

## **1. An Economic Framework for the Analysis of the Expansion of Generic Top-Level Domain Names**

2. Given the professional standing of its three authors, it is incredible that ICANN's latest Economic survey into the likely effects of new gTLDs again completely fails to consider the impact on the internet of the million name root, as anticipated by ICANN director Harald Alvestrand during the public forum session in Seoul in October of last year, 2009.

3. Whilst Mr. Alvestrand, admitted in Brussels that his apparent support for a root of a million names was due to his imperfect grasp of the English language, which is not his native tongue, the clarity of his vision of the future internet root cannot be ignored.

4. For the record, in responding to a question from French GAC representative, Mr. Bertrand de la Chapelle, regarding a "one level DNS" and the possible ramifications of a "DotIBM" TLD "that fully uses the second domain", Mr. Alvestrand stated, "the place I see us going is with everything significant is named at one level and people might have second level things under that but a root of a million names is not something I... is something I have several reasons not to dislike. But the chief driver, the chief indicator of such a thing will be the one component names. That is <http://mykey/>".

5. Whilst, to my knowledge, only Mr. Alvestrand has so far publicly voiced this opinion, none of the other ICANN board members present at the time, including both Chairman Peter Dengate Thrush and CEO Rod Beckstrom, disputed Mr. Alvestrand's view.

6. Accordingly the fact that ICANN commissioned an economic report into the anticipated effects of new gTLDs without, apparently, specifically instructing the authors to consider the vision of one of ICANN's most technically expert directors demonstrates an incredible oversight on ICANN's part, even if unintentional.

7. Nevertheless, whilst the report's authors might not have been specifically instructed to investigate the impact of a million name root, they were instructed to study "published studies and resources that describe the potential impacts of new gTLD introduction".

8. As the Report is dated June 2010, the authors should have been aware not only of Mr. Alvestrand's views but also of similar concerns raised at ICANN public forums in Mexico City, Sydney, Seoul and Nairobi when, amongst others, I have raised my concerns regarding the imminent threat to the DotCom brand and the arrival of the million dollar internet presence that the introduction of an unlimited number of new gTLDs heralds.

9. The Report, instead, focuses on 5 studies and an interview. Two of the studies, by Krueger & Van Couvering and Paul Stahura, were prepared by individuals who added their names to the September 21st 2009 letter to ICANN calling for new gTLDs, whilst the interview was with Nick Wood, identified in the report as "Nick Wood, Com Laude" rather than as a director of "Valideus, gTLD Consultancy, Application and Registry Management". Mr. Wood was also a prominent member of the IRT team that developed the Trademark rules for new gTLDs.

10. Accordingly the above studies/interviews should be considered very cautiously if a balanced report, free of conflict of interest, is to be produced.

11. Two further studies, dated 2002 and 2004, by Zittrain & Edelman and Summit Strategies respectively, were considered but in view of comments contained in Section 4 of the Report, in which the authors state that “no study of past behaviour, however can predict the future costs and benefits for an entirely new set of circumstances” such as the proposed new gTLD release, they can also be dismissed (as should much of the rest of the Report).

12. The Report does however refer to one study that presents interesting information being that prepared by Moore & Edelman, dated 2010, which examined 3,264 domains of at least 5 characters listed in the most popular 6,000 domains by Alexa.com on June 29, 2009. This study claims to have found 1.9 million registered .com domain names that were plausible misspellings of those 3,264 popular domain names, estimating that 900,000 of them are “typo” domains ie. deliberate misspellings of the target domain name. Whilst on average each domain had 280 typo domains, Google.com reportedly had about 2,500.

13. Elsewhere, in Section 16. under Background, the report also cites a Department of Justice letter from then Acting Assistant Attorney General, Ms. Deborah Garza, expressing the view that the “.Com registry would not be constrained by new gTLDs”. That letter, however, was written in December 2008, well over a year before Canon Inc. announced their intent, despite owning Canon.com, Canon.ca, Canon.co.uk and no doubt many other Canon domains, to apply for .Canon in the first round of gTLD applications, a fact mentioned in Section 29. of the report.

