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AT-LARGE COMMUNITY STAFF DOCUMENT SERIES

REPORT OF THE STAFF AT THE REQUEST OF THE AT-LARGE ADVISORY COMMITTEE

ON DOMAIN TASTING AND MONETISATION

Introductory Note by the ICANN Staff

This briefing was written at the request of the ICANN At-Large Advisory Committee (ALAC) by Bruce Beckwith and delivered to the ALAC via electronic mail on 18th August 2006. Information is therefore current as of the date of original transmission. Very minor edits were made, mostly in relation to the presentation of the text and the introduction, on 6th February 2007.

It is provided to the community for informational purposes only. It was presented originally on a basis that it was for the internal use of the ALAC only, and as such it has not been reviewed for legal correctness by the Office of the General Counsel and as a consequence does not have any standing except as an informational note.

[End of Introduction]

The term “Domain Monetization” has been coined to describe the process by which some registrars, domain resellers, and/or domain name speculators (for this document, they will be referenced as DMs) are able to:

- measure the number of “hits” that a domain name receives,
- offer “pay-for-click” links on a temporary web
- site for this domain name, and,
- “monetize” the use of the domain name.

all during a period of less than 5 full days at a time. By performing this activity on up to thousands of domains concurrently, there is apparently a significant amount of revenue that is collected by these registrars and/or their resellers and/or their domain name speculator customers (DMs) from the pay-for-click industry to make this a worth-while endeavor. There is also an additional activity that is possible, which is to provide these domain names for sale or auction during the 5 day period, though this activity is not the main thrust of DMs at this time.

Background

Until ICANN implemented the competitive registrar model in 1999, the .COM, .NET, and .ORG gTLD domain names could be registered only through Network Solutions at a fee of \$35.00 USD per year. Once a test-bed of five additional registrars proved successful, domain registrations were available via numerous registrars that were accredited by ICANN. The process to become an accredited registrar was and continues to be straight forward, and is described at:

<http://www.icann.org/registrars/accreditation.htm>><http://www.icann.org/registrars/accreditation.htm>.

Today there are hundreds of accredited domain name registrars (a list can be found at <http://www.icann.org/registrars/accredited-list.html> and an unknown number of domain name resellers that have relationships with one or more registrars in order to sell domain name registrations.

As soon as a large number of registrars had been accredited in 2000 and 2001, the competition between registrars drove retail prices down, with some registrars charging customers as little as \$0.25 USD above the fee paid to the registry. This downward price pressure has continued, which has led some registrars and their resellers (note that resellers are not ICANN accredited) to investigate other options for revenue generation.

One of today’s largest volume registrars offers domain name registrations at an average price of \$8.95 USD for retail consumers, though they also offer income tax software, photographic image collections, web hosting, email services, domain registration record privacy services, and many other services and products which all serve to increase their revenue per customer and revenue per sale.

In an effort to increase revenue generation, some registrars have begun to utilize a “5 day grace period” in domain registrations to participate in the now labeled “Domain Monetization” activity.

Detailed Process

If a domain has either never been registered, or if a domain has finished the Redemption Grace Period (RGP) and has subsequently been deleted from the registry's system, the domain may be registered as a "new" domain, also known as an "ADD" command to the registry systems. This ADDED domain is granted a "5 day grace period" which was originally designed to allow a domain to be deleted if there had been a mistake in the domain name spelling or other administrative mistakes. Though the registry charges the registrar the full registration fee for the first year at the time of the ADD command (in the case of .COM it is currently \$6.00 USD), this fee is refunded to the registrar should the domain name be deleted within 5 calendar days.

It is important to know that when a domain name has been registered for more than 5 days, i.e., not eligible for deletion and no refund of the fee given, then when the domain is ultimately deleted, either during the registration term or if it is not renewed, the domain must enter the Redemption Grace Period or RGP. This is a time period after the domain name registration has expired where the registrant may contact the original registrar and request that the domain name be renewed back to the original registrant. Many registrars will accommodate the registrant (though it is not a requirement of the ICANN contracts that registrars offer this service), and typically for a substantial fee, the registrant can have the domain name reinstated. If the domain name is not reinstated, it is then deleted by the registry, which must give all registrars a notice that the domain name will be deleted. There is usually a highly competitive process by some registrars to register newly deleted domain names.

