

This latest economic report posted 16th June 2010 is an improvement over the 2009 reports from Professor Carlton, however we believe the current report still has not touched on fundamental issues and concerns which are likely to bedevil the proposed GNSO new gTLD process if there is an attempt to implement it in its current form.

Given this is just an initial report we hope the following structural economic concerns with the proposed GNSO new gTLD process could be studied and redressed in the second part of the report.

Introducing competition to registry services

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Introducing competition to registry services

One way of establishing competition is to allocate the rights to run a registry for a fixed term and on expiry of that term hold an invitation to tender for a subsequent term.

The alternative approach to registry competition which the GNSO seems to be trying to adopt is to award a gTLD to a registry in perpetuity and then try and generate the competition, sort under the various MOUs, by awarding new additional gTLDs to competing registry companies.

Given the first mover advantage of .com with 25 years of usage, the network effect and 88,000,000 domains there has to be serious questions as to the likely success of this approach especially when compared with a much less complex approach involving fixed term competitive tendering of any new and existing registries.

Further not subjecting the incumbent registries to periodic tendering of services especially ones which may dominate the market as a whole runs the risk of leaving both ICANN and the companies operating these registries open to accusations of combination or conspiracy to monopolize.

For example the United States Courts of appeals ruling filed June 5, 2009 Coalition for ICANN Transparency Inc. v. VeriSign Inc. and the recent referral at appeal raise some of these concerns. How long will it be before ICANN is embroiled in these actions?

Many of these problems stem from the failure to clearly and publicly articulate the fundamental principles of domain ownership and registry function.

What is the economic function of a registry?

Is a registry like a librarian whose function is to maintain a list of books, provide access to those books at a fixed rental price and in the most reliable and efficient manner?

Or is a registry like a book business where it aims to obtain and then supply books at the highest prices the market will support? Perhaps by charging people more to rent the most popular books, perhaps running auctions and incentives in order to transact as many books as possible?

The market will recognize the librarian model+even if ICANN does not, quickly and effectively ensuring that in a very short space of time the actual heavy lifting and mechanics of registrations will in the main be contracted out to a handful of specialist registry companies like VeriSign, Afilias & NeuStar.

This is already happening with a handful of specialist companies providing the actual registry services.

.com .name and .net (VeriSign)
.biz .travel and .tel (NeuStar)
.aero .asia, .info mobi and .org (Afilias)

Part of this process will almost certainly lead to further consolidation, with larger players acquiring not only the technical services of the newer smaller registries but also the whole businesses as demonstrated with VeriSign's acquisition of .name and Afilias's more recent acquisition of .mobi

Rather than introducing competition the GNSO proposal for new gTLDs could be more akin to licensing contracted parties rights to sell more product lines.

Dangerous assumptions in the GNSO proposal for new gTLDs

From the outset the various Draft Applicant Guidebooks (DAGs) have presented many issues as ready for implementation. What may seem relatively minor issues in the overall scheme of the project to introduce new gTLDs to improve the Domain Name System (DNS) can have massive economic implications for virtually every user and future user of the Internet.

After the initial public reaction to the first DAG ICANN presented the four overarching issues . Trademark Protection, Malicious Conduct, Security & Stability: Root Scaling and TLD Demand and Economic Analysis. Later a fifth issue - Vertical Integration of Registries and Registrars was introduced. Vertical Integration is really just a single sub-issue from one of several wider economic implications of introducing new gTLDs.

The early DAGs sort to make Vertical Integration as a given and simply presented Vertical Integration as the natural solution as to how new gTLDs should be implemented.

It subsequently became apparent that this seemingly innocuous proposal would almost certainly lead to massive gaming of the implementation of new gTLDs primarily to the benefit of certain contracted parties. The Board then effectively reversed the DAG position and a GNSO Vertical Integration working group (VI WG) was set up to seek consensus on any amendments to the Board's position on implementation.

The nature of the participation in the GNSO VI WG is of particular interest because the majority of the participants are contracted or would be+contracted parties and as a consequence they are directly economically impacted (both for significant benefits and losses) from how this issue is resolved.

Because the VI economic impacts are more immediate to their personal and business interests than many of the other economic impacts from new gTLDs the issue has been subject to vigorous discussion with the extensive articulation of positions seeking to draw any final proposals towards preferred positions. This has led to over 3000 email posts on the VI WG mailing list even before

the Draft Initial Report has been issued and without any significant signs of consensus being achieved for the initial report.

The proposals from the GNSO for new gTLDs and subsequent DAGs contain far greater economic impacts for the Internet as whole. It is therefore vital that the second part of the Economic Analysis reports identify these wider economic impacts thereby enabling ICANN and the wider community as a whole to begin to understand, (as the contracted parties have with their interests in VI) just how involved and far reaching some of the seemingly innocuous concepts behind the GNSO proposal for new gTLD process actually are.