14. This should demonstrate to anyone interested in observing it, that rather than complimenting existing TLDs, the new gTLDs offer companies the single component DotBrand domain name envisioned by Mr. Alvestrand in Seoul (providing they can afford them) and as such, as a group of domains, have the potential to completely replace the existing TLD framework if steps are not taken to prevent it.

15. Secondly, the Authors were asked to “Examine theoretical arguments about the benefits and costs of an increased number of gTLDs”.

16. Whilst the authors refer, in Section 3. to ICANN estimates that prospective registry operators may apply for hundreds of new gTLDs, it is not clear whether this is the reason they apparently fail to consider a larger root, even if not a million name root. Accordingly, the Report authors, in Section 41. when considering Costs to competing registries, assuming that competition will result from the introduction of new gTLDs make the “strong presumption that the overall social benefits of competition will be positive” allowing them to “not discuss these costs further”.

17. The Authors also have an incredibly naive opinion of the motives of Search Engine operators, apparently believing that such operators are motivated solely by the public interest function they perform.

18. Accordingly, in Section 43. the Report outlines the increased search costs especially for users not using search engines to find what they are looking for, apparently ignorant of the recent case

in which Google was sued by the owners of the Louis Vuitton brand because Google had sold the search term to a competitor or Google's sale of the search term "Gordon Brown" to the British Conservative party for the recent election campaign.

19. The Report goes into some detail regarding Trademark issues and the rights protection issues that may be incorporated with the release of new gTLDs, describing, in Section 47, how "the significant costs of applying for and operating a new gTLD reduce the likelihood of cyber-squatting at the gTLD level". The Report, however, fails to recognise that .Canon, the only gTLD so far of interest to any major corporation, is a generic term, meaning "a general law, rule, principle, or criterion by which something is judged" and refers specifically to the "collection or list of sacred books accepted as genuine" which form the basis for the Catholic faith.

20. Accordingly, regardless of any trademarks Canon Inc. might hold, if it is awarded the .Canon gTLD, it will, effectively, be cyber-squatting, albeit legally and with ICANN's assistance, on a generic term that clearly belongs to the Catholic Church, unless the Catholic Church is prepared to negotiate what its followers would no doubt view as a sacrilegious deal with Canon Inc..

21. But .Canon is not the only generic term prospective applicants have expressed an interest in registering. Since Trademark law does not permit the registration of indistinct trademarks or generic terms, the Reports statement, in Section 47, that "people without a legitimate right to a brand name are unlikely to try to register that brand name" at the gTLD level, is completely inaccurate. No organisation can have any legitimate right to any generic term at the gTLD level because no generic TLD is sufficiently distinct to be a trademark whilst ICANN refuses to recognise the rights of the only legitimate claimants to such gTLDs, being the current DotCom registrant of whichever generic term.

22. Whilst, in Section 48, the Report recognises the incentive brand owners will have to register domains within new gTLDs "defensively" to protect their brand, the report fails to recognise that if new gTLDs number even only several hundred, the cost of registering a new gTLD, with the protections at secondary level as currently proposed, is all but free, as regards the ICANN fee, since 200 secondary gTLDs at \$100 per annum per domain equates to \$20,000 per year which would make the \$185,000 capital payment for the TLD a bargain. Furthermore, as the number of TLDs rises the value of the TLD, simply in terms of the protection it offers at secondary levels rises too to the point where even the most blinkered Company executives will not fail to recognise the bargain they represent, especially since companies that failed to recognise the commercial opportunities the internet offered in time to obtain their DotCom domains, will be keen not to repeat their mistake.

