it been answered:
+ What is the actual cost to a registry to process a transaction?

Why is this question so important? Because one of the issues about "tasting" is whether the costs of this frenzy of speculative sub-5-day registrations are being subsidized by the registries or the systemic costs being effectively transferred onto those who acquire names on a full-term basis without using the AGP.

If the registry transaction costs are very low, then the costs of "tasting" may in fact be covered by the interest generated by the amounts on-deposit by the tasting registrars with the registries. If the registry transaction costs are higher than that interest revenue on the deposits then the tasters are being implicitly subsidized.

An ancillary aspect is that if the transaction costs are low, then one must wonder why ICANN has created registry fees that are greatly in excess of actual registry costs?

All of this leads to an important task that needs to be performed in order to go forward on this domain tasting policy process:
+ ICANN must perform a deep and believable audit of the actual costs at the registry level of processing transactions of various types.

2. The 5 day grace period gives rise to another kind of abuse that was not, I believe, discussed: A group of colluding registrars can use AGP, in conjunction with synchronized Drop and Add transactions to create a kind of round-robin system in which a name is passed among the colluding registrars like a baton and never made available to the name buying public. Through this mechanism a name that generates revenue - via Google Ad Sense income for example - can be effectively maintained for the price of the cost of the interest on a few dollars that are deposited at a registry, in other words for far less than a normal registration.

This round-robin passing of sub-5-day registrations is not foolproof, a name may be lost during the hand-off. One might think that there is no advantage using this round-robin

system - the same amount of money is used whether it be on deposit with the registry or actually paid in the form of the registry fee. But round-robin does allow early relinquishment of a name that starts to perform less well and thus frees up the money on deposit for use on another name. And round-robin is also a means to further hide the real identity of an owner of a name that may be in use in a way that is abusive of the rights (such as trademark rights) of another.

3. We need to be careful about the term "AGP". The ICANN-registrar contracts define several types of 5 day grace periods with the "add" version being but one. Yet the other types may also be susceptible of similar abuse.

--karl--

Karl Auerbach

(Message on GA list)

51. Karl Auerbach

Date: Thu, 24 Jan 2008 14:45:07 -0800

I was on ICANN's board when the various 5 day grace periods crept into the contracts. (I voted against, but for reasons apart from the 5-day periods.)

These were very large contracts with many appendices. It is my recollection that at no time did the board ever explicitly discuss or consider the wisdom of these 5-day periods. Nor did ICANN's "staff" who actually wrote these provisions, bring their existence to the attention of the board of directors. It may be fair to say that few, if any, board members even knew of the existence of these provisions when we adopted them along with all the other provisions of the contracts.

(These 5-day grace periods are not to be confused with the longer "redemption grace" period that was adopted to help deal with registrants who fail to renew a name before the end of their contract period. That redemption grace period was considered explicitly by the board and it is not one of the grace periods that is involved with "tasting".)

Getting back to my main point - these 5-day grace periods are not the result of a considered deliberation on the part of ICANN. They fell through the cracks.

Consequently one ought not to give the normal deference to the status quo that one would give had these provisions been the result of a thoughtful deliberation and debate. Instead these 5-day provisions should be considered in a context which looks at them afresh.

In this fresh evaluation these 5-day grace periods should have to be demonstrated as being valuable and useful; if the proponents do not carry that burden then these 5-day grace periods should be abandoned.

--karl--

Karl Auerbach

Initial Report on Domain Tasting

Authors: Olof Nordling, olof.nordling@icann.org, Liz Gasster, liz.gasster@icann.org

(Response on GA list)

52. CADNA (forwarded by GNSO.SECRETARIAT)

Date: Fri, 25 Jan 2008 15:36:00 +0100

On behalf of Phil Lodico:

This is a white paper that was issued by CADNA (Coalition Against Domain Name Abuse) that offers insight into potential Domain Tasting solutions.

This was released in October of 2007.

Phil Lodico

Attachment

This white paper was compiled by the Coalition Against Domain Name Abuse (CADNA) and is intended to serve as a source of reference for lawmakers, policymakers, brand owners, the press, and others as they consider possible solutions to the issue of domain name tasting. The document paints a realistic picture of the domain tasting challenge, while aiding readers in becoming familiar with the role that the Add Grace Period (AGP) plays in domain tasting. Also presented are an evaluation of potential solutions, and a proposed strategy to successfully curb the effects of this widespread abuse.

This paper is divided into three major sections, listed below.

I. An Introduction to Domain Tasting

- A. Domain Tasting as a Significant Threat
- B. Notorious Tasters
- C. Legitimate Registrars

II. Potential Solutions: Arguments For and Against

- A. Re-evaluate the five-day add-grace period
- B. Shorten the 5-Day AGP Window
- C. Apply a Restocking Fee
- D. Revoke a Registrar's Accreditation for Abuse of the AGP
- E. Limit, by Ration, the Number of Deletes a Registrar is Allowed at No Cost - Add/Delete Ratio
- F. Activation Upon Day 6 – until payment “clears”

III. CADNA Position

The document seeks to objectively clarify the impact and significance of each proposal and to address issues policymakers should consider in ensuring that the implemented solution is beneficial to the Internet Community at large. After analyzing the applications and implications of a handful of proposals including restocking fees, ratios, and accreditation revocation (as it pertains to notorious tasters), CADNA contends that abolishing the AGP is the safest and most practical solution to implement.

Initial Report on Domain Tasting

Authors: Olof Nordling, olof.nordling@icann.org, Liz Gasster, liz.gasster@icann.org

We have compiled this “Tasting Solutions” white paper to promote the open debate surrounding potential domain-tasting solutions and to take further steps to protect the security and stability of the Internet environment.

Domain Tasting – An Introduction

Domain tasting is the legal practice of registering domain names and testing their value (typically based upon traffic), in order to decide whether to keep or rescind each registration within a five-day period. Domain tasting is made possible by the Add Grace Period (“AGP”), which allows a registrar to revoke a domain name within the first five days after registration and receive a full refund of the registry and ICANN transaction fees. One of the AGP’s original purposes was to protect registrars against fraud by giving them five days to verify the registrant’s method of payment.

Tasting typically works in the following manner:

A taster registers a large number of domain names and puts up a Web site at each domain that contains pay-per-click advertisements relevant to the content of each domain. [While the following examples are fully registered, they may or may not have been identified via tasting; the purpose is to provide examples of pay-per-click sites and illustrate how names are monetized and how their value is assessed, not tasting]. One example is the site www.airfarecheap.com, which displays advertisements for discount travel agencies and airfares. Another example is www.harleudavidson.com (intentional typographical error) where sponsored ads include those of Harley-Davidson as well as others buying the “Harley Davidson” keyword. Advertisers pay a fee to the taster each time a site visitor clicks on their ad. If the taster does not have the in-house capability to create Web sites that display pay-per-click (PPC) ads pulled from contextual advertisers (e.g. Google), he or she parks domains with a company that can. Examples include Sedo, Skenzo, Imonetize, Domain Sponsor, TrafficZ and Hitfarm.com. The taster monitors overall traffic, the conversion rate to clicks on ads, and the total ad revenue collected from each domain over a period of time less than the initial five-day period. After day five, the taster only retains those domains that yield enough ad revenue to be worth the cost of registration, and “returns” the rest of the domains to the registry for a full refund. Some tasters register and delete the same domain name over and over again, a process known as domain kiting. Many accredited registrars participate directly in tasting, while other registrars offer tasting services to their customers. The tasting process for ICANN accredited domain name registrars, some of which are among the most active domain tasters, involves submitting a deposit with the applicable registry (VeriSign for .COM). This deposit caps the maximum number of domains a taster can test-drive at any point in time. However, the vast scale of this practice is illustrated by the fact that the largest tasters may have tens of millions of dollars on deposit with a registry in order to be able to taste the large volume of names discussed in this paper. These registrars have gained substantial competitive advantages and realized exceptional profits by tasting large quantities of domain names since they are able to register the ones they wish to keep at wholesale pricing that is not available to the public.

A large percentage of Internet users reach their destinations on the Web via Direct navigation, which refers to the practice of entering a domain name directly into their browser’s address bar rather than using a search engine. As a result, capturing direct traffic by casting a wide net of domain names and presenting syndicated sponsored ads can generate significant revenue. The domain tasting business model profits due to the scale of the operation rather than the amount of money made on any particular Web site. Even if

tasters and kitters (often one and the same entity) do not net significant profits from one particular domain name, they are still causing disproportionate harm to the affected trademark owner, and that brand's consumers. Paid search ads syndicated out to domain tasters' Web sites generate estimated revenue in the hundreds of millions of dollars each year. Domain name owners, domain monetization platform providers, and the search engines that sell ads to advertisers share this exceptional revenue. Domain tasting is one of the forces driving domain name monetization because it enables tasters to test drive many domains names without cost and retain only those domain names that get enough traffic to turn a profit.

Domain Tasting – A Significant Threat?

Domain tasting is a relatively new phenomenon that takes place on a massive scale and it is proving to be a highly controversial practice with many negative ramifications. While domain name tasting is technically permitted under a current ICANN policy, many believe that the usage of the AGP to taste millions of domain names each day is damaging to the stability of the Internet and harmful to members of the Internet community. The unique ability for tasters to leverage the AGP to incur costs only on domain name investments that are proven to turn a profit has led to many problems in the domain name system. In fact, tasting has reached a near tipping point in the .COM namespace as .COM offers domain name tasters the greatest pool of traffic to monetize. The sheer scale of the problem has led to significant over-registration of the name space. While many may disagree that this is problematic in and of itself:

-

The number of domain names that exist on a day-to-day basis continues to grow in part due to domain tasting.

-

The number of domains that contain words confusingly similar to trademarks has grown in part due to domain name tasting because the majority of Internet traffic is aimed at brand inclusive domain names.

-

The number of domain names at any given time caught up in the AGP is in the millions. This in turn has lead to:

-

Increased profits for ICANN and registries since tasting allows domain name speculators to test the type-in traffic to any conceivable domain name risk free and helps speculators identify domains that might not have been registered otherwise; and thus has led to an increase in the total number of domain names registered.

-

Restricted consumer choice, as interested new potential registrants are often unable to find trademark-clear domain names for personal or business use because they are already owned, or "owned" through tasting or kiting and are being monetized via PPC schemes.

-

An overabundance of registered domain names that exist for no other purpose than to offer PPC ads and do not provide users with a rewarding experience. The goal of an Internet user is to have a relevant experience and having to click through multiple pages of sponsored links without (a) being told they have reached the wrong destination; (b) being offered the

chance to opt out of reaching that site; (c) being offered natural search results to find their destination diminishes the confidence of consumers in their online experience.