In the same way the original GNSO proposal for new gTLDs ~~assumed~~ vertical integration was how new gTLDs should be implemented, many of the implicit assumptions for implementing new gTLDs have been drawn up by committees dominated by contracted parties. There are fundamental questions that need to be redressed at a much higher level before delving into the details, such as the costs and benefits of defensive registrations etc.

For example: A commendable tenet of the original GNSO proposal for new gTLDs was that existing incumbents should not be allowed to prevent entry. Subsequently a principal was articulated that ICANN should not, for a number of reasons, including transparency, be in the business of picking winners and losers from applicants for new gTLDs.

The assumption that these two ideas should simply be combined in the name of equal competition (~~entry~~ as termed by Professor Carlton in his earlier economic reports) whilst convenient for the interests of contracted parties is not in the wider public interest and has led to many of the issues which have delayed the new gTLD process.

The economic impacts of this approach far outweigh the discussion of the VI WG but as yet there has been a noticeable absence of discussion on the matter. This absence of consideration by the wider ICANN community runs the risk of irreversibly damaging the DNS.

We spent a great deal of time responding to individual issues and points in the Public Comment period for the Final Carlton Report.

Our comments <http://forum.icann.org/lists/competition-pricing-final/msg00014.html>

However we see little mention of these and other issues raised during the public comment period. There has never been a publicly posted summary of these comments [as of July 21, 2010] and this may explain why the authors of this first part of this current economic report do not discuss these issues in depth. <http://forum.icann.org/lists/competition-pricing-final/>

Externalities for registrants in existing gTLDs not considering purchasing new gTLDs

A further well intentioned notion is that new entrants to the gTLD registry market will not have economic power and therefore should not be constrained with price caps. Whilst a commendable goal it should be noted that new gTLDs are proposed as an addition to an existing system and indeed proposed as an addition to probably the most successful system in the history of mankind.

As an existing system existing contracted parties are subject to existing rules and frameworks. One of the key tenets of this existing framework is that all contracted parties should be treated equally. This means if new gTLDs are launched without price caps on the principle they do not enjoy market power and given existing registries do not all enjoy the same level market power, smaller existing registries which consider themselves to have less market power than larger incumbents are likely to apply to have their price caps lifted.

This has the potential to introduce massive externalities for existing innocent third parties.

The removal of price caps also raises the issue of differential pricing. i.e. dinghy.xyz is likely to be considered more valuable than yacht.xyz. Again if all registries have to be treated equally this introduces the possibilities of massive externalities for registrants in existing gTLDs simply because of the GNSO's desire to introduce new gTLDs to give the somewhat questionable appearance of competition in the gTLD space.

Even if restrictions on differential pricing are introduced in the live periods there can be substantial economic impacts during sunrise launches where businesses and mark holders operating in other gTLDs feel the need to protect their marks defensively. A substantial number of new gTLDs launching vastly increases the magnitude of these externalities.

Why are new gTLD categories so important?

It is clear from various website (including sites like <http://www.newtlds.tv/> mention in the first part fo the report) around the Internet where people are discussing possible applications for new gTLDs that applications for new gTLDs are likely to be clustered around several distinct purposes

IDN . (International Domain names (Languages not based on ASCII characters)
Geographic - (.nyc .berlin)
Community & language - (.scot .cym)
Technical & Innovative - (.tel conversions for telephone numbers & domains etc.)
Corporate & Brand - (.canon)*
Generic - (.news .shop .site)

*.canon is the only corporation we are aware of so far to express an interest in a .brand gTLD

The whole of GNSO proposal for new gTLD implementation evolves around trying to develop a single framework for all types of gTLD. Since the initial DAG, there has been a reluctance to discuss or amend the one size fits all approach which is very concerning for a bottom up or consensus driven organization. It is clear even to the uninformed observer that each category will introduce markedly different externalities and provide markedly different levels of social benefits.

Further this approach leads to the impression at least that ICANN has been captured by vested interests and the new gTLD process will implemented as a one size fits all regardless of community concerns. The one size fits all approach is convenient as the demand for new gTLDs is unlikely to be uniform, indeed much of demonstrable need for new gTLDs could be satisfied by concentrating on specific needs.

By continuing to adopt a one size fits all approach for all new gTLDs ICANN is missing a huge opportunity to shape the proposed introduction of new gTLDs for the public interest. Without categories the new gTLD framework has to be far more constrained to cover for eventualities many of which have absolutely no bearing on all but one category and therefore introduce needless regulation and needless complexity for other categories.

The only area of the VI discussions to reach a limited form of consensus ironically was to provide exemptions for the most economically advantaged group of would be new gTLD applicants for .brands!

Each of the likely types of gTLDs bring individual policy concerns however two of these types have the potential to bring fundamental economic changes to the Internet and not necessarily in a

good way.