23. Additionally, suggestions that new gTLDs will have protection against similar strings at TLD level not to mention typo errors (if Moore & Edelman's claim that each of the top 3000 domains had an average of 280 typo domains associated with them is accurate, are we to believe that ICANN will assign 280 TLDs for each one registered?) and International Domain Names (DotMusic received a sympathetic ear to their suggestion in Brussels that TLD applicants should be given the IDN's for their TLDs at a substantially discounted rate), the decision by any even medium sized company not to register a gTLD at the first available opportunity will be an incredible mistake; especially since as stated, in Section 17. of the Report, "ICANN does not

intend to restrict the number of new gTLDs that it may delegate in the current round. Under the Board-approved policy, ICANN would accept any new gTLD as long as it met all of the criteria established by ICANN and survived any objections raised by parties with standing to object.”

24. Even the Report, itself, in section 37, outlines reasons why Companies will want their own TLDs, stating that “new gTLDs might reduce search costs by making it especially easy for Internet Users to find an organisation’s website” because “For example, Acme Corporation may be able to send a strong signal of its location on the Internet by registering .Acme as a new gTLD” and “In examining a list of search hits, users would probably view .acme as more likely to be Acme’s official website than acme.<gTLD>”.

25. Amazingly, however, the report’s authors still somehow fail to follow their reasoning to its logical conclusion, being that in future every company will desire their own gTLD in exactly the same way every company today desires its own DotCom.

26. As for the benefits of new gTLDs the report states, in Section 81. that “new gTLDs might generate benefits by providing competition to existing gTLDs resulting in lower quality-adjusted prices,” Although this may very briefly be the case, as we have seen above, absent any intervention by ICANN (including failing to alert the general public to the opportunities presented by new gTLDs, something it is already several years late in doing), the new gTLDs will completely replace the DotCom registry and with it all 85 million DotCom domains in a very short period. In addition the 200 million or so DotCC domains will become secondary to the million or so new gTLDs rather than being secondary only to the DotCom of the same name as it is now.

27. Whilst some new gTLDs, probably categories of TLDs such as DotCities, will emerge as genuine registries to replace DotCom, which for reasons described below will be consigned to the trash pile, any commercial operation without its own TLD will be viewed less favourably than one with it.

28. Accordingly, whilst today a top quality internet presence can still be obtained in the DotCom registry for a matter of dollars the cost in the future will be around a million dollars for a TLD which will enjoy only the same level of exposure as that currently enjoyed by DotCom domains.

29. Since in Sydney, ICANN’s chosen economic expert, Mr. Steven Salop, who, with Tom Krattenmaker, reportedly developed and articulated the concept of raising rivals costs, spoke about market power as the opposite of intensity of competition. Mr. Salop noted that the key to competition is maintaining minimal barriers to entry because where there are no barriers to entry, competition will be intense and there will be no prospect of market power.

30. The introduction of unlimited numbers of new gTLDs with the inevitable rise in the cost of a premium web address from the \$10 or so dollars today to the million or so dollars it will cost for the gTLD domain of the future, will create a massive barrier to entry with the resultant damage to competition.

31. Although some people may claim that most prime DotCom addresses have already been registered, as the Mean Sales Prices of Second level Domains on the Secondary market, quoted in Section 87 of the report, fell from a peak of \$5,016 in 2007 to \$1,829 in 2009 and Median Prices, quoted in Section 88 of the report, are as low as \$410, (although I seriously question those figures) current financial barriers to entry are nothing compared to the financial barriers that will result should the new gTLD roll-out go ahead as envisaged.

32. In addition the above ignores both the additional barrier to entry caused as a result of the new Rights Protection Mechanisms and the value to successful new gTLD registrants offered by those same mechanisms which will extend trademark law to previously unimagined levels by preventing the registration of similar strings both at TLD and secondary levels.

33. This unprecedented expansion of trademark law is a direct attack on those companies and individuals who were sufficiently aware of the ramifications of the success of the DotCom registry, to realise that the registration of a legitimate DotCom rendered Trademarks obsolete and who, as a consequence, even today have not registered their DotCom brand as a Trademark. Trademark lawyers, however, in contrast to those forward thinking DotCom registrants who shunned them, will be amongst the major beneficiaries of new gTLDs, even if only in the short-term.