-

Customer confusion – when a user enters a domain name in their Web browser’s address bar expecting a content-rich site and lands upon a site serving a collection of competing ads and irrelevant and fraudulent offerings, confusion may occur.

-

Growth in cybersquatting – while not all, or perhaps even the majority of domain tasting results in cybersquatted domains, brand-related domain names garner significant traffic and thus registering domains derived from brands presents an opportunity to those who monetize traffic and breeds an environment conducive to cybersquatting.

-

Brand and trademark dilution – The purpose of a trademark is to protect the consumer. When trademarks are abused by cybersquatting, the resulting dilution hampers the ability of the trademark to do its job.

-

Dramatic increase in costs to trademark owners – The necessary costs for trademark owners to protect their brands and consumers have grown substantially due to the volume of domain names that are added on a daily basis. While many may argue that this is the cost of doing business, many others would argue that those increased costs are unnecessarily passed on to the general consumers and could be prevented by better ICANN policies and contractual provisions with registries and registrars.

-

Domain name kiting – Kiting is the practice of serial domain tasting where a registrant will continuously add and then drop a name to avoid payment of registry and ICANN fees. The ability to receive all of the benefits of ownership without paying for the real estate is not illegal, but is an opportunity that is not present in most other marketplaces. In fact, in many markets the usage and subsequent return of a product on a cyclical basis is fraud.

-

Fraud – Because domain tasting occurs on such a massive scale, those responsible for protecting consumers through monitoring often do not look at any names that are less than five days old because the list of names is much too long. The result is that names younger than five days old are able to exist virtually anonymously. At times this anonymity is used for fraudulent behavior, which could include the sale of unwanted counterfeit goods, and other harmful acts.

While many argue that domain tasting is not detrimental to the health of the Internet, the abuse of the AGP has reached a point where the negative effects of tasting far outweigh the positive.

If consumers, intellectual property owners and legitimate registrants are being harmed by this practice, then who is benefiting? Insofar as domain name tasting enables would-be registrants to identify names that will garner traffic, those registering names with intent to monetize traffic are the major winners. Without domain tasting, they would have to “guess” which names would generate traffic and assume financial responsibility regardless of whether they see a return on their investments. Domain tasting enables tasters to purchase Internet real estate virtually risk-free.

Please refer to Figure 1, which highlights the parties that informed ICANN via a questionnaire that they are negatively impacted by domain tasting.

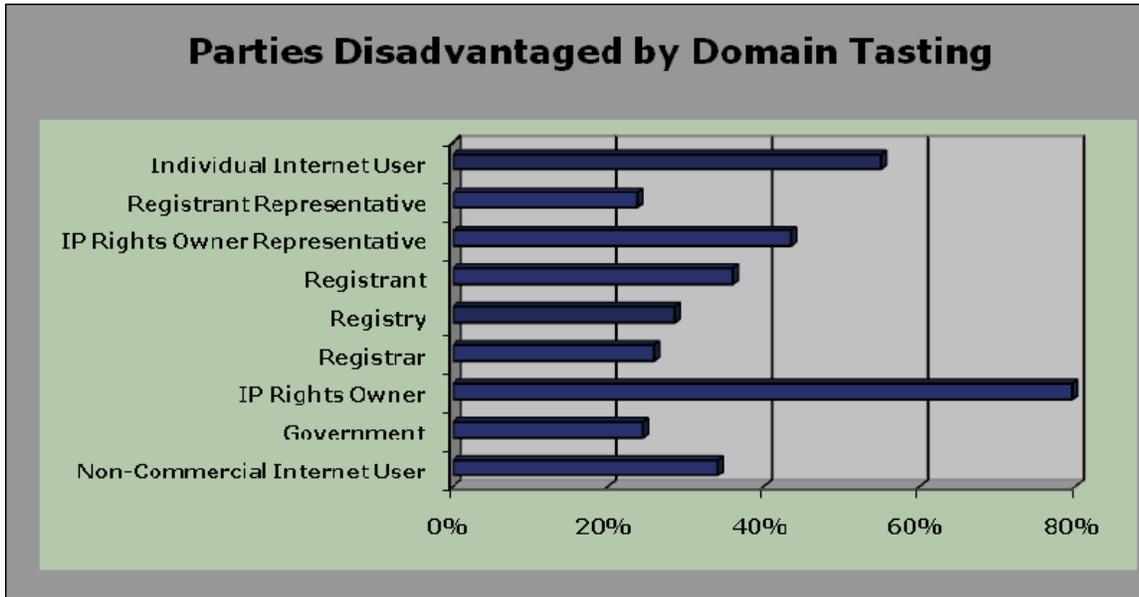


Figure 1. Statistics from ICANN's Domain Tasting Questionnaire

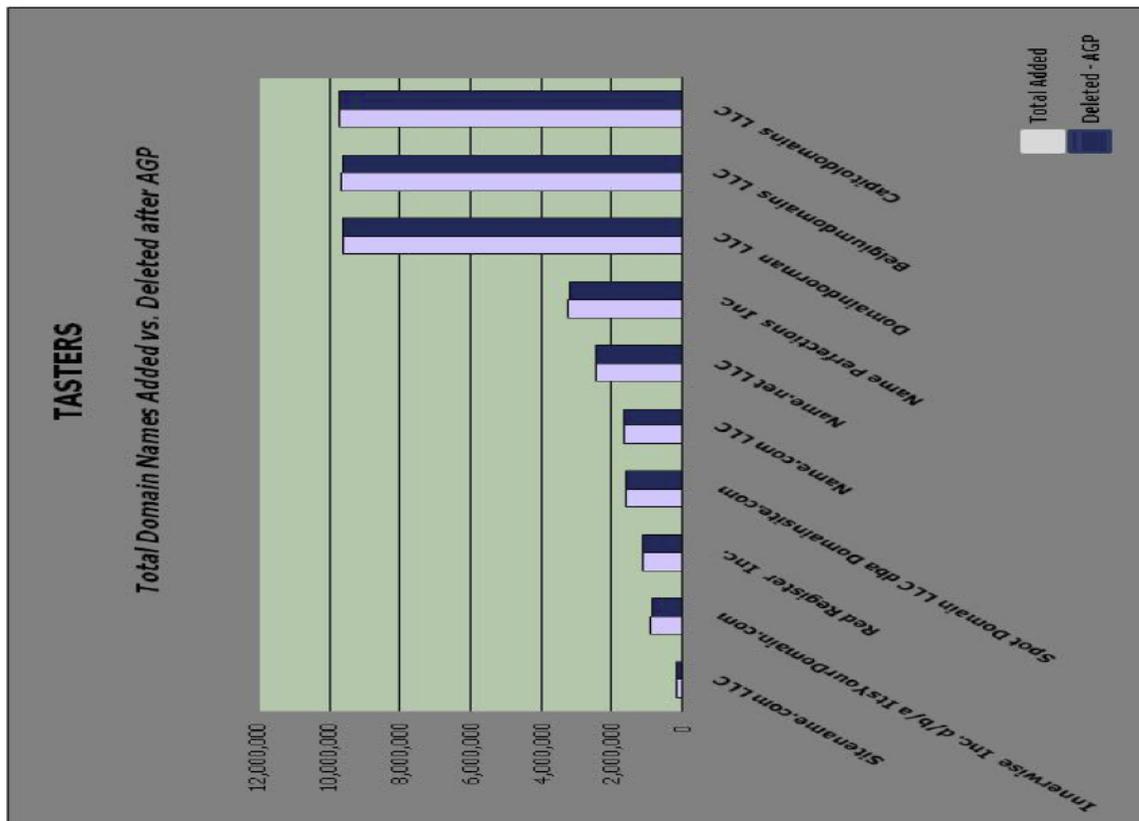


Figure 2. FairWinds Partners analysis of April 2007 .COM report provided by VeriSign – this figure represents a limited sample of the largest domain name tasters. Please note: these are the ten registrars that have the lowest add/delete ratio.

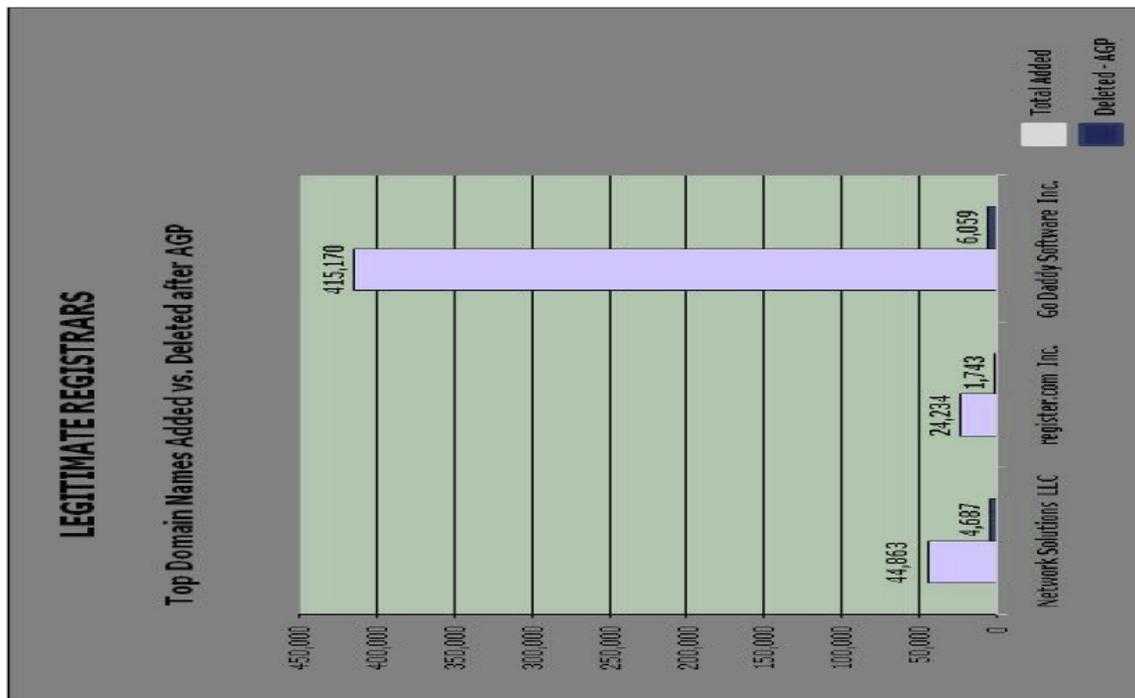


Figure 3. FairWinds Partners analysis of April 2007 .COM report provided by VeriSign

Potential Solutions

Domain tasting is a high profile issue that is top-of-mind for the domain name community, ICANN and businesses. Increasingly, legislatures in Washington are taking note of this issue as well. ICANN recently formed an Ad Hoc Group to review the issue and present its findings to ICANN's GNSO Council. As the governing body that accredits and monitors both registrars and registries, it is within the scope of ICANN's policy development process to amend the five-day grace period in order to discourage activities that jeopardize the security and stability of the domain name system.

