ICANN

New Generic Top-Level Domains: Trademark Issues, Malicious Conduct

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Purpose and Agenda

- As the introduction of new top-level domains becomes imminent, ICANN is holding a series of discussions focusing on:
  - Protections for trademark holders
  - Prevention and mitigation of malicious conduct

- These meetings are intended to discuss the merits of possible solutions to these issues for inclusion into the Applicant Guidebook (defining the process by which one applies for a gTLD)

Agenda

- Introduction, New gTLD background

- Trademark issues
  - Potential Solutions
  - Discussion

- Malicious conduct
  - Issues
  - Potential sloutions

- Root zone scaling and the Marketplace

ICANN Formation and New gTLDs

- A core objective in founding ICANN; a requirement in each of ICANN's agreements with the USG (1998 – present):

  > "Define and implement a predictable strategy for selecting new TLDs"

- Fostering choice and competition in provision of domain registration services

- White Paper in 1998: "The new corporation ultimately should … oversee policy for determining the circumstances under which new TLDs are added to the root system"

ICANN Policy Development Process

- Policy development process by ICANN's Generic Names Supporting Organization (GNSO) initiated Dec 2005, completed Sep 2007

- Terms of Reference (questions to be answered):
  - Whether to introduce additional gTLDs
  - TLD string selection criteria
  - TLD allocation methods
  - Contractual conditions

- Policy embodied in 19 separate recommendations

Policy Conclusions

- New gTLDs will benefit registrant choice and competition; implementation plans should be created

- The implementation plan should also allow for IDNs at the top level, and ideally implemented at the same time as new ASCII TLDs

- Introduction of new gTLDs should not cause security or stability issues - security and stability concerns with root zone operation can be addressed through the adoption of sting criteria

- Protection of various appropriate interests requires objection and dispute resolution processes
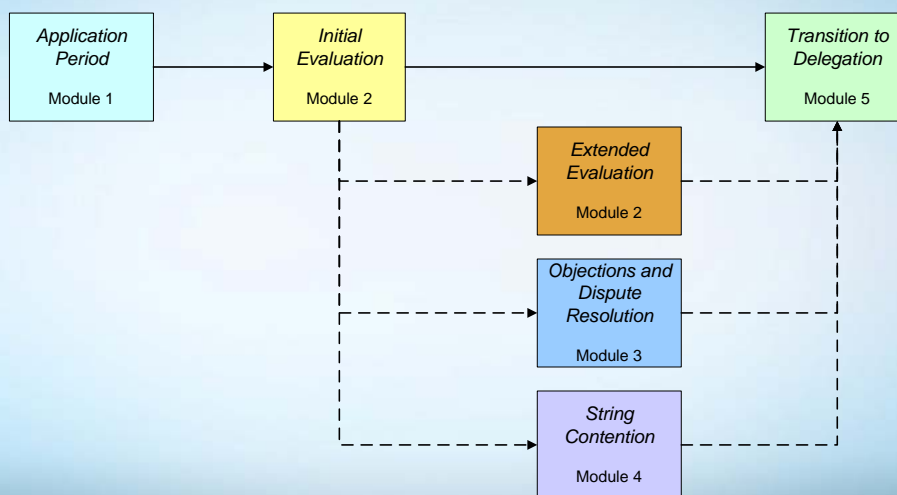
Principles of the Implementation Process

- Care/conservatism: While speed, efficacy and efficiency are all important: protection of registrants, DNS stability and security is paramount.

- Application proceeds are planned to cover costs.

- ICANN will provide a clear, predictable, timely road map for the application, evaluation and delegation of gTLD strings.

- Some applied for strings are so objectionable, they should be excluded through an independent process, if they:
  - clearly incite certain malicious behavior,
  - are an infringement of rights, or
  - are a misappropriation of a community label.

New gTLD Evaluation Process

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Application          Initial                              Transition to
Period               Evaluation                           Delegation

Module 1             Module 2                             Module 5

                                  Extended
                                  Evaluation

                                  Module 2

                                  Objections and
                                  Dispute
                                  Resolution

                                  Module 3

                                  String
                                  Contention

                                  Module 4
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Key Sections of the Applicant Guidebook (RFP)

- Module 2 – Evaluation
  - Strings are reviewed for: DNS Stability, User Confusion, and Governmental approval (if required)
  - Applicants are reviewed for: Financial Capability, Technical Capability, and Registry Services

- Module 3 – Objection & Dispute Resolution
  - Grounds for objection
  - Standing and standards
  - Dispute resolution procedures

- Module 4 – String Contention
  - Identification of string contention set
 - Processes for resolution of that contention

Where are we in the process?

- ICANN published two versions of the new gTLD draft guidebook and explanatory memoranda in November 2008 and March 2009

- Extensive thoughtful, constructive comment:
  - Nearly 500 comments, 100s of pages
  - Significant comment in other fora

- Comment analysis, launch over arching issue study, revised Guidebook and explanatory memoranda published

- This is the ICANN process at work

Nature of comments

- Implementation comments: requests for change
  - Examples include fee structures, definition and qualification of a community-based applicant, contractual issues, timing issues and more
  - Handled in "typical" manner

- Elements requiring explanation: requests for elaboration
  - Examples include refund approach and amounts, dispute processes