34. In addition to the erroneous belief that new gTLDs will generate competition for existing TLDs, the Report also suggests, in Section 82. that new gTLDs will allow “the registration in new gTLDs of second-level domain names that already exist in current gTLDs”.

35. Unfortunately, whilst in theory this seems like an obvious benefit, in practice, because of the rights protection mechanisms proposed by the IRT, the opposite will in fact occur. Since it should now be apparent that at just \$185,000 (which is less than the average price of a home pretty much anywhere in Canada) new gTLDs will be a bargain, anyone with a half decent chance of registering one will attempt to do so. Since the first TLDs to be registered will be the most popular and they will include typo, similar string and secondary level protections as mentioned, as TLDs are registered, the ability to register those same strings at secondary levels will be denied.

36. Accordingly, only the most unattractive names will be available to be registered, exacerbating the current problems and increasing the extent to which the internet will be controlled by a tiny minority of the worlds biggest corporations.

37. Whilst the Report, in Section 52., considers the adverse effect on Trademark holders of “freeriding” it completely overlooks the extent to which registrants of new gTLDs, such as .xxx, .hotel, .shop and .music will be freeriding on existing businesses one sees advertising in magazines, movies, television shows, advertising hoardings and shop windows, confusion which the addition of the DotCom, DotNet, DotCC and other TLDs prevents.

38. Finally the Report, in Section 29, makes the hilarious claim that one of the most important reasons to consider expanding gTLDs is “the chance that a new gTLD and/or its sponsor could provide an innovative, heretofore, unimagined business model”.

39. Whilst the Report, in Section 81, substantially withdraws this claim, stating that “it is inherently difficult for an economic study.....to anticipate the benefits that could be generated by new business models that rely on unique characteristics of new gTLDs not yet introduced” the foregoing should not be allowed to pass without comment.

40. For any serious Report to refer to important benefits that cannot be imagined is ridiculous, not least because Domain Names do nothing except point to IP addresses. As such a domain name cannot possibly be responsible for any “innovative, unimagined business model”. However the money that companies know they will make as a result of being given new gTLDs could be viewed as sufficient incentive to delay the introduction of improvements and innovations, such as making the internet safer for children and less prone to fraudsters, until such time as the new gTLD carve-up has happened and then it can be claimed the improvement somehow depended on the new gTLD.

41. The Report identifies two areas where new gTLDs would be a good thing. With regard to certain communities, physically or otherwise connected such as the DotCity TLD proposals; and International Domain Names, which were approved in Seoul.

42. Both proposals add variety to the Domain choices without causing confusion since it is unlikely that confusion would arise from domains having similar names if one was in a .NewYork TLD with the other in .Paris. Similarly, IDNs offers an improvement in the certainty of internet addressing in areas where English is not the first language.

43. In addition to its failure to recognise the threat posed to DotCom by the new gTLDs as a whole, the Report also fails to address the impact recent developments regarding ICM’s DotXXX will have on existing gTLDs, again notably DotCom.

44. Net users have long demanded the ability to regulate the content they and their families have access to over the internet but ICANN has repeatedly denied that right, notably in its refusal to introduce a DotXXX TLD.

45. Whilst ICANN is finally considering granting ICM the right to the DotXXX TLD if it is to have no association with Verisign and the DotCom registry, the ability to insist non-family appropriate content is moved from DotCom to DotXXX will be lost. Since new gTLDs will have the opportunity to refuse to host adult content, on the reasonable grounds that a dedicated TLD exists for precisely that kind of content, ICANN will be consigning DotCom, denied the opportunity to insist that sort of content is removed from its domains, to being grouped with DotXXX, as a TLD which members of the public, notably parents and child minders, will seek to block in order to ensure they do not have access to pornography.

46. Accordingly, new gTLDs, by simply refusing to host the sort of content which many internet users have been shocked by for years, will have a distinct and marketable advantage over DotCom, which is being denied that opportunity by ICANN, even with its over 85 million registrants.