In an effort to improve the Internet and to hamper the ill effect of domain tasting, the following are descriptions, and CADNA's analyses, of possible solutions that have been discussed:

A.

Re-evaluation of the five-day add-grace period

The add-grace period (AGP) is no longer solely used for the purpose that it was intended for. While it is important to be cognizant of the need for registrars and registries to test their system capabilities and to be sympathetic to the occasional need to return a name due to fraud, the most straightforward solution to the problems faced today as a result of tasting is a complete elimination of the AGP wherein domain registration fees are non-refundable between registry and registrar.

ARGUMENT FOR: Eliminating the AGP completely would quickly address many of the problems discussed earlier while also bringing the domain name industry in line with other

marketplaces where investments are made without perfect visibility. Eliminating the AGP will decrease the amount of Internet-based fraud committed by domain owners and will reduce the amount of domain infringement and subsequent consumer harm since registrants typically would incur fees before using brand-related domains.

Some registrars today use the AGP as a method to allow customers to save a name in their carts while they shop and think about it for a period of up to five days. This is to the disadvantage of others who may want that piece of real estate and are willing to buy it immediately. While registrars could use the AGP as a tool to protect themselves against fraudulent credit card charges, it is not used for this purpose as often as it is used for more self-interested purposes. Elimination of the AGP may be the easiest and least costly option to implement from a technological perspective and the most amenable for all parties involved in solving this dilemma.

ARGUMENT AGAINST: The originally intended uses of the AGP are still relevant. Registrars and registries need to be able test the stability of their systems and of the name space. Proponents of the AGP will argue that there are important commercial functions made possible by the five-day grace period. These include refunds, customer-requested correction of typographical errors made by the registrant, cart “hold” as an improved registration experience, credit card charge-backs, criminal theft of credit card information, registrar testing of the EPP system, and restoring a credit balance after a system failure mistakenly registers domains. Together, these beneficial uses make the outright abandonment of AGP problematic. It is imperative, as mentioned in some of the responses to the ICANN tasting questionnaire, that the potential degradation in registrant experience not be overlooked should AGP be eliminated. Registrars that utilize the AGP for customers in a beneficial manner believe that elimination of it would adversely affect their cart or provisioning system and would necessitate significant re-engineering to the registrar-registry system. Hence, ICANN might consider a more balanced approach that would curb the abuses of AGP while still maintaining its other benefits.

Furthermore, ICANN has expressed concern that by changing the rules to restrict commercial activity, it would compromise its commitment to encouraging competition across the Internet. One alternative to completely eliminating the five-day AGP might be to eliminate the five-day grace period on bulk buys, which would curtail bulk-buy abusers. This would be a positive step in the short-term.

B.

Shorten the Window of the AGP from 5 Days

DESCRIPTION: The time period for the AGP is currently five days. A potential solution to curtail the abuse of the AGP is to reduce the period of time for the AGP to 24 hours.

ARGUMENT FOR: Reducing the amount of time allotted during the AGP would allow proponents of the AGP to achieve their goals while also significantly reducing the resulting harms associated with domain tasting. As is always the case when trying to find common ground, reaching consensus on a new time period would be challenging. However, it is important to reduce the amount of time allowed by the AGP since excess time increases the likelihood that abuse will occur. By changing the time period, you negatively affect the economics of tasting and reduce the opportunity for tasters to conduct fraud.

ARGUMENT AGAINST: A reduction in the time period for the AGP does not fully eliminate the abilities of those that wish to cause harm by tasting. Similarly, reducing the period of time for the AGP will force registrars and registries to implement new policies and procedures to achieve other goals that may be costly.

C.

Restocking Fee

DESCRIPTION: ICANN might opt to levy a restocking fee – or a similar fee – that would be charged for every domain name immediately upon registration. Registrants would be able to recoup the rest of the registration fee for a name they choose to return within five days. A non-refundable fee would help to curb domain name tasting in the .COM space as well as other TLDs.

ARGUMENT FOR: A restocking fee is a relatively simple technological solution that would implement consistent charges for all domains being registered, thus reducing the harms that have been seen because of domain name tasting. Restocking fees would also allow the proponents of the AGP, including registrars and registries, to benefit from the “necessary” uses of the AGP without incurring a \$6.42 charge (.COM example) per name, making it an economical option compared to the complete removal of the AGP.

ARGUMENT AGAINST: Unless a restocking fee is significant (in the range of 50% of the cost of a name or more), it will not do enough to curb domain tasting and sufficiently protect consumers and the integrity of the Internet. Because monetizing domain name traffic is such a profitable business, having the option to return non-profitable assets for a fee and re-coup some of the cost of domains will allow for the harms to continue, though at a slower pace than they are today.

While .CN did not institute a restocking fee, their recent price drop in the cost of a domain name registration could be indicative of the lack of effectiveness associated with a low price restocking fee. The .CN registry’s decision to drop their registration price to roughly \$0.12 per year per domain name in early 2007 spurred a dramatic increase in domain registrations in China and a fivefold increase in the number of Web sites using the .CN suffix¹. After examining the economics of traffic monetization, it becomes apparent that .CN in China is very similar to .COM (the most popular TLD) in the U.S. and much of the world, .CO.UK in the United Kingdom, or .DE in Germany. Ultimately the only way a restocking fee could work is if it was high enough to influence registrant behavior. While the intent was not to create a restocking fee, the fact that a low price actually encouraged “test” registrations for a period of one year suggests that a similar low-cost restocking fee in .COM will not necessarily work to curb the ill effects of domain tasting.

MODIFICATION: A restocking fee could be a viable option if:

1)

The fee imposed was a deterrent to the negative aspects of domain tasting

2)

A fee was coupled with a threshold percentage on the number of deletes any registrar may make. An excess-deletion fee could be charged when the number of deleted registrations within the five-day AGP is in excess of a determined percent of the total number of initial registrations made by the registrar over a given time period. This is an attempt to appease both the registries and the domain speculators. The registries would continue to collect the registration fee when a registrant chooses to retain the domain and domain speculators would still operate within the domain name system and generate profit.

D.

Implementing a Limit, by Ration, of the Number of Deletes a Registrar is Allowed to Make for No Cost

Add/Delete Ratio, or a version of the Excess-Deletion Fee

DESCRIPTION: A solution where a registrar is only able to make cost-free deletions for a limited number of domain names – this solution has been employed in other registries to curb domain tasting. The non-profit Public Interest Registry (PIR is the .ORG registry) was similarly concerned about the dramatic increase in the volume of domain name registration transactions in the .ORG registry during the 5-day add-grace period. PIR went on to charge a registrar an excess delete fee of 5 cents on every domain name deleted during the 5-day add-grace period when the number of deletions is in excess of 90% of the total number of initial registrations made by a registrar in a 30-day period. Please note, however, that the economics of this solution would need to reflect the monetary value and traffic of names associated with .COM versus the paucity of those associated with .ORG.

Here larger registrars would be able to delete more than smaller registrars, and size would be defined by the number of domain name additions over a specified period of time. For example, if the ratio were 100:1 a domain name registrar that adds 1,000 domain names in a day would be allowed to delete 10 names that day. The exact ratio would certainly be up for discussion, but the goal would be to provide registrars with enough flexibility to make legitimate use of the AGP while preventing rampant abuse.

According to data released by ICANN and analyzed by FairWinds Partners (refer to Figures 2 and 3 on pages 9 and 10), primarily consumer-facing “legitimate” registrars such as Network Solutions, register.com, and GoDaddy.com on average have an add/delete ratio of 30.67:1 (Figure 3). This indicates that for every 31 domain names added, only 1 is deleted. Compare this to the average add-delete ratio of identified substantial tasters at 1.0061:1, and you will find considerable difference between the two. For a registrar such as GoDaddy.com, 1 domain is deleted for every 68 domain names added by registrants. An identified taster such as Capital Domains, on the other hand, deletes almost as many names as it adds initially. It is important to note that the registrars highlighted in Figure 2 are not the only ones posing a threat to trademark owners who cannot keep pace. CADNA identified over 200 other registrars with an add-delete ratio under 1.5, including:

PocketDomain Udamain
NameKing Deschutesdomains
Gradeadomainnames Interlakenames
FindYouADomain FrontStreetDomains
Domainsovereigns Betterthanaveragedomains
EUNamesOregon PearlNamingService
DomainRoyale Domainarmada
EUNameFlood Domainraker

This list does not include registrars such as Compana (add-delete ratio of 1.065324859), eNOM, which has over 60 registrar accreditations with add-delete ratios below 1.1, and others that have higher ratios but unlawfully participate in massive cybersquatting campaigns that violate federal laws against trademark infringement and dilution. Dotster, for example, represents a case in which registrar malfeasance was addressed by lawsuit rather than ICANN arbitration – and Dotster does not even represent the most AGP-abusive registrars.²

In regard to this particular proposal, the prospect of instituting an add/delete ratio requires:

- 1)
- a decision as to whether all registrars should be held to the same standards
- 2)

a set limit that determines the amount of deletes per add and is representative of an acceptable industry standard ARGUMENT FOR: Compared to some of the other proposed solutions, an add/delete ratio does not require a great deal of technological re-working on the part of registrars. It protects the ability of registrars not involved in the abusive aspects of tasting to use the AGP for its intended purposes while preventing the abusive registrars from continually operating with an unfavorable add/delete ratio. This would effectively help reduce the harms that are caused by domain name tasting. In addition, the effectiveness of the add-delete proposal is reinforced by its demonstrated success in .ORG.

ARGUMENT AGAINST: While the .ORG analogy is often referenced to lend credence to this potential solution, it is necessary to note that the .ORG space is very different than the .COM space, or any other name space for that matter. Registrants simply do not abuse .ORG on the same scale as they do .COM. A registrar such as Capitol Domains tasted 9,743,168 .COM domain names in a single month. The 90% limit set by PIR cannot be applied in the .COM environment where, 8,768,850 of 9,743,168 deletes would be acceptable. Because direct navigation is required to monetize a domain and .COM domains are the most frequently typed-in addresses, it follows that registrants primarily taste .COM domains. Hence, a solution that was effective in addressing .ORG abuses would not necessarily have the same success in .COM. The .ORG space has only a fraction of the appeal to tasters as .COM and this solution would not eliminate the mechanism that makes tasting attractive; it simply makes that mechanism more expensive and slightly less attractive.

