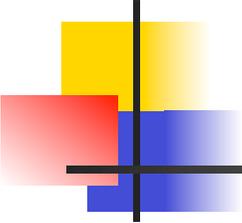


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# Vertical Integration Between Registries and Registrars – The Economic Pros and Cons

Sydney, Australia

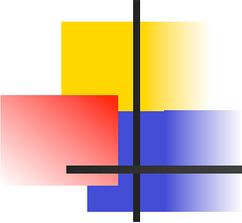
22 June 2009



# Background

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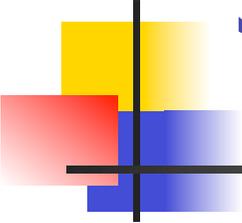
- Issue debated since creation of ICANN
  - Originally generated because only one (commonly owned) commercial registry operator and registrar
  - Significant increase in competitive alternatives at registry and (especially) registrar level has not eliminated debates
  - New gTLD plans have brought issue to forefront again



# Discussion Panel

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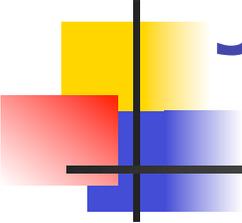
- Joe Sims – Moderator
  - Senior Antitrust Partner, Jones Day
  - Counsel to Jon Postel in creation of ICANN, and outside counsel to ICANN since its creation
- Participants
  - Steve Salop
  - Joshua Wright



# Steve Salop

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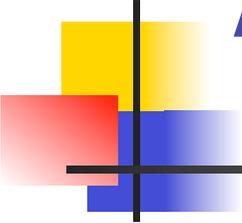
- Professor of Law and Economics, Georgetown University Law Center
  - Formerly Associate Director for Special Projects and Industry Analysis, Bureau of Economics, US Federal Trade Commission
  - Formerly Economist at Civil Aeronautics Board/Federal Reserve Board
- Prolific author and speaker; relevant publications include:
  - Krattenmaker and Salop, Antitrust Analysis of Anticompetitive Exclusion: Raising Rivals' Costs to Gain Power Over Price, 96 YALE LAW JOURNAL 209 (1986)
  - Riordan and Salop, Evaluating Vertical Mergers: A Post-Chicago Approach, 63 ANTITRUST L.J. 513 (1995)
  - Salop and Romaine, Preserving Monopoly: Economist Analysis, Legal Standards, and Microsoft, 7 GEO. MASON L. REV. 617 (1999)



# Josh Wright

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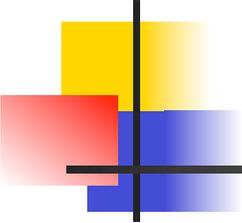
- Professor, George Mason University Department of Economics
  - Assistant Professor of Law, George Mason University School of Law
  - Formerly Scholar in Residence, Bureau of Competition, Federal Trade Commission
- Author of several relevant publications on the economics of vertical contractual arrangements:
  - *Antitrust Analysis of Exclusive Dealing and Tying Arrangements* (with A. Abbott), in THE LAW AND ECONOMICS OF ANTITRUST (Keith N. Hylton ed. 2009)
  - *The Economics of Slotting Contracts* (with B. Klein), 50 JOURNAL OF LAW AND ECONOMICS 421 (2007)
  - *Slotting Contracts and Consumer Welfare*, 74(2) ANTITRUST LAW JOURNAL 439 (2007)



# Agenda

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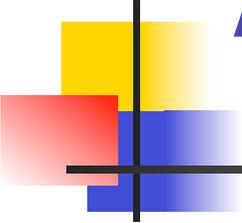
- Presentation of vertical integration economics and law by the panel
  - Purpose is to lay an educational foundation for subsequent discussions at ICANN on this topic
  - Presentation (to best of our ability) will be objective and neutral
  - More focused on principles than ICANN specifics
- Application of these principles to ICANN-specific issues, with participation from registries and registrars
- Discussion and questions from the floor



# Vertical Integration Basics

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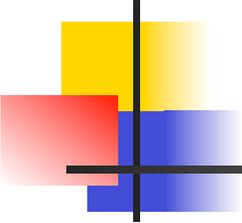
- Vertical integration can be structural, or by contract
- Vertical integration can be procompetitive or anticompetitive, depending on the facts
  - Can lead to lower prices, higher quality and better service
  - Can lead to higher prices, lower quality or less product variety, or slower innovation<sub>7</sub>



# Assessing Effects

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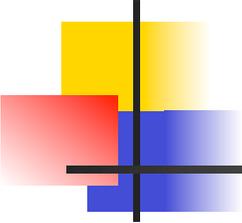
- Effects not limited to cross-ownership
  - Exclusive/preferential vertical contracts
- Complex task
  - Effects depend on numerous factors
  - Not well suited to bright lines



# Potential Anticompetitive Effects of Vertical Integration

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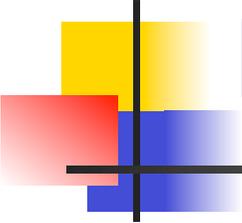
- Exclusion -- foreclosure/discrimination
- Evasion of price caps
- Exchange of sensitive competitive information



# Potential Consumer Benefits from Vertical Integration

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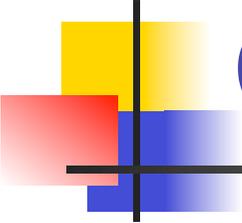
- Lower prices
- Facilitate new entry by Registries
  - Induce Registrar to provide specialized services for Registry
  - Induce Registrar to promote Registry
- Allow more scope for innovation in delivery of products/services



# Conflicting Effects of Prohibition on Vertical Integration

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- “Under-inclusive”
  - Vertical integration can facilitate the creation, maintenance or exercise of market power
  - Anticompetitive effects can occur, even if firms not formally integrated
- “Over-inclusive”
  - Vertical integration unlikely to raise competitive concerns in competitive markets, or markets that lack entry barriers
  - Prohibition can prevent beneficial, pro-competitive conduct, even in concentrated markets



# Competition Policy: General Principles

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- Good rules focus on likely effects
  - ***Facts matter!***
  - Market power
  - Intensity of competition
  - Barriers to entry
  - Price caps
  - Magnitude of benefits
  - Restrictiveness of conduct
- No easy answers
  - ***Simplistic rules ensure mistakes!***
    - Blanket prohibitions
    - Complete laissez-faire antitrust
  - ***Case-by-case analysis most accurate, but hardest to apply***
- To state the obvious
  - ***Any rules are only effective if rigorously enforced***
  - ***Changes in status quo can produce long term benefits, but also short term transition costs***