47. ICANN's stance appears to contradict the belief, expressed in the Report, in Section 56., that "ICANN is already committed to examining applications for potential significant external costs" since the greatest public benefit would be to allow the existing TLDs the opportunity to become family friendly, not least since the new gTLDs will not be operational for several years and because of the likely existence of DotXXX have no reason to permit non-family appropriate content.

48. Other advances that may benefit new TLDs but not necessarily existing ones include the improved security of the High Security TLDs, which currently involves little more than the enforcement of responsible business practices, which should have been in place long ago. As apparently proposed, these new HSTLD practices will benefit only those existing TLDs whose registry operator chooses to adopt them. Coupled with DNSSEC root signing procedures, which again will not immediately benefit existing TLDs, this is another avoidable reason DotCom will be consigned to the garbage bin, soon after the launch of the new gTLDs, always assuming they go ahead as planned.

49. Accordingly, small businesses and individuals currently content in the price-capped luxury with which their early adoption of a DotCom internet presence rewarded them, will be forced to register with as many of the new gTLDs as they can until, out of the chaos that will ensue over the next 5 or so years, the new preferred secondary TLDs (or groups of TLDs), below the DotBrands, emerge.

50. Of course, none of the new preferred secondary level TLDs will have the benefit of price-caps or other customer protections, so once the new preferred TLDs have become established, Registry operators will be at liberty to raise prices as much as they can without alienating their "locked-in" customers so much they force them to relocate to another TLD. As indicated in the report, however, because of costs involved in relocation, including the brand awareness that comes with prolonged marketing, registrants need to be very dissatisfied before considering changing TLDs.

51. In such a market one of the biggest winners will be the search engines. With the numbers of TLDs likely to skyrocket, the 90% of users who today use Search Engines will increase also. Furthermore, because the average domain registrant will be unable to obtain a TLD, they will be forced to choose a secondary domain in a market where there may be no clear frontrunner for sometime. Accordingly, since Rights Protection Mechanisms may well prevent the registration of any memorable name that is listed either in the TM Clearinghouse or has been registered at the Top Level, the ability to register a memorable name will be severely restricted. Accordingly the ability to be found will depend on the extent to which such companies can achieve good search engine visibility.

52. Since the Search Engines will become of so much more value to such companies, I find it impossible to believe that the likes of Google, Yahoo and Bing, all of which have had real influence on ICANN's new gTLD initiative, will continue to routinely return companies not buying keywords or otherwise rewarding them, higher than those that will.

53. In light of the above and in view of the fact that ICANN was established with a view to maintaining the stability of the internet whilst promoting competition in the domain name market, I believe the new gTLD program represents a complete betrayal of the trust the public has placed in ICANN.

54. As I said in Mexico in March 2009, I believe the internet is worth approximately \$100 trillion, being 10% of the Global GDP of around \$60 trillion dollars, capitalised at 6%. Whilst the 10% may be high and it may only be 5%, in the current market one could argue that the capitalisation rate could be as low as 1% which together would give it a value of \$300 trillion.

55. Assuming, however, that its value is only \$100 trillion, it is my belief that the DotCom registrants collectively hold about 50% of that value. Whilst the DotCom Registrants include Facebook and Google which between them account for many billions of that total amount, because of the price-cap on the DotCom registry, each DotCom domain has an average value of something over \$500,000.

56. Accordingly, if DotCom can be smashed and that potential value released then technically there is a \$50 trillion dollar pie to be shared by those lucky enough to get a slice.

57. However, it is my belief that the development of the internet has been deliberately “cultivated” by those with the power to organise such things, so that its development, popularisation and commercialisation have all been financed at the public’s expense in order that now, it can be privatised and its value passed to the world’s most powerful companies at a fraction of its value.