Implementing an add/delete ratio would require enforcement and tracking by ICANN and the registries. As such, it would result in an increase in costs and policy enforcement resources. It also does not allow a seemingly rule-abiding registrar, which is scammed on a large scale via credit card fraud, to limit their loss.

Statistical Basis for Comparison: Legitimate Registrars vs. Tasters

Registrar Name	Total Added	Deleted Within AGP	Registered	Add/Delete Ratio
Network Solutions LLC	44,863	4,687	40,176	9.572
register.com Inc.	24,234	1,743	22,491	13.904
Go Daddy Software Inc.	415,170	6,059	409,111	68.521
Sitename.com LLC	142,812	140,251	2,561	1.018
Innerwise Inc. d/b/a ItsYourDomain.com	879,238	874,400	4,838	1.006
Red Register Inc.	1,129,565	1,126,161	3,404	1.003
Spot Domain LLC dba Domainsite.com	1,589,936	1,581,408	8,528	1.005
Name.com LLC	1,629,872	1,624,542	5,330	1.003
Name.net LLC	2,435,488	2,428,131	7,357	1.003
Name Perfections Inc.	3,221,235	3,176,516	44,719	1.014
Domaindoorman LLC	9,626,685	9,597,683	29,002	1.003
Belgiumdomains LLC	9,655,967	9,626,360	29,607	1.003
Capitoldomains LLC	9,743,168	9,713,571	29,597	1.003

Figure 4. FairWinds Partners analysis of April 2007 .COM report provided by VeriSign

E.

Revoke a Registrar's Accreditation for Abuse of the AGP

DESCRIPTION: Aggressive and automated domain tasting appears to occur almost exclusively due to a handful of registrars. VeriSign's January 2007 monthly report showed that the top ten registrars engaged in domain tasting accounted for 95% of all deleted .COM and .NET domain names during that month. These registrars deleted 45,450,897 domain names out of 47,824,131 total deletes across all registrars. The top four registrars engaged in tasting deleted 35,357,564 domain names, or 74% of all deletes.³

According to data released by ICANN, these major tasters include: Sitename.com LLC, Innerwise Inc. d/b/a ItsYourDomain.com, Red Register Inc., Spot Domain LLC dba Domainsite.com, Name.com LLC, Name.net LLC, Name Perfections Inc., Domaindoorman LLC, Belgiumdomains LLC, and Capitoldomains LLC. A logical solution might be to target the tasters that continue to abuse the AGP to their own advantage.⁴

ARGUMENT FOR: ICANN might find this solution to be reasonably enforceable. The largest offenders can and have been easily identified, and they could be easily sanctioned.

Removal of these abusers would eliminate the vast majority of ill effects associated with domain tasting.

ARGUMENT AGAINST: ICANN staff has given an opinion that the RAA 3.7.4 cannot be used to curb commercial domain tasting. While initial sanctioning of these monolithic abusers is feasible, the Registrar Accreditation Agreement (RAA) process is so weak that tasters could simply buy other registrars or be accredited under another name and continue automated tasting through multiple accounts. There are obvious alternatives for determined registrants; they might choose to taste through retail registrars such as Moniker, which is now allowing tasting from its general customers. Additionally, the practice of domain name tasting is not a breach of the current RAA and these abusers would have to either breach a specific section of their RAA or the RAA would have to be revised and retroactively adopted. This option will result in an increased cost in time and resources to an already strapped ICANN enforcement program. The feasibility of asking ICANN to enforce such provisions and create new provisions could ultimately be a roadblock to any such implementation.

F.

Activation Upon Day 6 – until payment “clears”

DESCRIPTION: Under an “activation upon payment” amendment, the AGP remains a 5-day grace period and the domain name is registered – minus the Domain Name Servers (DNS). There is no delegation of DNS until day six, when for example, VeriSign delegates the domain name to root servers, allowing for resolution to the intended Web site. This means there is no Web site until the five days have passed and the domain name has been fully paid for.

ARGUMENT FOR: This would render some AGP abuse useless, as a domain name that does not resolve to a Web site cannot be tasted with the intention of measuring traffic and assessing profitability. The 5-day period is left in place for registrars and registries to test their systems and to protect against credit card fraud and customer mistakes, allowing for flexibility to address refunds from the applicable registry.

ARGUMENT AGAINST: An argument against waiting until day six to activate the name is that it does not necessarily mean that fewer names will be registered unfairly, thus it fails to completely eliminate the consumer harms ultimately caused by many Web sites. Another argument against waiting until day six is that it will impact all domain name registrants.

Domain name registrants, consumers and businesses alike, have become accustomed to being able to buy a name and activate it to resolve to Web content immediately. This change could have a negative impact on consumers and the Internet community at large. While a large majority of registrants can afford to wait five days for their domain name to resolve, there are rare cases that demand urgency.

MODIFICATION: A potential amendment might take into consideration the legitimacy and urgency of the registration and offer the registrant the ability to give up their right to delete and receive a refund. This would allow certain registrants to activate content immediately. It would also force registrars to implement additional fraud prevention methods or to opt out of providing immediate activation if they were concerned with having to absorb the cost associated with a fraudulent registration.

CADNA Position

In agreement with much of the Internet community, CADNA believes that the AGP is extremely harmful to consumers and businesses since it enables domain name tasting. While there are legitimate uses associated with the AGP, the abuse of this policy conducted by certain registrars has created a situation that demands immediate action.

CADNA calls for ICANN to take immediate action that definitively discourages abuse while minimizing any compromise to well-intentioned competition. While the current review of domain tasting within ICANN (The Ad Hoc Group) is a step forward, millions of names are added and dropped on a daily basis and consumers are harmed as a result. The review of this issue and the possible solutions to it cannot be afforded months and years. We call upon ICANN to protect its integrity; the integrity of the namespace, and the Internet by taking immediate action while this issue is further reviewed. As an immediate step, ICANN should perform complete audits of ALL accredited registrars to identify those that participate in tasting. This includes frequent tracking add/delete ratios and reporting on who is being sued for illegal cybersquatting connected to such practices, and ultimately, revoking accreditation for those who have breached their RAA obligations or have otherwise violated the Anti-Cybersquatting Consumer Protection Act (ACPA).

Furthermore, CADNA strongly believes that the AGP policy needs to be significantly amended in order to address domain tasting and its subsequent harms.

The following are factors to be taken into consideration:

1. Sufficiency of deterrence
2. Potential disruption to the provisioning of ongoing services
3. Sufficiency of registrar accountability
4. Implied additional registrar, registry, and ICANN administrative and direct costs
5. Solution balance

In light of the preceding analysis of issues surrounding tasting solutions, and in the interest of identifying an immediate means to curb the abuse, it would appear that closing the AGP is the most practical solution to effectively address domain name tasting. Other proposed solutions including shortening the AGP or monetization of the abuse through a restocking fee pose logistical challenges both in terms of implementation and enforcement. In addition

to closing the AGP, and while it should be obvious, registrars should be prohibited from registering domain names involving trademarks in their own names, thus reducing cybersquatting and potential harm to consumers.

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The Coalition Against Domain Name Abuse, Inc.

2122 P Street, NW

Suite 300

Washington, D.C. 20037

53. AIPLA/Michael K Kirk" <mkirk@xxxxxxxxx>

Date: Sat, 26 Jan 2008 18:27:48 -0500

Attached are the comments of the American Intellectual Property Law Association on the GNSO Initial Report on Domain Tasting.

Attachment: ICANN Domain Name Tasting.pdf

AIPLA applauds the GNSO for focusing on domain tasting. We believe that effective measures should be adopted to curb the practice of domain tasting. The "business model" of tasters is, in many respects, built around trademark abuse, e.g., via the tasting of common typos of well known trademarks and other infringing domain names. In many instances, the infringing conduct (for "successfully" tasted names) extends beyond the 5-day grace period, and even infringements that last only 5 days are harmful to trademark owners.

We believe that ICANN should adopt requirements and procedures that eliminate the ability of unscrupulous individuals to infringe trademarks in this manner as a business model.

54. Jeffrey A. Williams

Date: Sun, 27 Jan 2008 01:11:12 -0800

All,

See: <http://blog.domaintools.com/2008/01/google-to-kill-domain-tasting/>

Also see some of the comments to this blog post...

Seems to me that the ICANN board yet again missed a good leadership opportunity, and Google of all companies did a good deed for once, and went back to doing good deeds for a change. Vint, if you lead this effort at Google, well done all be it a bit belated!

Regards,

Initial Report on Domain Tasting

Authors: Olof Nordling, olof.nordling@icann.org, Liz Gasster, liz.gasster@icann.org

(Contribution on GA list)

55. Registrars/ forwarded by GNSO.SECRETARIAT
Date: Mon, 28 Jan 2008 16:35:41 +0100
Forwarded:

The attached is the Registrar Constituency statement of views on Domain Name Tasting.

Tim Ruiz

attachment: RC Constituency Statement

56. APWG /Laura Mather
Date: Mon, 28 Jan 2008 13:02:59 -0800 (PST)

The Domain Name System Policy Working Group of the Anti-Phishing Working Group respectfully submits the following comment on the Initial Report on domain tasting. If you have questions about this comment or would like further information, please contact me.

-Laura Mather
Managing Director of Operational Policy
Anti-Phishing Working Group

The Domain Name System Policy Working Group of the Anti-Phishing Working Group (APWG) performed a study on the use of domain tasting by phishers. That study can be found here:
http://www.antiphishing.org/reports/DNSPWG_ReportDomainTastingandPhishing.pdf

The report shows minimal use of tasting by phishers in the time the study was performed -- which is different than a claim by the ISPC in its constituency impact statement.

It should be noted, though, that members of the anti-phishing community have had to increase their infrastructure to account for the much larger number of potential phish sites that are being registered by tasters, and this impedes anti-phishing efforts and increases the cost of detecting and mitigating fraudulent behavior.

57. Registrar Constituency/ forwarded by GNSO.SECRETARIAT
Date: Mon, 28 Jan 2008 22:57:58 +0100

Apologies, the previously forwarded mail was unreadable.

The attached is a resend of the Registrar Constituency statement of views on Domain Name Tasting sent by Tim Ruiz.

Initial Report on Domain Tasting

Authors: Olof Nordling, olof.nordling@icann.org, Liz Gasster, liz.gasster@icann.org

Thank you.

