

1 Executive summary

1.1 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, 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.

Based on the questions identified in the Issues Report, the group conceived a Request for Information that was launched on the ICANN website on 10 August and also as an on-line form on BigPulse. The deadline for responses was set to 15 September, in view of the holiday season. The GNSO Council, at its meeting 9 August (minutes at <http://gns0.icann.org/meetings/minutes-gns0-09aug07.shtml>) decided to defer the reporting deadline for the group until 4 October, in view of handling the outcomes at the Council meeting 11 October.

Further information retrieval launched by the group included analysis of monthly registry reports, answers from several ccTLDs about their domain tasting experiences, a questionnaire to Uniform Domain Name Dispute Resolution Policy (UDRP) service providers regarding their views and experiences, a supplemental request for information conducted by the Intellectual Property Constituency (IPC) targeting trademark owners and their representatives, a submission about registrars' use of the Add Grace Period (AGP) and a sample zone file data study that was contemplated but has not been done. ~~Moreover~~However, VeriSign has not provided a substantive answer to a request about specific statistical data. An overview of the findings is given below.

1.3 **Draft Terms of Reference for a PDP [note: move to next page]**

As requested, the group has drafted Terms of Reference to be considered in the case the GNSO Council opts for launching a Policy Development Process on domain tasting. The draft ToR identifies two crucial aspects to be considered by each Constituency and for which consensus would be sought - the overall assessment of the impacts of domain tasting, based on available data, and the considerations of which measures to take.

1.4 **Next steps**

The GNSO Council may choose to launch a PDP based on the proposed ToR, or a potentially modified ToR, and/or to recommend further research on the impact of potential countermeasures to domain tasting practices - or on refining the specific data about domain tasting. The actions are not mutually exclusive, but call for time phasing and coordination if launched in parallel.

were held, on 17 and 25 July, 1, 8 and 22 August, 5, 12, 18 and 26 September, and 3 October.

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- Further information retrieval tracks launched or contemplated by the group included:
 - analysis of monthly registry reports
 - inquiries to ccTLDs about their experiences with domain tasting
 - requests for information from constituency members prepared and conducted by the constituencies
 - a questionnaire to UDRP service providers about their experiences with domain tasting
 - straw poll of registrars regarding other uses of the AGP
 - sample zone file data study
 - analysis of more detailed statistics from VeriSign
- The Outcomes Report was reviewed as successive drafts by the ad hoc group, both on the list and on two conference calls, before being finalized and submitted to the GNSO Council.

3.2 Issue Background

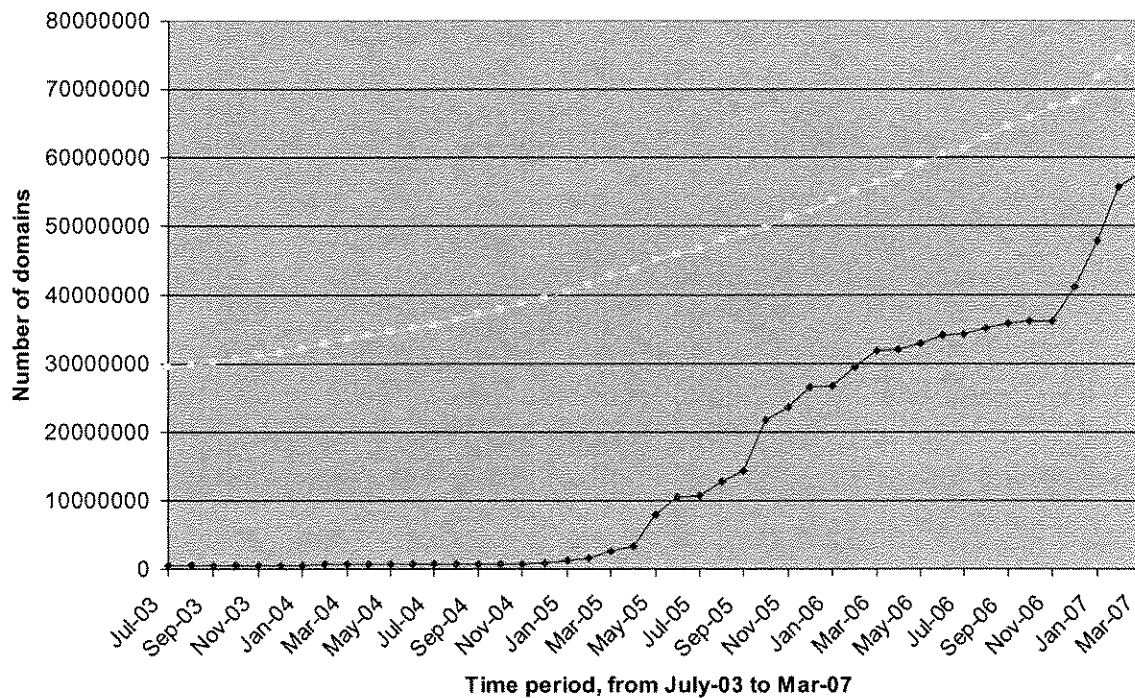
- The issue background has largely been covered in the aforementioned Issues Report, available at <http://gns0.icann.org/issues/domain-tasting/gns0-domain-tasting-report-14jun07.pdf>.
- Certain developments since the Issues Report was finalized deserve to be mentioned, in particular that ~~the~~ Public Interest Registry (PIR), the operator of the registry for .org, introduced a 0.05 USD fee per domain deleted for registrars deleting more than 90% of their registrations within the AGP, a measure that in practice relates to option “C”

