

Comments on New gTLD Final Reports on Competition and Pricing

The Coalition Against Domain Name Abuse (CADNA) appreciates the opportunity to provide comments on Dr. Carlton's report regarding competition and pricing of the proposed new gTLDs. CADNA recognizes Dr. Carlton's expertise as a distinguished economist, but the Coalition was disappointed to see that his analysis lacked a fundamental understanding of the dynamics of the domain name space. Because of the inaccuracies present in his report, the Internet community still does not have an accurate view of whether the potential benefits of the proposed launch outweigh the potential costs.

There are three main areas on which CADNA will focus its comments: competition, consumer welfare, and trademark protection and infringement.

Competition

Throughout his report, Dr. Carlton maintains that new gTLDs will "likely" create competition for the existing major TLDs and will overcome the first-mover advantage that .COM currently holds. Despite the fact that the Department of Justice has explicitly issued statements to the contrary, Dr. Carlton claims that the new gTLDs could constrain the market power of .COM and other major TLDs in the future.

However, amid such an ardent focus on economic theory and principles, the report overlooks an important factor of this issue: the facts of consumer behavior. The TLD space is dominated by .COM because consumers overwhelmingly prefer to navigate using .COM over any other TLD. Multiple TLDs were introduced after .COM, including .BIZ and .INFO, and it appears none have diminished the market power of .COM or created any significant competition for it.

If Dr. Carlton believes that a lack of variety and diversity among the current gTLDs is the problem behind the lack of competition, then he need look no further than .TRAVEL to realize that this is not, in fact, the case. In a sense, .TRAVEL is emblematic of the new gTLD system because it is a topic-specific TLD, as are many of the examples that have been proposed in discussions over the new gTLD rollout. It appears as though there should be a market for the .TRAVEL TLD; after all, many people use the Internet to book travel plans. However, .TRAVEL has not been effective in gaining market power from .COM, which should leave one to question what effect flooding the market with gTLDs will have on competition in the space.

Though the report admits that the gTLDs that have been introduced in recent years "have achieved only limited success in attracting registrants and Internet activity," it fails to realize that this is largely due to consumer Internet usage trends. Because of its first mover advantage, consumers overwhelmingly tend to prefer the .COM extension; when they are unsure of the domain name for the website they seek, they are much more likely to assume it ends in .COM than any other TLD – the iPhone even has a button for .COM but no other TLD. Therefore, the

costs associated with creating more competition for the .COM TLD are extremely high, as they would include marketing campaigns to change an ingrained behavior of Internet users.

The report continually makes assertions based on the premise that the DNS operates in the same manner as a free market, meaning that unfettered competition will eventually weed out any possibility of monopoly or unfair pricing. However, there is no evidence that thus far the DNS has been run as a free market. In fact, right after the release of the report, an anti-trust lawsuit was brought against VeriSign for colluding with ICANN to fix prices and block competition. As the organization responsible for managing the day-to-day operations of the DNS, the suspicion of collusion between ICANN and a major domain name registry shows that the DNS does not necessarily operate as a free market.

Consumer Welfare

In detailing the various ways in which new gTLDs will benefit consumers, the report mentions that they will likely bring about new innovation, lower prices and provide new services to consumers. CADNA wonders what types of innovation will emerge from a system with an unlimited amount of gTLDs that have so far been impossible with only 21 gTLDs.

Unfortunately, the report never clarifies why the new system will be more inclined to deliver innovation. Also, as discussed above, it is quite unclear whether or not new gTLDs will in fact lower prices across the DNS. When Dr. Carlton writes that, “restricting the opportunity for entrants to compete for such profits necessarily has the effect of protecting and preserving the profits of the .com registry and its registrars,” he demonstrates a lack of understanding of the workings of the domain name retail chain.

CADNA would also like to point out its concern over the fact that the report has ignored the point raised by not only the Department of Justice, but also the National Telecommunications and Information Administration and the Department of Commerce—the fact that new gTLDs could create confusion among consumers. The report contends that new gTLDs will help consumers find the content they are seeking faster than they are currently able to, but one could just as easily argue that broadening the DNS in such a drastic way will create bigger obstacles for consumers, particularly during the initial adoption period, because they will not be able to rely on their instincts about the most efficient ways to browse the internet.

Trademark Protection and Infringement

While CADNA appreciates the report’s acknowledgement that new gTLDs will place the burdensome cost of defensive registration on trademark owners, the Coalition is troubled by the assertion that ICANN’s current dispute mechanisms, namely the UDRP, are sufficient to protect intellectual property online. The problem with his reasoning is that mechanisms like UDRP are *reactive*, and as such can only be employed after infringement has occurred. Trademark owners need *preventative* measures to ensure that the infringement does not happen in the first place. Preventative measures are much more effective in protecting both trademark owners and, ultimately, consumers.

CADNA is also concerned by the lack of understanding of cybersquatting evident in the report. When mentioning the Anti-Cybersquatting Consumer Protection Act, he defines cybersquatting as “attempts by firms to acquire domain names, including those involving trademarks, for the purpose of reselling them to trademark holders.” Firstly, cybersquatters are rarely firms; they are typically individual third parties. Secondly, the ways to profit off the practice of cybersquatting extend far beyond simply selling domains to trademark owners. In the last several years, cybersquatting has evolved into a sophisticated business and cybersquatters are no longer dependent on domain name sales for profit. Cybersquatters have developed numerous methods to monetize online traffic, such as pay-per-click sites. Because the report does not take into account the true nature of cybersquatting, the report’s claims about the severity of the problem or the capacity of existing mechanisms to resolve it are inaccurate.

The report also demonstrates an uncertainty over what the costs involved in obtaining new gTLD domains will ultimately be for trademark owners. Using Ford as an example, it says, “It is unclear how much the introduction of a new gTLD – say, .cars designed for sites related to car – would further increase the required effort and associated costs of monitoring use of Ford trademarks.” It stands to reason that if new gTLDs are released in the manner ICANN is planning, the DNS will be exponentially larger, and thus will create more and increasingly diverse opportunities for cybersquatters that will be harder and more costly for trademark owners to keep up with. Dr. Carlton acknowledges the ambiguousness of what the true cost will be, but stops short of conceding that it could be extremely high. Moreover, he offers no suggestion for how to keep the cost to a manageable level.

Given that this report has been created without a proper understanding of the domain name space as a whole, it presents an inaccurate analysis of the potential launch of new TLDs. To assert that this TLD launch will improve competition and benefit consumers without substantial evidence or even knowledge about TLDs and domain names is misleading to the Internet community. If this TLD launch moves forward, it must do so in a way that accurately weighs all the costs and benefits and takes into account the impact the launch will have on all of the constituents it will affect.