--

Glen de Saint Géry
GNSO Secretariat - ICANN
gnso.secretariat[at]gnso.icann.org
http://gnso.icann.org
Attachment: Registrars Constituency.doc

58. INTA/Sharon Aguayo
Date: Mon, 28 Jan 2008 17:22:15 -0500

Please Post the Attached.

Sharón R. Armogan-Aguayo

International Trademark Association
External Relations Department
attachment: INTA position paper

I. Introduction

The Internet Committee of the International Trademark Association (“INTA”) is pleased to provide these comments on both the GNSO Issues Report on Domain Tasting (the “Issues Report”) and the GNSO Initial Report on Domain Tasting (the “Initial Report”). INTA (<http://www.inta.org>) is a 129-year-old not-for-profit membership association of more than 5,500 trademark owners and professionals, from more than 190 countries, dedicated to the support and advancement of trademarks and related intellectual property as elements of fair and effective national and international commerce.

Over the last decade, INTA has been the leading voice for trademark owners on the future of the Internet DNS, and it is a founding member of the Intellectual Property Constituency (IPC) of the Internet Corporation for Assigned Names and Numbers (ICANN). INTA’s Internet Committee is a group of over one hundred trademark attorneys and professionals from around the world which is charged with evaluating treaties, laws, regulations and procedures relating to domain name assignment, and use of trademarks on the Internet. The Issues Report responded to the At-Large Advisory Committee’s request for an Issues Report in support of future potential policy development to address the issue of domain tasting. It concluded, in part, that additional fact finding and research relative to the practice of domain tasting and its impact on the internet community would be beneficial to further policy development. Accordingly, several questions were set out as part of the Issues Report. INTA responds below to the Issues Report and the questions therein, as well as to the Initial Report.

II. Executive Summary

The evidence detailed in the Issues Report, as well as in the Outcomes Report of the GNSO Ad Hoc Group on Domain Name Tasting (“Outcomes Report”), strongly supports a conclusion that domain tasting benefits only those speculators (which appears to include registrars) who participate in the practice. The simplest mechanism for ending domain tasting is to eliminate the Add Grace Period (“AGP”). Although the AGP was intended to

assist registrants who mistakenly registered domains by, in essence, “forgiving” the registration fee, in practice the AGP is egregiously abused as a means to avoid payment of registration fees by speculators who deliberately register millions of domain names only to see which might prove to be valuable drivers of pay-per-click traffic. In fact, one knowledgeable commentator reports that VeriSign – the registry operator for the two gTLDs in which over 90% of tasting occurs – initially “adopted the view” that tasting (then known as “Batch Testing” or “Autodelete Registrations”) was “abusive” and “threaten[ed] the participating registrars] with litigation.” Moreover, the availability of AGP and domain name tasting encourages infringing and illicit or criminal activities, while allowing tasters to avoid detection and prosecution by hiding behind the constant churn of short term registrations. The practice tends to decrease the security of the domain name system because of the association with criminal activity. In addition, tasting activity puts pressure on registry operators, in the form of repeated deletions of domains and attendant costs in time, money and resources. The practice also creates an artificial scarcity of domains, further detracting from user confidence in the domain name system, which, in turn, further erodes user confidence in the Internet as a tool for secure communications and commercial transactions. Stopping or significantly reducing domain name tasting would seem to immediately benefit many constituencies. Registrars (other than those who engage in tasting themselves), and registry operators would benefit from the decreased administrative burden associated with numerous repeated registrations and cancellations; registrants and users would benefit from the resulting decrease in internet instability and improved navigation of the web, and intellectual property rights holders would benefit by being able to reduce already excessive policing and enforcement costs. Moreover, and importantly, the eradication of AGP would result in the collection of increased registration fees—a circumstance that would benefit many participants in the domain name registration chain, including ICANN itself. By the same token, there is little reason to believe that eliminating AGP would result in substantial harm to any constituency. Speculators still may register domain names if they wish to “test” them for their ability to drive traffic. But by requiring the confirmed payment of registration fees (or the refund of the fee only under specific and more narrow circumstances than under current practice), and forcing registrants to be more judicious in their actual registrations, all registrants, registrars and end users of the internet would benefit equally because the costs (of those confirmed registrations) of tasting would be properly borne by the actual domain name registrants, rather than spread among all registrars, registrants and Internet users.

In sum, it is the INTA Internet Committee’s view that the harms caused by domain name tasting to various internet constituencies, including intellectual property rights holders, far outweigh the potential benefits to the group of registrants and registrars who engage in the behavior. Moreover, because the AGP does not appear to significantly benefit the population that it was targeted to assist, and encourages other behavior that violates others’ rights and undermines the stability and security of the domain name system, it is INTA Internet Committee’s view that the AGP must be eliminated or, at a minimum, amended to significantly limit its availability.

III. Answers to Specific Questions Posed by GNSO Issues Report

To answer the questions posed by the GNSO Issues Report, we believe it is helpful to note briefly the origins of the AGP and mechanics. The Issues Report defines an add grace period (AGP) as a specified number of calendar days following a registry operation in which a domain action may be reversed and, as appropriate, a credit may be issued to a registrar.

In the domain tasting context, the AGP refers to the five-day period following the initial registration of a domain name. If a new domain name registration is deleted during the AGP, the registrar is credited for the registration fee by the registry, and the registrar, in turn, typically credits its customer.

The AGP is not the result or subject of an ICANN consensus policy. Rather, the AGP reportedly evolved from requests by registrars to cancel registrations and receive credits therefore where applicants for registrations made innocent typographical errors in identifying domain names in their requests, non-payment and testing. (A knowledgeable industry commentator notes, however, that the AGP has been used for speculative registrations since its inception.) Provision for an AGP was negotiated by registries and is now a part of all registry contracts with ICANN. According to the Outcomes Report, registrars reportedly also use the AGP for systems testing, to correct system errors and to recover losses from failed payment transactions or registrant fraud.

1) Who benefits from domain tasting, and who is harmed?

Only registrants of tasted domain names, including registrars who participate in the practice, appear to directly benefit from domain name tasting. Specifically, registrants of tasted domain names benefit from the short term testing and filtering without incurring fees to register the domains in question.

Notably, registrars responding to the ICANN RFI contended that the AGP facilitates other legitimate activity, including avoidance of fraud, customer support and satisfaction and monitoring of security and stability of registrar services. While these uses of the AGP may be legitimate, the AGP should not be seen as the only means for addressing these concerns – all of which existed before the AGP was introduced. Moreover, as detailed below, in the Issues Report and the Outcomes Report, the instances of abuse of the AGP are too numerous to be justified by the fact that it might be used legitimately, in certain circumstances.

While some registrars and registrants of tasted domains may benefit from tasting and the AGP, ordinary internet users/consumers, as well as legitimate trademark owners have been the most vulnerable to the negative consequences of domain name tasting. In fact, a majority of respondents (58%) to ICANN's recent request for information on domain name tasting ("ICANN RFI") believe that tasting harms internet users and 81% of respondents believe that the practice harms intellectual property rights holders by causing consumer confusion and/or erosion of brands and brand reputation.

Internet users, for example, are harmed by the need to sort through some number of false hits (or tasted domain names) when searching for legitimate sites. The need for such sorting and navigation results in user frustration, user confusion, and/or the possibility that users do business with the wrong entity.

Internet users likely also are harmed when tasted domain names attract criminal activity or deceptive advertising practices. For example, a recent Wall Street Journal article chronicles the use of online ads to harbor viruses and malware that may be downloaded onto consumers' computers. Similarly, an eWEEK article noted that ads serving adult content and pornography have been placed at sites associated with anticipated typographical errors of brands aimed at children. This conclusion is bolstered by responses to the ICANN RFI with numerous respondents expressing concern about an association between phishing and other forms of abuse and tasting. Because tasted domain names are used primarily to host advertising, the phenomenon of embedded viruses, malware and related activity inevitably will be associated with tasted sites. Domain tasters are, by their

nature, difficult to identify and track. Therefore, internet participants seeking to do harm, will naturally be attracted to tasting as a means to decrease their exposure or possible detection by authorities.

Users and/or registrants also are harmed by the artificial scarcity of domain names caused by tasting. In particular, tasting prevents businesses seeking to use domain names descriptively to sell goods and services from acquiring (and paying for) domain names that tasters are merely “trying out” for free.

Users who register names to use them, rather than to “taste” them also are harmed because they bear the additional costs incurred by the registrar as a result of tasting. For each domain name there is one transaction: the purchase of the domain name. Each such domain name generates the same revenue at the outset, but the registration fee for a “tasted” and rejected domain name is refunded. Although the internal costs of each transaction are the same regardless of whether the registration is confirmed, or whether it is reversed shortly thereafter by an opposite transaction, in terms of pricing, the tasted registrations are free, while confirmed registrations are not. Thus, the pricing structure results in long-term registrants subsidizing the short-term or tasting registrants, resulting in unfair and abusive cost-shifting to most domain name registrants.

Intellectual property rights holders are harmed by tasting behavior. Specifically, the typosquatting associated with domain name tasting deceptively misuses the intellectual property of brand holders, while rendering the UDRP a poor or entirely ineffective tool in remedying legitimate complaints. Indeed, the WIPO Deputy Director General has recently expressed concern that “the rate at which domain names change hands and the difficulty to track such mass automated registrations challenge trademark owners in their pursuit of cybersquatters.” This new form of cybersquatting thus has resulted in increased litigation and related enforcement costs for many brand holders. Moreover, a recent report by McAfee, Inc. characterizes domain tasting as one of the most significant factors in the recent growth in typosquatting. Domain tasting that is also typosquatting erodes brands, and harms the goodwill represented by those brands.

Many companies, such as Wyndham Worldwide, HSBC Holdings, and Dell, have publicly decried the harmful impact of domain name tasting on their businesses, based on lost advertising and sales revenues from parked landing pages and misdirected addresses to parties, including direct competitors, exploiting the goodwill of their established brands. Such companies increasingly are expanding prophylactic budgets on defensive registrations and buying domain names from tasters.

Brand holders also are harmed because they bear the double expense of paying search engines for keywords as part of legitimate marketing efforts, and then paying domain tasters when users ultimately visit their site(s) through links from tasted sites. Tasters thus obtain revenues from their activities without ever investing registration fees in the domain names they taste.

In addition, registrars themselves likely are harmed by domain name tasting activities. A number of ICANN-accredited registrars take part in or facilitate the tasting activities of others, and such participation is well-known within the internet community. Internet users seeking to register tasted (and therefore falsely unavailable) domain names, or who are frustrated by tasting because it interferes with navigation efforts, falsely assume that all registrars are involved or to blame for tasting activity. This perception, in turn, undermines the legitimate activities of all registrars, and user confidence in such registrars.