4 Outcomes

4.24.1 Analysis of Registry Monthly Reports

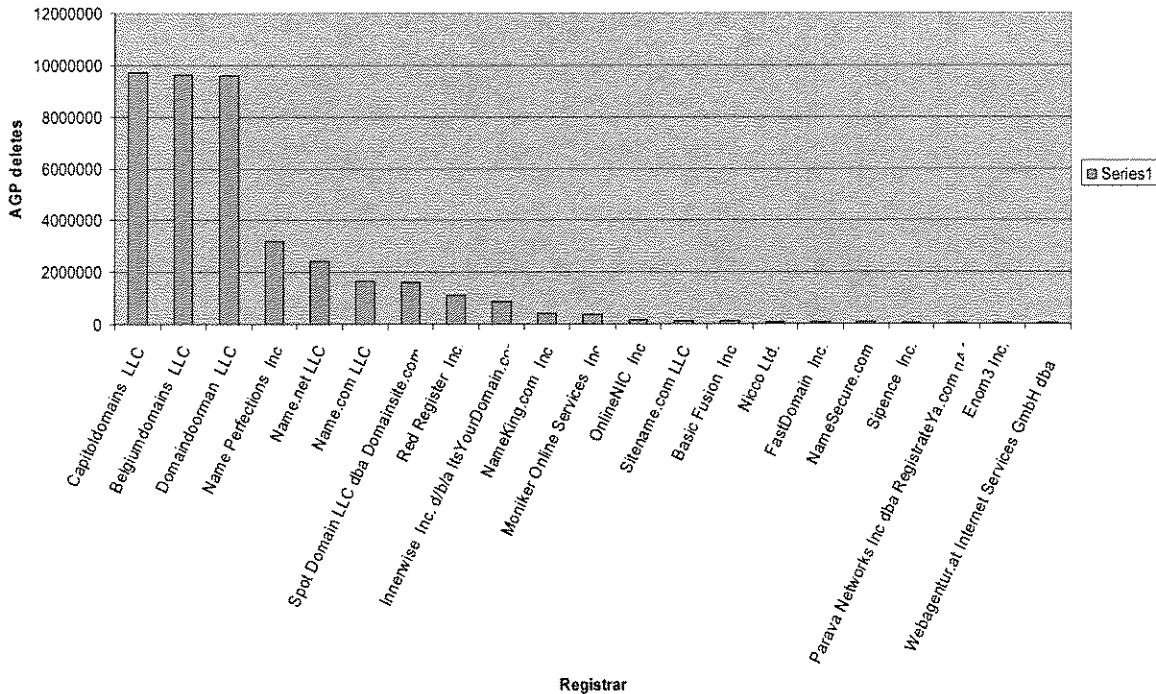
Based on data in the registries' monthly reports to ICANN, a couple of graphs have been developed by ICANN staff, as presented below. The focus has been on data for .com and .net, being the two gTLDs with the highest incidences of domain tasting.

Monthly deletes (red) and total domains (yellow), .com and .net



This graph clearly shows how the total number of deletes remained stable at a low level until early 2005, when a phase of marked increase starts, followed by an inflection point in the graph late 2006 marking an accelerated increase.