- Overarching questions about the new gTLD program

gTLD Applicant Guide Book
Process/Approach to Public Comments
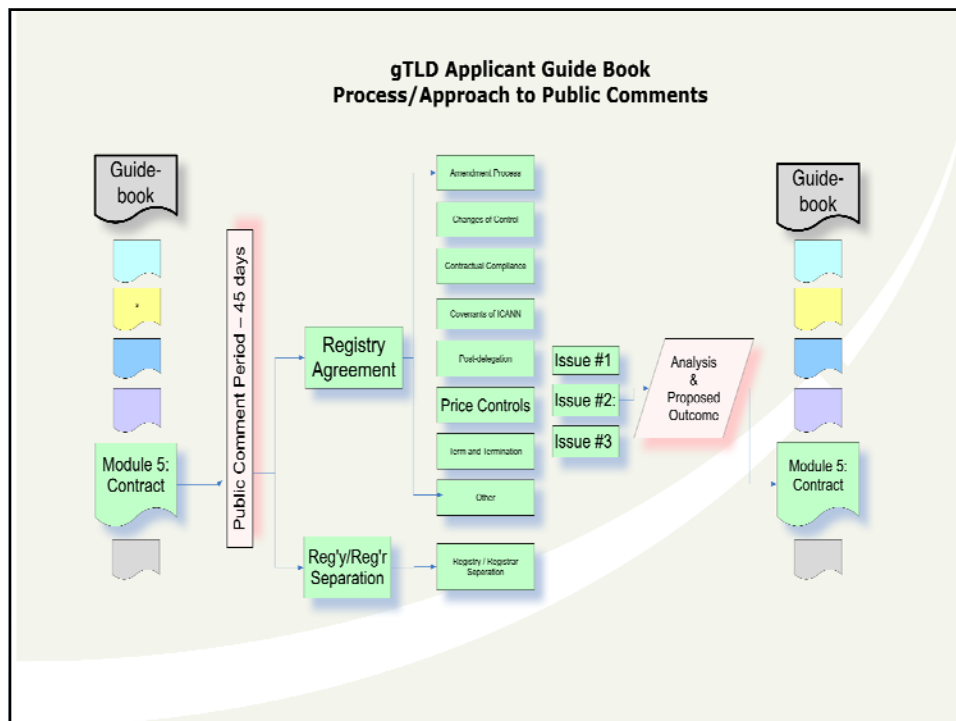
Overarching Questions

1. Trademark Protection Issues

   a. How can the new gTLD program be implemented in a way that addresses legitimate concerns of trademark owners?

   b. Address issues on top-level and second-level (at registry start-up time and during operations)

2. How can ICANN ensure that new gTLDs don't simply act as an amplifier for malicious behavior on the Internet?

3. Identify and address market impacts

4. What are the technical impacts of an expanded number of gTLDs, especially considered along with other planned changes to the root server system?

Overarching Questions - Participation

While identified collectively as 'over-arching issues' each are being approached, staffed and measured separately

▪Trademark issues: IRT, WIPO, others

▪Root zone scaling: SSAC – RSSAC

▪Malicious conduct: APWG, RISG, FIRST

▪Understanding the marketplace: COMPASS LEXECON, CRAI

Trademark Issues

- The policy states that, "strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law."

- An independent economist's report states that "while [new gTLD] entry generally promotes consumer welfare, proper account also must be taken for property rights that protect firms' investments in establishing a reputation and brand name."

Existing trademark protections in use

There are several solutions in place currently in the marketplace

- Rapid take down occurs in case-by-case manner
  - At registries (ccTLD and gTLD)
  - With ICANN / registrars / registries

- Online trademark registries exist in many jurisdictions

- Sunrise periods - IP clearinghouses have been used for ccTLD (e.g., .eu) and gTLD (e.g., .asia) launches

The IRT (and others) have considered some form of standardization of potential solutions in their work

Trademark Issues Solution Development

- IRT formed by the Intellectual Property constituency at the request of the Board to recommend solutions to Trademark issues in new gTLD implementation

- The IRT developed Preliminary and Final Reports recommending seven specific solutions

- The reports and other recommendations were published for public comment and are now presented for community discussion with the goal of…

conducting discussions here and in other fora regarding effectiveness, areas for improvement, and "implementability" of the suggested solutions (for inclusion into the new gTLD process)

Malicious Conduct Issues

- Will instances of malicious conduct multiply with the introduction of new gTLDs?

- What are the manner / modalities of malicious conduct that might arise?

- How can instances of malicious conduct be mitigated (in volume and effect)
  - Through the process of introducing new TLDs
  - Through contract or other restrictions

Malicious Conduct Participating Groups

The following groups or representatives of these groups have participated in the development of issues and solutions in this area:

- APWG (Anti-phishing working groups)

- BITS (A division of The Financial Services Roundtable)

- MyCERT (Computer Emergency Response Team, Malaysia)

- FIRST (Forum of Incident Response and Security Teams)

- RISG (The Registry Internet Safety Group)

Root Zone Scaling

- Joint study by RSSAC/SSAC per ICANN board request

- What are the possible combined effects on root zone performance of the coincident introduction of:
  - IPv6
  - DNSSEC
  - IDNs
  - New gTLDs

- RSSAC and SSAC have published the terms of the study and commissioned a team of experts to report

The Marketplace

ICANN commissioned an independent study of the marketplace that indicated there were:

- Potential costs and those costs should be mitigated:
  - Trademark infringement
  - Malicious conduct
  - Impacts to the root zone

- Benefits associated with the introduction of new TLDs (identified in the policy development process)
  - Community representation
  - IDNs
  - Increased competition

Next

- Presentation of potential trademark solutions:
  - IRT
  - WIPO
  - Demand Media
- Discussion
- Potential malicious conduct instances and potential solutions
- Discussion
- Status: root zone scaling study and economic studies

THANK YOU