Finally, and significantly, ICANN itself is harmed by domain name tasting. Domain tasting adversely impacts ICANN by artificially suppressing its revenues because tasted domains are not subject to ICANN fees. For example, levying the \$0.20 per name fee on all domain names deleted during the AGP in July 2007 alone would have resulted in over \$12.5 million in revenue. Because a number of ICANN-accredited registrars take part in or facilitate the tasting activities of others, because ICANN seems to have taken no action against such registrars (notwithstanding the entry by several U.S. federal courts of preliminary injunctions barring further such registration activity against at least four ICANN-accredited registrars), because ICANN has not yet taken action to stop tasting, there is a growing public perception that ICANN condones domain tasting and, by implication, the harms it causes. Such a public perception harms ICANN.

2) Who would benefit from cessation of the practice and who would be harmed?

The information and statistics provided by the GNSO and ICANN supports the contention that most domain name tasting is done by a small proportion of registrars and that a majority of tasted names are dropped. Specifically, a recent summary of the statistics drawn from ICANN Monthly Registry Reports reveals that ten registrars accounted for over 94% of the 57,732,289 deletes in the month of March, 2007 alone. The same reports reveal that the same set of registrars have deleted in excess of half a billion domain names in the last two years. These results are further supported in the Initial Report itself. It would appear then, that the majority of registrars who do not take part in this activity would be the largest beneficiaries of cessation of tasting, since the remaining registrars would no longer be associated with activities that undermine user confidence in, and the integrity of the DNS system. Moreover, the domain name registrars and ICANN would benefit the most by removing an apparently obvious conflict of interest and/or any perceived hidden complicity resulting from the practice of domain name tasting and by restoring the compromised integrity of the registration process.

The cessation of domain name tasting ultimately would impact a small class of domain name speculators - who have had a disproportionate impact on trademark owners – in a market that has been unchecked against fraudulent practices. Rather, by eliminating domain name tasting – a loophole for cybersquatting and fraud - businesses would have greater opportunities to compete for market share by now playing on an even field.

3) How are registry operators being affected by domain name tasting?

Because registry operators carry the burden of processing each domain name registration, the increased number of registrations and cancellations resulting from the practice of domain name tasting inevitably results in increased costs for the registry operators. In addition, there is computing power used in initially registering the additional domain names and adding them to the zone files and shortly thereafter deleting and removing the majority of them. The registry operator also needs to retain transaction information for accounting purposes to determine the net gain in registrations so it may collect the appropriate fees. This may be why VeriSign was, according to a knowledgeable domain industry participant, initially opposed to high-volume speculative use of the AGP.

4) How are registrars being affected by domain name tasting?

Although the registrar ends up paying only for the names that are kept, like the registry operator, it has to expend time and resources processing those domain name registrations for which fees are later refunded, and the registrar is also required to pre-fund the original registrations during the “tasting” period.

The other major problem for registrars is one of consumer confidence and consumer support. Users complain that a particular domain name is listed as unavailable on one registrar's website, but is available elsewhere. Registrars may lose business as a result. In addition, the practices of some registrars who are themselves involved in domain name tasting may lead to a loss of confidence in all registrars, further undermining the stability of the Internet as a forum for commerce.

Exacerbating this problem is the practice engaged in by some registrars of creating multiple shell entities to register and then re-register tasted domain names. This practice further erodes the reputation of registrars who do not engage in tasting, and results further deterioration of consumer confidence in registrars generally.

5) How are registrants being affected by domain tasting? Are there different categories of registrants affected differently?

Domain name registrants are affected by tasting in a number of ways and different categories of registrants seem to be affected differently.

A. General Effects of Domain Name Tasting

i) Significantly, according to MarkMonitor, domain name tasting increased by 242% from the first to the second quarters of 2007. As discussed above, the practice is most often used to identify sites that will produce click-through fees by diverting traffic. This diversion of traffic creates instability as users attempt to winnow through links on tasted domains. It also impairs the value of the Internet as a reliable tool for commerce because of the ephemeral nature of the links on sites residing on tasted domain names. End users seeking specific Internet content on one day may not find the same links the next because tasted domain names have been cancelled or re-registered by a subsequent taster. Users who happen upon these temporary sites become frustrated because of their temporary and unstable quality and may stop looking for the desired content.

A second important impact of tasting is the false unavailability of domain names caused by entities merely "tasting" domains without actually purchasing them. Legitimate registrants, willing to pay for legitimate domain names, can become frustrated by their apparent unavailability.

Another adverse consequence of this instability and changeability is the potential for continued erosion of user trust in the DNS and internet navigation altogether. This distrust is fomented by the growing commoditization of domain names. Indeed, "practices such as 'domain name tasting' risk turning the domain name system into a mostly speculative market. Domain names used to be primarily specific identifiers of businesses and other Internet users, but many names nowadays are mere commodities for speculative gain." Tasting that results in an increase of apparently useless links creates distrust of the system. User awareness of the fact that so many domain names are registered for the AGP only increases user distrust. It should be noted that this distrust impacts all registrants equally – whether the goal of the registrant is to monetize a domain name, to conduct commerce, or merely to use the web for non-commercial activity.

ii) Tasting also causes user confusion, as end users seeking a particular site or brand may follow false leads and may be unable to navigate through the "rabbit warren" of links to locate the desired site or commercial entity. Such activity results in users doing business with someone other than a trusted brand.

iii) As mentioned previously in section III.1, tasting has been alleged to be linked to actual or potential criminal activity or deceptive advertising practices from phishing, pharming, spamming, identity theft and the use of tasted domain names to host advertising that may

include viruses, malware or other forms of code used in identity theft or hacking. This kind of criminal activity, as a general matter, is on the rise throughout the Internet. The short registration period implicitly encourages such activity because of difficulties in identifying and taking action against such bad actors during a five-day period. As such, the wide availability and tolerance of tasting can be considered to encourage further illicit behaviors.

B. Categories of Registrants Affected Differently

i) Popular, well-trafficked websites and online businesses and well-known brand owner/registrants.

Registrants with the highest trafficked sites and/or those who own very popular (and often searched) brands are primary targets for tasting. Recent lawsuits detail allegations, complete with evidence documenting the repeated tasting of domains that include brands owned by, for example, Cingular Wireless, Verizon, JC Penny, Kawasaki, Toyota Motor Corp and Microsoft. Presumably, this brand targeting occurs because popular brands are likely to attract traffic. Therefore, it stands to reason that domain names that are inclusive of well-known brands or other highly trafficked commercial domain names, (or typosquatted versions of well known trademarks), are likely to be the most sought after as potential sources of traffic/revenue. Even when a tasted domain name generates inadequate traffic to justify a confirmed registration, and is “thrown back,” it is likely that the same apparently attractive domain name is just picked up again by another taster. Hence, it is likely that owners of famous and attractive brands and registrants of domain names from very popular sites, whether or not they are also trademarks, are the usual and constant targets of tasting activity. In any event, because large brand owners and popular domain names are likely the favorite targets of tasting behavior, such entities likely pay a disproportionate cost in policing and defensive registration of domain names.

ii) Registrants of generic second level domain names.

These registrants suffer from the same woes experienced by brand owners. Users who normally would be driven to or through a generic domain name site, may get lost in the temporary world of clicks and navigation caused by tasting of similar second level domain names. In addition, like brand owners, tasted and then re-deposited domain names containing generic terms likely get re-acquired or tasted—potentially repeatedly by several domainers. This results in registrants having to police the practices of domain name tasters, and/or engage in defensive domain name acquisition. It also results in user frustration and erosion in user confidence in the system.

It may be worth noting that owners of generic domain names themselves fall into two categories: (a) those that use their domain names for commercial or non-commercial purposes, exclusive of monetization and (b) those that use their domain names for monetizing purposes, such as for affiliate marketing or parking. It is hard to say which of these sub-groups is affected more, since both groups rely on the ability of the generic domain name to attract traffic. Any online behavior, including tasting, that may interfere with that traffic flow likely would affect both registrants the same way-- namely to lose some portion of traffic or prospective customers to the tasting sites.

iii) Small businesses/registrants.

Small business registrants are equally prone to domain name tasting activity, even though their size may suggest that they would be generally less attractive targets for domain tasting activity. Moreover, small businesses probably are hurt more significantly by the practice of domain tasting because they are less likely to have the financial resources to combat the

practice and/or to correct or guide user navigation despite the tide of false, ephemeral or interfering links posted on tasted domain sites.

iv. Registrants Who Are Registrars

Of course, one very significant category of registrant is registrars who themselves register domain names for tasting purposes. Those registrants, of course, benefit from tasting activity by gathering, when possible, click through, affiliate or other fees or remuneration from directing traffic to sites. Such registrants benefit from avoiding payment of registration fees, or have fees paid by affiliates, for the tasted domain names.

6) What enforceable rules could be applied toward domain tasting activity?

Significantly, a majority of respondents to ICANN's recent RFI on domain name tasting agreed that eradication or severe limitations of the AGP are necessary. Specifically, nearly 77% agreed that ICANN should prohibit domain name registrations at no cost to registrants, and nearly 71% agreed that there should be some registration fee imposed for every domain name registration. In addition, 64% of respondents agreed that the AGP should be eliminated entirely – at least as between registries and registrars. Commentators and some registries have suggested a few additional methods, of varying enforceability, to curb domain name tasting.

A) Redefine the AGP to significantly limit its applicability to Delete operations to a certain percentage of names registered by a registrar within a set time period. One recently suggested proposal is to redefine the AGP to limit its applicability to a certain percentage of names registered by a registrar within a set time period. Under this proposal, the AGP would apply only to those Delete operations that represent a percentage of a registrar's adds during a set time period. For example, the AGP would apply to only the first 10% of a registrar's five-day deletes during the preceding thirty-day period; the AGP would simply not apply to that registrar's remaining 90% of deletes that occurred within five days of registration within that 30-day period. This proposal would appear to impose no greater tracking burden on registries than is currently de facto imposed through tasting. As set forth in the Issues Report, a GNSO policy recommendation to implement this change would, if approved by the Board, constitute a consensus policy and apply to the registries.

B) Impose the \$0.20 per name ICANN fee on tasted domains. ICANN does not currently levy its \$0.20 fee against domain names deleted during the AGP. Doing so would either increase ICANN revenue or decrease significantly the volume of domain tasting. Application of the fee could be included in the upcoming ICANN budget or, preferably so as to avoid a further 6-month delay, through an interim budget process. Had ICANN imposed this fee in July 2007 alone, it could potentially have generated over \$12.5 million in revenue

C) Charge registrants a fee for returned domain names. If the registrar, or any registrant, registers and then throws back some threshold number of domain names within a given time period, then the registrant/registrar must pay a fee for each domain in excess of the relevant threshold per period. The rationale for this procedure is the conviction that, if the practice becomes more costly for registrars/registrants, tasting would be curtailed—perhaps dramatically. Presumably there is an administrative burden to tracking credits and fees for returned domain names but the rule should be relatively easy to enforce provided there is agreement to its insertion into the accreditation agreement.