AGP deletes top 20 April -07



Information on deletes within the AGP was only recently made publicly available by VeriSign. The above diagram is based on the April 2007 data for such deletes regarding .com and shows the most active registrars in this respect. It can be noted that the Whois records for the three registrars with the highest numbers of deletes within AGP all display the same address in Miami, Florida; the same phone number; and the same corporate formation date, indicating that these registrars are interrelated.

Registry representatives from PIR (.org) and NeuStar (.biz) provided more detailed data on deletes within the AGP and analyzed it as follows:

Data for the .org registry show a total of 4,997,048 deletes within the AGP during the period January – June 2007. For these cases the table below shows the range of repetition. For example, in the 4 to 10 range, a domain name was created/deleted no less than 4 times and no more than 10 times during this 6 month period.

A majority of respondents are IPR owners/representatives, followed in numbers by registrants/individual users. 91 out of 188 (48%) see registrants as benefiting from domain tasting, followed by 65 (35%) for registrars, while 62 (33%) see nobody benefiting. Comments from various respondents elaborate on their answers as follows:

Registrants are characterized as benefiting from

- "try before you buy" with immediate registrations at no financial risk
- ability to correct misspelled domain names at no registration cost
- opportunity to get short-term ppc advertising revenue without registration cost
- opportunity to take short-term advantage of IPR holders' brands

Registrars are characterized as benefiting from

- increased revenue through increased net additions of registrations
- ability to delete names at no cost in cases of registrant credit-card fraud
- their own domain tasting with the same advantages as tasting registrants, boosted by better opportunities to scale and technical capabilities to act in real-time with registries

Other actors that are characterized as ~~benefitting~~benefiting are registries (getting net increase in registration revenues) general Internet users (getting direct navigation to a live webpage instead of error messages), IPR owners (verifying the appeal of their brands as domain names) and governments (getting more taxes as more business is generated). Furthermore, other comments characterize spammers, phishers and other dubious/criminal activities as benefiting from opportunities to cover their tracks through domain tasting fast-flux registration.

149 out of 183 (81%) see IPR owners disadvantaged by domain tasting, followed by 106 (58%) for individual Internet users, while 15 (8%) see nobody disadvantaged. Comments from various respondents elaborate on their answers:

IPR owners are characterized as being disadvantaged by:

- short-term infringement of their trademarks
- erosion of brand names thru user confusion
- erosion of reputation thru users diverted to unexpected and potentially harmful sites
- loss of revenues thru diversion of traffic
- increased monitoring costs and reduced possibilities to trace IPR violators

domain names, enforcement of RAA to eliminate warehousing of domains by registrars, pro rata billing for the time a domain is tasted, registry policing of domain names with continually shifting registrants, contributions by tasting registrants/registrar to a fund for increased enforcement costs, and maintaining public WHOIS data beyond the registration time.

110 out of 173 (64%) support suggestion A (eliminating AGP), while 25 (14%) prefer suggestion C (registry excess deletion fees charged to registrars for disproportionate deletes), 17 (10%) support B (ICANN 0.20 USD charge to apply to names deleted within AGP) and 20 (12%) vote for D (neither A,B or C). Comments regarding potential disadvantages with A-C range from statements that there are no, or negligible, disadvantages with any of them for anybody, to statements that all three would very negatively affect registrants (potential and current), registrars, registries and Internet users. That option A would deprive registrants of the ability to correct mistakes for free is noted by many. However, one respondent highlights that national consumer protection legislation in Brazil (KR note: if comment either identified only Brazil or did not identify any other country) stipulating the right to return purchases within seven days for a full refund does apply to domain names ~~(in Brazil at least)~~, meaning that the registrar would have to carry the full cost for A. Options B and C are noted for adding costs and administration for registrars, while also being questioned by some as to whether B or C would sufficiently deter domain tasting. Others, on the contrary, find B and C less disruptive to provisioning of ongoing services, while also referring to the PIR/.org experience as to the efficiency of option C. Comments on potential additional benefits diverge considerably, although many state that A would prompt registrants to be more careful and add commercial certainty while being the easiest option to administrate. Some state that B and C would provide more revenues to ICANN and registries, respectively, and that C would hold registrars more accountable. Comments on whether any of the suggested means should be implemented largely reflect the comments on disadvantages and benefits and on other suggested means above.

