New gTLDs: Legal and economic issues
A Policy Analysis

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INTRODUCTION
Policy analysis

Law

Technology

Economics
Agenda

- Policy for the domain name market
- gTLDs: Legal & economic characteristics
- Criteria for regulatory choices
- Analysis of ICANN’s policy
POLICY FOR THE (GENERIC) DOMAIN NAME MARKET
Benefits of gTLD policy?

Static or dynamic root?  

How to expand namespace?

\[
\text{net social benefits} = \text{net private benefits} + \text{external effects}
\]
ICANN's gTLD policy

- Liberalized access to TLDs
- Allocation of “TLD rights”
- Protecting 3rd party interests
Market forces

**Demand**
- Consumer preferences
  - Semantics
  - Investment
- New gTLDs
  - New domain names
  - Demand for new gTLDs
- Substitution
  - Of DN by other identifiers?

**Supply**
- Domain names
  - Registries & registrars
- TLDs
  - ICANN as a “supplier” or “regulator”?

Market failures?
Market share

Source: ntldstats.com (01/09/2014)
Millions

Source: Verisign, Centralized Zone Data Service, Q1 2014
Thousands (Q1)

Source: Verisign, Centralized Zone Data Service, Q1 2014
Parking

Parking in new gTLDs Overview

Domains: 2,096,232
Parking IP: 90,143 (5.39%)

Parked Domains: 1,672,353 (79.78%)
Parking Resp: 1,065,047 (63.69%)

Source: ntldstats.com (01/09/2014)
Generic top level domains

LEGAL AND ECONOMIC CHARACTERISTICS
gTLD right – the legal perspective

**Contractual right**
- Duration limited, but easily renewable

**Bundle of rights**
- ICANN’s obligation to facilitate a delegation
- Sell domain names
- Exclusivity of a TLD
gTLD as a good – the economic perspective

<table>
<thead>
<tr>
<th>rivalrous</th>
<th>excludable</th>
<th>non-excludable</th>
</tr>
</thead>
<tbody>
<tr>
<td>private</td>
<td>e.g. food, clothing</td>
<td>common</td>
</tr>
<tr>
<td>non-rivalrous</td>
<td>club good</td>
<td>public</td>
</tr>
</tbody>
</table>
gTLD as a private good with positive externalities

**Private good**
- gTLD right
  - Sell domain names, (via registrar)
  - Limited policy authority over gTLD

**Public good**
- Name resolution
  - Stability & security
  - Usability & trust
CRITERIA FOR ASSESSING GTLD POLICY
Market failures may justify regulation

<table>
<thead>
<tr>
<th>Lack of competition</th>
<th>Externalities</th>
<th>Public goods</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Dominance</td>
<td>• Negative</td>
<td>• Name resolution</td>
</tr>
<tr>
<td></td>
<td>• Costs to 3rd parties</td>
<td>• Security</td>
</tr>
<tr>
<td></td>
<td>• Declining utility of the Internet?</td>
<td>• Stability</td>
</tr>
<tr>
<td></td>
<td>• Positive</td>
<td>• Trust</td>
</tr>
</tbody>
</table>
Criteria for gTLD policy analysis

Private goods
- Market efficiency
- Modality of TLD allocation
- Procedural fairness

Welfare effects
- Imbalance?

Competition
- Dominance

Positive externalities & public goods
- How ensure and secure?

Negative externalities
- Avoid?
- Regulate?
- Market solution?
ANALYSIS
Private goods on a market

- Initial allocation
  - Create new gTLDs based on demand

- “Property rights”
  - (Economic term, not legal)
  - Facilitate efficiency through trade
  - Primary and secondary markets for gTLDs

- Market failures?
# Name Markets

<table>
<thead>
<tr>
<th></th>
<th>Domain names</th>
<th>TLDs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Primary market</strong></td>
<td>✔️</td>
<td>?</td>
</tr>
<tr>
<td><strong>Secondary market</strong></td>
<td>✔️</td>
<td>?</td>
</tr>
</tbody>
</table>
Competition

Winners and losers

• Economic success?
• Regulation: Secure public goods when TLDs fail

Dominance

• Network effects of <.com>
• Sector-specific competition law (ex ante)
• Vertical integration
• Continued price regulation?
• ICANN as a competition authority?
Negative externalities

- Costs for name holders
- Combatting crime
- Name collisions
### Examples

<table>
<thead>
<tr>
<th>Added</th>
<th>Domain</th>
<th>Listed on</th>
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<tbody>
<tr>
<td>2014-08-29</td>
<td>простой . сайт</td>
<td>Yandex Safe Browsing Malware</td>
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<tr>
<td>2014-08-26</td>
<td>🇲🇽apple-service . support</td>
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<tr>
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<tr>
<td>2014-08-14</td>
<td>🇺🇸dos . repair</td>
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<tr>
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<tr>
<td>2014-07-21</td>
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<td>Google Safe Browsing Malware</td>
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<td>2014-07-21</td>
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<td>Google Safe Browsing Phishing</td>
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<td>🇩🇪peypal . center</td>
<td>Google Safe Browsing Phishing</td>
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Data is acquired from Google, Inc. and Yandex N.V., ntlstats.com is not responsible for false entries listed.
Costs for name holders

Risk of cybersquatting (perceived)
- Defensive registrations
- Costs for defending names

Regulation: rights-protection measures
- URS
- Trademark clearinghouse

Market solution → efficiency?
- Domain Protected Marks List (DPML)
- Trading externalities (Coase)?
Combatting crime

gTLD applicant selection process

Registry Agreement

Registrar Accreditation Agreement
Measures to secure pos. externalities & public goods

Name resolution
• Selection process
• Obligations in Registry Agreement

Usability & trust
• String confusion
• Objection procedure
• Problems remain
• Singular and plural TLDs
Procedural fairness

• Clarity & fairness
  – Application criteria relatively clear
  – Compare previous rounds

• Foreseeability?
  – Application procedure evolved during application process
  – Learning by doing
  – E.g. sequencing issues

• Outsourced justice?
  – Appeals process?
CONCLUDING REMARKS
gTLD policy

Main conclusion

• Current gTLD policy avoids inefficiencies of pre-liberalization policy

Challenges remain, e.g.

• Negative externalities
• Public goods: Usability of & trust in DNS
Institutional aspects: ICANN

Regulator

- Quasi-governmental regulatory functions
- Akin to state regulation

Multi-stakeholderism

- ‘Regulatory conversations‘ between the regulator and members of the regulated community?

Mature?

- Acts as regulator and enforces policy
- Differences in regulation for classes of TLDs
Thank you!
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