PIR, the registry operator for the .org TLD, amended its registry agreement in May 2007 consistent with this approach. Its amendment allows PRI to levy an excess deletion fee of five cents for every domain registered with it that is allowed to lapse within the five-day grace period "...when the number of such deleted registrations is in excess of ninety percent

(90%) of the total number of initial registrations...”. The additional charge levied by PIR is intended to offset some of the costs incurred by operators as a result of domain name tasting. According to the monthly registry reports, domain tasting in .org has decreased dramatically since the excess deletion fee has been implemented. However, only 14% of respondents to the ICANN RFI preferred excess deletion fees as a way to address abuse of the AGP and resulting tasting behavior.

D) Require registrants to confirm that domain names are substantially related to registrant’s other activities. Some commentators have suggested the registrars require registrants to affirm that selected domain names are substantially related to the business of the registrant and, if they are not, enter some sanction or suspension against the registrar for abuse. The Australian registry, AuDA, in an attempt to address domain tasting, requires registrants to agree that any domain name the registrant seeks must be “closely and substantially connected to the registrant.” The policy specifically authorizes registration for monetization purposes, provided that the monetization is within a category of services provided by the registrant. “[P]roviding users with information and advertising links about the subject matter of the domain name” is acceptable under the AuDA policy. Hence, such rule allows for tasting for monetization purposes but leaves open the possibility of sanctions for abusive tasting.

The enforceability of this procedure appears questionable. Deciding on a case –by- case basis what constitutes a business substantially connected to the registrant necessarily requires some judgment, certainly could not be accomplished for bulk registrations, and likely would invite conflicting decisions and standards. As such, this approach may lack practical, long term application.

E) Suspend or sanction registrars or registrants that habitually taste domain names. As touched upon earlier in section III.4, one especially thorny issue relating to tasting is the practice of registrars that set up multiple organizations or shell companies to acquire domain names for tasting purposes. For example, Company A may taste a particular domain and then, after the domain name is “thrown back,” affiliated company B registers and tastes the domain name and then allows it to go back so that the next entity may taste the domain name. Such serial tasting by related entities should be further evidence of bad faith and be sanctionable unless there is some countervailing rationale for such serial registrations. Both Dell, Inc. and Yahoo, Inc. have recently filed lawsuits in a U.S. federal district court that contain allegations of such conduct by three ICANN-accredited registrars.

F) Suspend or sanction registrars or registrants that have a habit of registering and deleting the same domain names. Many registrants repeatedly taste domain names, apparently in an effort to avoid paying registration fees (a practice known as “kiting”). There would seem to be no rationale for kiting other than the avoidance of payment of registration fees. Hence, a strict rule against kiting should be agreeable to everyone. Enforceability will depend upon the level of integration of registry databases but seems possible.

G) Identify repeatedly tasted domain names and remove them from the pool of domains available for unpaid registration. Registries could identify domain names that have been tasted and rejected a threshold number of times within a given period (say 3 times in a quarter) and then remove them from the list of available domain names to taste. These domain names could still be registered by registrars or individual registrants, but the AGP should not be available to registrars for such names. This would reduce the constant churning of domain name registrations and stop kiting. In addition, by tagging domain names that have been tasted and rejected, registries would actually perform a service for

bulk registrars who may have no clear way of knowing which domain names are useful to taste.

H) Require verification of mis-registered domain names. A policy could be developed that would require registrants and registrars to verify errors in registration that caused the exercise of the AGP. The initial ICANN policy that created the AGP was predicated on the notion that registrants might make typographical errors in the initial application. The AGP was meant to address that concern by allowing cancellation of domain names within five days of registration if the registrant had inadvertently registered the wrong domain name. Hence, one way of addressing tasting would simply be to ask registrants to verify the nature of the typographical error—in the same way that consumers often have to identify what was wrong with the product they are returning before a refund is issued. For example, the Canadian Internet Registration Authority (“CIRA”) refuses cancellation of domain names unless, for example, the request is made to correct a typographical error.

7) What would be the impact (positive or negative) of establishing limitations, guidelines or restrictions on registrars’ use of the AGP?

As described above, there are many ways in which the practice of domain tasting could be curtailed or regulated, while at the same time maintaining the original and stated purpose of the AGP. Any limitations, restrictions or conditions need not detract from legitimate uses of the AGP, namely to enable those who make good faith errors to rectify them and to enable registries to cancel erroneous registrations and credit registrars, and to enable registrars to credit users for such registrations, while, at the same time, eliminating at least reducing tasting. There would be no negative impact on registries or registrars who use the AGP to correct honest clerical errors. There would be no negative impact on registrants who have made honest clerical errors.

There would be a positive impact on registries in eliminating numerous tasting-motivated transactions during the AGP. There would also be a favorable impact for trademark owners and Internet commerce businesses whose trademarks and variations thereof are being registered in bad faith, tasted, and typosquatted. In addition, by limiting use of the AGP, users likely would benefit by having a more stable platform upon which to conduct searches and locate goods and services. Eliminating the AGP and the tasting of domain names would allow consumers to access information and conduct transactions more efficiently.

8) What would be the impact (positive or negative) on registries, registrars and registrants of eliminating the AGP?

The elimination of the AGP would have primarily positive impacts on all constituencies. The elimination of the AGP would eliminate domain name tasting as we know it. As a result, user confusion and failing confidence in the Internet as a useful commercial tool would very likely be reduced. Perhaps more importantly, elimination of the AGP would significantly reduce the ability of criminal factions to use the AGP to hide their activities and/or identities behind ephemeral and churned temporary domain name registrations. This would likely have an immediate positive impact on the safety and security of the internet.

Conceivably, the elimination of the AGP without introducing some other type of corrective procedure in its place would remove the possibility for a registrant who makes an honest clerical error in preparing and filing a new request for registration of a domain name to obtain a registration for the correct domain name without having to pay for both the first erroneous and the second correct registrations. In addition, it would remove the possibility for a registry to provide credits to registrars whose customers make honest typographical errors in preparing and filing new requests for registration. However, as discussed above,

these possible negative consequences seem to be relatively inconsequential, weighed next to the benefits that eradication of the AGP would bring, and can be addressed in ways other than through an AGP as described herein.

IV. Conclusion

INTA's Internet Committee is thankful for the opportunity to respond to the questions within the Issues Report and Initial Report on domain name tasting. Domain name tasting negatively impacts each of the constituencies that form the global Internet community, including harming ICANN as the entity responsible for the technical coordination of the Internet. Furthermore, domain name tasting destabilizes the stability and security of Internet. For these reasons, INTA's Internet Committee strongly recommends that ICANN take immediate action to eliminate the practice of domain tasting -- preferably by eliminating the AGP or, at a minimum, significantly limiting its availability directly or indirectly. We set forward below, in descending order of preference, methods that ICANN should implement to eliminate domain name tasting:

1. Eliminate the AGP.
2. Redefine AGP to significantly restrict the percentage of Deleted names to which it applies.
3. Impose the ICANN fee.
4. Endorse imposition of a Registry fee.

59. ICA/Phil Corwin <pcorwin@xxxxxxxxxxxxxxxxxxx>
Date: Mon, 28 Jan 2008 23:41:22 -0500

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Philip S. Corwin, Partner

Dear Members of the ICANN Board:

This comment letter is submitted by the Internet Commerce Association (ICA) in regard to the January 7, 2008 ICANN Notice, "GNSO Initial Report on Domain Tasting". ICA is a not-for-profit trade association representing the direct search industry. Its membership is composed of individuals and companies that invest in domain names (DNs) and develop and monetize the associated websites. ICA's members collectively hold portfolios comprised of tens of millions of DN's. Domain name investors and developers are the new media and e-commerce companies of the twenty-first century, with the current asset value of the direct search industry standing in excess of \$10 billion and with these assets generating at least \$1-2 billion in annual advertising revenues and associated e-commerce transactions. ICA's mission is to promote the benefits of the activities of professional domain name investors, owners and developers to the press, advertisers, and governmental authorities on a global basis; and to strive for fairness among regulators and in ICANN's dispute resolution process as well as in the taxation and treatment of DN registrants under all relevant laws, regulations, and agreements in the U.S. and other nations. ICA provides a unified voice for a

membership with common interests and a diverse collection of experience in the professional domain name ownership community. The community represented by ICA has risked large amounts of capital in order to develop domain names. Professional domain name registrants are a major source of the fees that support registrars, registries, and ICANN itself.

ICA Position on Domain Name Tasting

The ICA believes that abusive domain tasting is an unintended and insupportable misuse of the add/grace period and should be ended. Because the practice of abusive domain tasting is an economic phenomenon based upon the fact that thousands of names can be registered for a short term at no cost we believe that the best means of curbing abusive tasting is to impose a price that is minimal for a single or small group of domain names but substantial for thousands of test registrations. The imposition of a nominal non-refundable registration fee by ICANN, perhaps enhanced by individual actions by gTLD registries, should be tried and evaluated before considering the more radical step of totally eliminating the add/grace period.

This is not a new position for our Association. On March 15, 2007 we submitted a comment letter (<http://forum.icann.org/lists/registryservice/msg00000.html>) in support of the PIR proposal to impose an "Excess Deletion Fee". As we stated at that time:

The ICA supports adoption of the Excess Deletions Fee proposed by the Public Interest Registry (PIR) for .org domain names. This new policy would impose a "restocking fee" of \$.05 (5 cents) for registrations deleted during the five day add/drop grace period when the percentage of such deletions by any single registrar exceeds ninety percent of the initial registrations made within a calendar month.

The ICA recognizes that repetitive mass registration of domain names (DNs) for the purpose of determining their pay per click (PPC) advertising viability (know as "domain tasting") can lead to abuse of the five day grace period. In particular, the ICA opposes "domain kiting", in which particular DNs are registered and deleted for sequential five day periods within the registry's add/drop grace period, thereby allowing for de facto DN ownership absent its cost. We believe that the PIR proposal is a reasonable policy designed to address such abuse and clearly demonstrates that individual registries can readily take action to address the legitimate concerns that have been raised by the practice of excessive DN "tasting".