128 out of 173 (74%) deem that domain registrations at no cost to the registrant would permit domain tasting. 131 out of 173 (76%) find that ICANN should prohibit domain registrations at no cost to the registrant. 122 out of 173 (71%) find that ICANN should impose a minimum registration fee on domain registrations. The comments on such suggested fees vary between

extremes of 0.05 USD and 1000 USD, while most are in the range of 1 – 40 USD. Some suggest fees that decrease with the registration period, for example 10 USD for one year, 8 for two years, 4 for five years etc. Quite a few state, to the contrary, that ICANN should not be involved in any pricing matters.

Commenting on statistical and other factually supported information of potential use, respondents name the monthly registry reports, MarkMonitor's "BrandJacking Indexes" reports (in particular the recent report with information on kiting), and a forthcoming study from the Coalition Against Domain Name Abuse ("CADNA").

Some examples are provided, sites like pool.com and webhosting.info are mentioned and contacts with Google suggested. A number of individuals are suggested as experts to be contacted - names of those consenting to this show in comments to question 15 in Annex 2.

Additional comments are provided, for example CADNA stating that 2 million names are being tasted every day. One respondent notes an increase from 5 infringements a day to 30 per day over a ~~6~~six-month period. Statements that the survey appears biased against domain tasting and that addressing domain tasting as such is outside ICANN's scope are also noted. On a more general level, some comments state that it is important to further pinpoint what the exact problem is to be solved.

A summary of the responses received via email to ICANN is given below, with respondents' affiliations if provided. There were 23 email responses to the RFI, whereof 1 off-topic not included here. The complete email responses can be viewed at <http://forum.icann.org/lists/rfi-domaintasting/>.

- Eight respondents provided input structured along the RFI questions; Tony Finch/University of Oxford, Tim Ruiz/GoDaddy, Markus Faure/CORE, Darren Williams/Full-Effect.com, Nikki Schoorl/AI Tamimi & Co, Alex Tajirian/Domain Mart, Éva Szigeti/Danubia and Jorge Tristán/Facio & Cañas,. These have been added to the overview Big Pulse results and their text comments are included in the corresponding Annex 2 section for each question.

- An email response from MarkMonitor that suffered a communications problem and does not feature on the ICANN site has been included in Annex 2 ([link to full text](#)). This response contains a study of sample registration data for domain names during two weeks in July, to illustrate domain tasting activity.
- Input has also been received directly to the group from the Domain Name System Policy Working Group of the Anti-Phishing Working Group (“APWG”). This input summarizes an investigation about phishers’ use of domain tasting and is included in Annex 2 ([link to full text](#)). The conclusions are that phishers do not use domain tasting but that domain tasting does negatively impact the anti-phishing organizations due to increased infrastructure needs for monitoring many more domain registrations.

4.3 Intellectual Property Constituency Supplemental Request for Information

The IPC prepared its Supplemental Request for Information (RFI) in response to the ad hoc group’s decision to use a general RFI and to permit constituencies to develop and conduct constituency-specific requests for information. Although the IPC designed its Supplemental RFI to seek specific data from trademark owners and their representatives, participation was open to all interested respondents who were willing to provide contact data for response verification.

The IPC first made its draft Supplemental RFI available to the ad hoc group on 29 July to permit review and comment by the group members. The IPC revised several of the questions and the FAQs in response to comments and suggestions from ad hoc group members. The wording of the IPC Supplemental RFI is available at Annex [55.1](#) ([link](#)) The IPC Supplemental RFI was available only as on-line polling. Polling opened on 7 September and was extended twice – once from 15 September to 20 September in light of religious holidays and again from 20 September to 24 September in light of a number of reports of technical difficulties from potential respondents. After polling was closed, one-third of respondents were contacted by email to verify that they were, in fact, the persons who responded. No reports of false participation were received.

The summary of responses and comments received in response to each question in the IPC Supplemental RFI are also included in Annex 5, grouped by the respective questions. The comments are extensive and deserve detailed reading, but some highlights of the results and comments are provided below.

The IPC received 115 tabulated responses to its Supplemental RFI². The great majority of the respondents identified themselves as IPR owner representatives (75%), followed by IPR owners (44%), registrants (24%), individual internet users (20%), and registrars (8%).³ The only stakeholder groups not represented among the results were government and registries.