Corporate & Brand gTLDs

.com isn't sold or advertised by VeriSign. It is sold and branded implicitly by virtually every major corporation using it day in day out across all their communications. It's that simple.

The success of the internet is because it delivers efficiency to the market place. It enables anyone to reach an unfathomable number of people simply by buying a domain name. Cost - \$10 + hosting per year. Mind blowing!

ICANN's new gTLDs for corporations and brands changes this by taking advantage of the efficiencies afforded by the original design of the Internet over non internet models. And in doing so creates a super league the cost of entry to which is \$185,000 and \$25,000 + hosting per year.

Recent trends in brand evolution have led to many websites both on and off line using a more and more minimalist form

<http://www.brand.com>

www.brand.com

brand.com

.brand if allowed may follow

If this happens and is reinforced worldwide in corporate communications day in day out users will quickly come to recognize that a brand to the right of the dot is a major player and therefore by implication a brand to the left of the dot will be perceived as a lesser brand.

The level playing field of the internet is destroyed and a super league created.

The Creation of a Super league

There has to be serious economic concerns not least because a single layer model to the right of the dot can never replicate the complexities of businesses around the world. Whilst initially appearing to offer more freedom for new domains it actually offers less freedom.

For example if there is .dell .ibm what about brands like .hp? HP is seriously disadvantaged simply because its brand is 2 letters and 2 letters are reserved for country codes.

Or the fact that it offers a system where there can only be one organization to the right of the dot - ever! This is a step backwards from the existing system which by careful management of competing open generic gTLDs allows multiple totally separate entities to each enjoy a similar level of branding in the second level to the left of the dot.

What about organizations whose names conflict with geographic areas? .amazon? What about organizations or brands that share a name with places that may in the future have a need for an internet presence? .moon or .saturn etc. What about companies whose brands are already taken like .cat?

But most importantly a Super league destroys the ability to compete on a level playing field. At the moment to launch some software designed to compete with Microsoft or Sun its \$10 + hosting a year then it's down to skill and innovation.

A super league changes this and medium sized players will have to consider whether it worth spending \$185,000 + \$25,000 per year with ICANN to enjoy the same level of branding and enter the Super league. For startups and smaller players cost of admission to this implicit branding advantage is likely to prove prohibitive.

The Creation of Private Monopolies

If day to day usage and advertising of corporate bands to the right of the dot means they enjoy competitive advantage then generic names to the right of the dot will become to enjoy a similar branding advantage.

Generic names such as .news .shop .store .music .radio and .movie will become to be perceived as superior. Their simple existence will allow the creation of a series of individual worldwide monopolies which will be awarded primarily for the benefit of the most economically advantaged.

Because of the unique signaling each gTLD brings very few gTLDs will compete with each other but will rather provide a monopoly advantage to single entities (and mixed entities) to compete with businesses operating from the second level in existing open generic gTLDs like .com.

What happens if Microsoft applies for .search? If they are granted rights to .search how is google.search handled? Maybe Microsoft would be happy to allocate it to Google especially if they can use shopping.seach, images.search & video.search to point to their own search engine Bing. This really blurs the DNS framework with the existing entities providing a recipe for consumer confusion to be replicated in every vertical.

What happens if Rupert Murdoch purchases a controlling interest in a company which is awarded .news?

As a case study, the award of the .jobs gTLD illustrates the problems with awarding monopoly positions. .jobs was initially awarded to serve the jobs industry. The original concept was simple any real world entity offering verified services in the jobs industry could apply for *their-name.jobs*. The concept was to provide a verified level playing field for the whole industry. However the people running .jobs have realized that generic names such as engineering.jobs or atlanta.jobs could generate additional revenue and recently have applied to ICANN to have their contract amended to allow the registering of generic names.

The Jobs industry has identified that this application fundamentally changes the economics of their relationship with .jobs. Whereas .jobs was setup to be run by an entity providing a service to the worldwide jobs community, the entity running .jobs is now seeking to leverage its relationship with ICANN to enable it to compete against the same community whose support it elicited and required for its original application.

Several people in the industry have realized the economic implications this change will make and there are around 300 comments objecting to the creation of this monopoly position in the recent ICANN comments period on the request for changes submitted by the .jobs registry.
<http://forum.icann.org/lists/jobs-phased-allocation/>

It will undoubtedly be argued that the application is creating %competition+as per the simplistic notion of entry providing competition in the earlier economic studies from Professor Carlton, but there has to be serious questions as to the ethics of allowing ICANN to provide its own contracted parties with advantage in their competition with all other entities in their industry simply because of their contractual arrangements with ICANN.

Awarding a generic gTLD in any industry to an applicant based in, or controlled by someone in

the same industry, is game changing compared with the current system which allows numerous individual entities to compete equitably in the second level of open gTLDs and ccTLDs. Trademark Law doesn't allow this advantage to be conferred nor should ICANN.