That proposal was subsequently adopted and, as noted on page 9 of the subject GNSO Report, has resulted in a reduction of domain name deletions on .Org of more than 90 percent and a complete cessation of tasting by the two organizations most involved in abusive tasting.

In September 2007 the ICA's Board adopted a member Code of Conduct (http://www.internetcommerce.org/member_code_of_conduct). That Code addresses domain name tasting and related issues addressed in the subject GNSO Report as follows:

The Internet Commerce Association's (ICA) Member Code of Conduct expresses the ICA's recognition of the responsibilities of its members to the intellectual property, domain name,

and at large Internet communities and will guide members in conducting their domain name investment and development activities with professionalism, respect and integrity.

All members of ICA are committed to addressing the issues facing the evolving domain name industry, which include:

Protection of Intellectual Property Rights: A registrant shall follow accepted trademark law and respect the brands and trademarks of others. Members will not intentionally and in bad faith register and use a domain name that is identical or confusingly similar to a trademark or service mark. Registrants shall respond promptly to legitimate disputes relating to alleged infringement of intellectual property rights.

Domain Name Tasting: Members should be supportive of changes in ICANN policy or self-driven registry initiatives that end abusive domain name tasting, including such market-based approaches as a restocking fee. All activity related to domain name registration should respect all other areas of the Code of Conduct, most notably including protection of intellectual property rights.

Domain Name Kiting: A registrant has the responsibility to pay the registration cost of a domain name when used beyond the applicable Add/Grace period. A registrant should not abuse the applicable Add/Grace period by serially deleting and re-registering a domain name with the intent of avoiding payment for such registration and use, a process commonly referred to as “domain kiting.”

Strict Adherence to Internet Fraud Laws: Members of the ICA are committed to adhering to all applicable laws that seek to curb and control Internet fraud and abuse. Cybersquatting, the practice of registering and reserving an Internet domain name for the purpose of reselling it to the rightful owner at an inflated price, is condemned; as are practices such as phishing, which is the process of attempting to obtain the personal information of unsuspecting Internet users for illicit purposes.

Finally, during the November 1, 2007 Public Forum session at the most recent ICANN Meeting in Los Angeles, I delivered the following oral remarks on this subject (<http://losangeles2007.icann.org/files/losangeles/LA-PublicForum2-1NOV07.txt>):

>>PHILIP CORWIN: Yes, good afternoon. Philip Corwin, Counsel to the Internet Commerce Association, representing domain name investors and developers.

I would like to start by expressing the appreciation of our membership to Dr. Cerf for his vision and dedication in helping to create and guide the development of this very incredible and transformative technology that we call the Internet. And thank you, Vint.

Briefly, I will address four key issues for our members, but first is domain name tasting. Last month our year-old trade group adopted a formal member code of conduct which opposes abusive domain name tasting and calls for the eradication of domain name kiting.

We are pleased that the GNSO approved a PDP on this subject and called on ICANN to consider immediate fee-based steps to eliminate abusive tasting. And we would go beyond that and call on the registries to consider using the dot org action as a model for steps that they might take to address tasting at their individual top-level domains.

Thus, in keeping with our Code of Conduct and our prior statements to ICANN on this matter, we enthusiastically support the expeditious adoption of economic measures by ICANN and individual gTLD registries to curb abusive domain name tasting by imposing a meaningful monetary cost on misuse of the add/grace period.

In closing, we would make two additional observations regarding the subject GNSO Report:

* While we believe that mass domain tasting is an insupportable abuse of the purpose of the add/grace period, we also believe it is important to confine criticism of the consequences of tasting to documented facts. In this regard, we would point out that the concern that tasting may be associated with the criminal activity of financial account “phishing” has been refuted by no less an authority than the Anti-Phishing Working Group DNS Policy Working Group. In its September 14, 2007 report, “The Relationship of Phishing and Domain Tasting” (www.antiphishing.org/reports/DNSPWG_ReportDomainTastingandPhishing.pdf), it concluded: “APWG analysts found domain name tasting to be antithetical to the phishers’ enterprise model and therefore no relationship exists at this time between phishing and domain name tasting...Domain name registration is inexpensive, with the cost of a retail registration being only \$6.00 to \$10.00. The cost of a legitimately purchased domain name is the least of a phisher’s concerns. Moreover, since the phishers’ business is to steal financial instruments, they often have a supply of stolen credit card numbers that they can use to illegitimately register domain names. Simply put, phishers have no incentive to practice domain name tasting. In fact, the notion of deleting a domain name that might continue to serve as a phishing site beyond the Add Grace Period because it has eluded detection is entirely contrary to the phishing business model.”

- Any final Report adopted by the GNSO on this subject should be careful to confine itself to an objective analysis of domain tasting and effective means of curbing its abuse and refrain from expressing definitive views on complex legal and policy issues which are very much in flux. In this regard, we would note that the courts and legal experts are divided as to whether the mere advertising monetization of a particular term entered into an address/search box constitutes trademark infringement and that web browsers, search engines, and Internet service providers are all now actively engaged in such activity in the rapidly evolving online marketplace.

Conclusion

The ICA appreciates the opportunity to comment on the subject Report and looks forward to reviewing the GNSO’s final Report and accompanying recommendations. In addition, we urge the ICANN Board to act quickly and decisively in this matter - hopefully at the upcoming meeting in Delhi, India which we shall be attending.

Sincerely,
Philip S. Corwin

Counsel to the Internet Commerce Association

60. INTA/claudio digangi
Date: Mon, 28 Jan 2008 20:24:51 -0800 (PST)

Comments on Issue Report & Initial Report on domain name tasting

Attachment: International Trademark Association, domain name tasting comments.doc
Description: 2565754906-International Trademark Association, domain name tasting comments.doc
(Same attachment as above for INTA)

61. Jeffrey A. Williams
Date: Wed, 30 Jan 2008 16:00:27 -0800

Dominik and all,

Thank you Dominik for expressing your well observed observations. In part, I, along with our members agree, elimination of Domain Name Tasting/ Front running should be the only goal, which is by the way achievable, and achievable with relative ease, IMHO.

It seems clear to me, and I am sure others, that the ICANN Bod, sees a revenue stream from Domain Name Tasting/Front Running, and as such doesn't desire to eliminate this practice, but would rather seek a means by which to profit from it, however unfairly and disproportionately so.

Regards,

(In response on GA list to Dominik Filipp)

62. Jeffrey A. Williams
Date: Fri, 01 Feb 2008 05:39:34 -0800

All,
Network world gave a pretty good luke warm reception to the ICANN Bod's Tasting solution/non-solution decision.

See:
http://www.networkworld.com/news/2008/013008-how-much-to-stop-domain.html?neth=ts_013008&nladname=013008dailynewspmal

Regards,

(Message on GA list)

Initial Report on Domain Tasting
Authors: Olof Nordling, olof.nordling@icann.org, Liz Gasster, liz.gasster@icann.org

63. Bill Kerney

Date: Fri, 01 Feb 2008 08:38:44 -0800

Domain Tasting really is one of the worst things about the internet, as the entire concept of tasting implies that one is not actually interested in the domain, but in domain speculation. With 100% of .com domains now hijacked and kited by people with no intention of using them for realistic purposes, I think the time has come to pull the plug on tasting completely. Eliminate the add/drop period entirely.

-Bill Kerney

64. Jeffrey A. Williams

Date: Fri, 01 Feb 2008 11:26:00 -0800

Dominik and all,

Nice find here Dominik! And indeed this is yet "another" method by which Tasting can continue relatively unabated or slowed without concern about the \$0.20 fee/tax retention decision by ICANN. But of course the ICANN Board will never admit publicly it's decision was poor one, now will they? Of course not! Such would be tacitly admitting they were either hasty or significantly incompetent and need to be removed from the Board without further delay...

P.S. I am sorry Peter old buddy, but this was, as Dominik's find has indicated, a very bad call.... And so, the ugly ICANN saga sadly continues...

Regards,

(In response on GA list to Dominik Filipp)

65. Jeffrey A. Williams

Date: Sat, 02 Feb 2008 04:44:37 -0800

All,

Do we have another "Form" of Tasting? Well of course we do! Yet another method and reason ICANN Bod's decision to address Tasting does little to actually address the problem... See:

http://www.websitemagazine.com/content/blogs/posts/archive/2008/01/31/Drop_Catching_Domains_Big_Business.aspx

<http://www.cadna.org/en/pdf/cadna-white-paper-drop-catching.pdf>

News from the Coalition Against Domain Name Abuse (CADNA) about a recent study of drop catching a process whereby a domain that has expired is released into the pool of available names and is instantly re-registered by another party.' The eleven day study showed that 100% of '.com' and '.net' domain names were immediately registered after they had been released. CADNA has published the results with their own analysis. Quoting: "The results also show that 87% of Dot-COM drop-catchers use the domain names for pay-per-click (PPC) sites. They have no interest in these domain names other than leveraging them to post PPC ads and turn a profit. Interestingly, only 67% of Dot-ORG drop catchers use the domains they catch to post these sites most likely because Dot-ORG names are harder to monetize due to the lack of type-in traffic and because they tend to be used for more legitimate purposes.

And so the ICANN saga continues,
Regards,

(Message on GA list)

66. Dominik Filipp

Date: Sun, 3 Feb 2008 18:10:49 +0100

Jeff,

especially, the second link points to a valuable document collecting credible comparisons and evaluation of tasting effects on .com, .net, and .org domains in overall means. The document also seems to correspond to my findings gathered during my personal research, namely the fact that all .com and .net domains are immediately registered after releasing back to the pool, and that eNom is one of the most active participant on the practice.

However, the document is still lacking mentioning some other aspects and/or findings that are of similar importance

a) Many (if not most of) domains being tasted are simultaneously placed on virtual auctions, such as Sedo, BuyDomains, etc. This can be quite easily verified by searching the tasted names at the auction company sites, quite a boring stuff though.

b) The document does not seem to identify the three mentioned tasting registrars BelgiumDomains, DomainDoorman, and CapitolDomains as belonging to the same company, most likely driven by CapitolDomains LLC. This fact can be easily recognized by comparing the registrars' IP addresses. On the other hand, very nice identification of Wan-Fu China (and similar phantom registrants covering up the above mentioned registrar activities) as a well-known alias of "Unasi", a famous drop catcher.

c) The analysis does not address at all the new trends and dangers of 'public domain tasting', a new phenomenon I elaborated on in my previous mail.

We could perhaps be expecting an upgrade of the analysis in the near future.

Initial Report on Domain Tasting

Authors: Olof Nordling, olof.nordling@icann.org, Liz Gasster, liz.gasster@icann.org

A nice study to look into anyway.

Dominik

(Response on GA list to Jeff Williams)