44 of 99 respondents (44%) stated that their brands (or those of the companies they represent) have been the subject of tasting and an additional 28 respondents (28%) did not know if their brands/marks had been the subject of tasting. Of the 37 respondents who identified how such domain names came to their attention, 20 respondents (57%) learned of them through a watch or monitoring service. Of the 52 respondents who answered the question seeking the number of tasted domain names that incorporated or used their brands, 15 respondents (29%) indicated that the number was 500 or more, while another eight respondents (15%) indicated that that the number was in the range of 100-499.

39 of 50 respondents (78%) stated that the number of tasted domain names that incorporate or use their brands had increased over the past year. A follow up question resulted in 34 of 46 respondents (74%) confirming that tasting had increased in real terms (as opposed to only a perceived increase due to increased awareness of domain tasting). 38 of 48 respondents (80%) who answered if the existence and number of tasted domain names had changed their enforcement strategies confirmed that they had – through increased time, budget, and staff resources devoted to domain tasting problems and enforcement. While almost two-thirds of

¹ Respondents who answered in the negative for some questions were instructed to “skip” questions relevant to only those persons who answered in the affirmative.

² One additional respondent identified itself as testing question_7. Because circumstances indicated that this user id was, in fact, a “test” identity created by one respondent, the responses submitted under this user name were suppressed from the results.

respondents (32 of 50) had sent objection/demand/cease and desist letters regarding tasted domain names that incorporated or used their brands/marks, the number of letters sent and domain names implicated varied from 1-24 letters and names (17 of 33 (52%) and 14 of 32 (44%), respectively) to more than 300 letters (3 of 33 (9%)) and 500 or more names (5 of 32 (16%)).

The great majority of respondents do not view existing enforcement mechanisms such as the UDRP and judicial proceedings as effective against domain tasting. Almost two-thirds of respondents (30 of 47 (63%)) had not initiated UDRP proceedings and over 90% of respondents (40 of 44) had not initiated judicial proceedings regarding tasted domain names that incorporated or used their brands/marks. The primary reasons provided for not doing so were because the domain name was deleted during the AGP and doing so was too costly given the number of domain names. The amount of time required to prepare and file complaints under UDRP and national law appeared to be another factor; 47% of respondents reported spending 4 or more days for UDRP complaints and 70% reported spending 4 or more days on judicial complaints (25 of 53 and 35 of 51, respectively).

Many respondents provided detailed comments about their experience with domain tasting and its impact on their business. For example:

"The detrimental effect of domain name tasting for trade mark owners far outweighs the original legitimate purpose underlying the practice of domain name tasting. Domain name tasting is being abused by "new age" cybersquatters. We have seen the registration of hundreds of domain names, which incorporate our clients well-known brand names for the purpose of hosting monetized websites. The registrants of these domain names earn profit by attracting users to the site by virtue of our clients reputation in its brands. Before any action can be taken, the domain name is deleted, often only to be immediately re-registered in the name of a different company. From experience, we know that many of the registrant companies are either the same company (using different names) or related entities. Normal enforcement practices are too slow ~~as a means~~ for responding to ~~these infringements of our clients~~ this form of misuse of brand name owners' rights. The constant changing of registrant names also makes filing timely and accurate UDRP Complaints impossible. For these reasons domain name tasting should be stopped." (Sally Foreman, Associate, Davies Collison Cave, Melbourne, Australia)(identified with permission)

This comment is just one of many opinions, all of which appear in Annex 5 ([link](#)).

³ Several questions allowed respondents to select all answers that applied, which resulted in "total" percentages

A questionnaire was compiled by members of the ad hoc group and sent to the UDRP providers. The questionnaire and the responses are available in Annex 4. The responses hardly lend themselves to summarizing and are preferably read in their entirety ([link to the responses](#))

4.8 Analysis of additional statistics from VeriSign

The group prepared a request to VeriSign for more detailed statistics on particular aspects, as detailed in Annex 6 ([link](#)) in view of making further analyses. PIR and NeuStar had provided similar information, prompting the group to request it from VeriSign as well. To date, VeriSign has not supplied that such information.

4.9 Potential measures to reduce domain tasting

The Issues Report featured a number of potential measures that could reduce domain tasting. These were included in the RFI and the opinions on them from the RFI respondents are covered in ~~4.14.2~~ and Annex 2. Other potential measures are known to have been put forward and still more may well exist, but addressing these was considered outside the scope of the ad hoc group's work.