58. Having brought the internet to this point, where its massive value is spread among 85 million domain name registrants, who have invested time, money and effort into developing resources to entice their friends, neighbours, family and customers to use and trust this incredible tool, the key now to releasing that “locked-in” value, is to destroy DotCom.

59. It is my belief that that ICANN has been preparing to do precisely that for the past 10 years, when it first became apparent to me that the body responsible for running the internet was not doing all it could to keep those using it safe both from vile content and from vile people.

60. Competition is not a problem on the internet. There are 85 million DotCom registrations with more being added daily yet few have ever been traded for over a million dollars although a couple have fetched over \$10 million. As indicated in the report, most domains trade for a few thousand dollars so a lack of affordable domain names in the DotCom registry is not the problem.

61. There really are only two problems when it comes to the internet;

1. the kind of content people sometimes unintentionally come across, including specifically pornography, and



2. the ability of criminals and other scam artists to operate anonymously or under assumed identities.

62.ICANN could easily have acted to restrict pornography by permitting the DotXXX TLD, as voiced by Dave,Wodelet, the ICANN board member who stepped down in Mexico. I am convinced it could also have done much more than it has to remove the anonymity that has allowed crime to flourish on the internet.

63.(Facebook, which recently announced its 500 millionth member has achieved its success by enabling members to largely overcome both those problems by developing a network of friends to help them safely navigate the internet by vetting and recommending to each other content they know they will each enjoy.)

64.I have long believed that ICANN has done almost nothing to address the problems of pornography and fraud on the internet.

65.It is my opinion that ICANN has deliberately allowed DotCom, to become the cesspit it is, to enable its destruction in order to “release” the trillions of dollars in value held, very often, unknowingly by DotCom registrants, who ICANN have consistently refused even to notify of the now almost imminent new gTLD proposals.

66.As porn and fraud free new gTLDs attract increasing numbers of businesses, by offering enticing terms and prices, ISPs and Search Engines will begin to offer users the ability to block results from certain TLDs, amongst them DotCom. Regular businesses, finding they are being blocked by potential clients, will leave DotCom in exactly the same way respectable businesses in the past have left the downtown core for the clean new shopping malls on the edge of town.

67.With DotCom destroyed the next step will be to encourage enough TLDs so that the level of confusion becomes so great that the introduction of the single component domain name will be seen as a relief. At that point, the theft, as I see it, is complete and the fact that companies profiting will be profiting because DotCom was allowed to become a cesspit by those whose duty it was to ensure its stability, will be nothing more than an unpleasant memory.

68.Right now the majority of the value held by DotCom registrants will be held by North Americans. However, the companies to which that value will be transferred will be corporations with no affiliation to any nation state. Accordingly, once the corporations have taken charge of the internet, America’s last great asset, there will be nothing to keep those corporations in America and if they leave, or rather when they leave, America will be bankrupt and the global economy will be thrown into turmoil.

69.Of course not many within ICANN agree with my views. However given Mr. Alvestrand belief, as expressed recently in Brussels, there is also a major difference of opinion between him and the authors of this study who fail in a 64 page report to even identify the possibility of a root zone of a million names let alone recognise it as the “terrible idea” Mr. Alvestrand believes it would be. Nonetheless, it is a terrible idea that will happen unless ICANN takes immediate action to prevent it.

70.The report concludes. “Looking to past experience to shed light on the likely cost and benefits of new gTLDs is problematic for two reasons. First the introduction of large numbers of new TLDs...has the potential to change the way website owners communicate and do business with internet users.” “Second, piecing together bits of information as we propose...is in many cases seriously hampered by the paucity of relevant data. These facts led to two conclusions.

71.First, it may be wise to continue ICANN’s practice of introducing new gTLDs in discrete limited rounds.”...

72.“Second.. ICANN should adopt practices that will facilitate the assessment of the net benefits from the initial rollout of additional gTLDs.

73.In other words, ICANN wants new gTLDs so do it and let’s see what happens.

74.The trouble with that strategy is that once the gTLD genie is out of the lamp, it won’t be going back in.