It is the domain names that have completed RGP and have not been reinstated that hold the most interest to the players in the Domain Monetization activity. These domains typically will have had some level of traffic, and are therefore likely to have Internet users either type the domain name directly in their browsers, or click on links to these domain names on web sites. The users will then land on the newly registered domain name that is no longer the web site they expected, but rather a collection of links that will pay the new DMs a fee for any clicks.

By measuring the number of hits that a newly ADDED domain has received within the 5-day ADD grace period, DMs can determine if the domain name registration should be allowed to continue to be registered for the full year term, or if the domain name should be deleted within the 5 days and then the domain name registration fee refunded. The cost of keeping a domain name registered past the 5 day window (in this example it is the \$6.00 USD that the registry charges for a .COM, registrar and/or reseller fees and other expenses) needs to be offset by a calculation of the pay-for-clicks that will be expected for the remaining 360 days. If a domain is deleted within the 5 day window, the registry refunds the registration fee to the registrar.

If the domain name is deleted within the 5-day ADD grace period, the domain IS NOT required to enter the RGP, therefore it can be again registered by the same or another registrar for another 5-day ADD grace period.

Contractual References

All registrars must sign a Registrar Accreditation Agreement (RAA) which can be found at <http://www.icann.org/registrars/ra-agreement-17may01.htm>. Of significance to Domain Monetization are several sections, the first being section 3.7.1 which reads:

“3.7.1 In the event ICANN adopts a specification or policy, supported by a consensus of ICANN-Accredited registrars, establishing or approving a Code of Conduct for ICANN-Accredited registrars, Registrar shall abide by that Code.”

Though there have been several efforts over the years by the GNSO Registrar Constituency to develop and adopt a Registrar Code of Conduct, none of these efforts have come to fruition to the knowledge of the author at the time this report was released.

Another relevant section is 3.7.4, which reads:

“3.7.4 Registrar shall not activate any Registered Name unless and until it is satisfied that it has received a reasonable assurance of payment of its registration fee. For this purpose, a charge to a credit card, general commercial terms extended to creditworthy customers, or other mechanism providing a similar level of assurance of payment shall be sufficient, provided that the obligation to pay becomes final and non-revocable by the Registered Name Holder upon activation of the registration.”

Though this section was designed with the assumption that domain names would be registered for terms of one year or longer, it might be argued that if a registrar allows DMs to participate in Domain Monetization then they have not “received reasonable assurance of payment of its registration fee.”

Lastly, section 3.7.9 reads:

“3.7.9 Registrar shall abide by any ICANN adopted specifications or policies prohibiting or restricting warehousing of or speculation in domain names by registrars.”

It is unclear if DMs are registrars who are speculating in the domain names, or if the activity is performed by resellers of the registrars, or by speculators who are simply domain name customers with large portfolios of domain names. If DMs are indeed registrars, then the “warehousing or speculation in domain names by registrars” clause would be relevant once ICANN adopts a policy prohibiting such behavior. I do not believe that this policy currently exists.

In addition to a registrar signing the RAA, they must also sign an agreement with each gTLD registry, known as the Registry-Registrar Agreement (RRA), which is typically Appendix F in the registry agreement. As the majority of the Domain Monetization is occurring in the .COM gTLD (mainly due to the volume of this TLD compared to the others, though the activity occurs in many TLDs), following is the reference to the .COM agreement:

<http://www.icann.org/tlds/agreements/verisign/com-index.htm>. The RRA can be found at <http://www.icann.org/tlds/agreements/verisign/registry-agmt-appf-com-16apr01.htm>. One of the features of the RRA is that the registrar will abide by the technical specifications and operating procedures for the TLD.

Of significance to Domain Monetization are the policies and processes regarding the ADD grace period, which can be found at <http://www.icann.org/tlds/agreements/verisign/registry-agmt-appc-16apr01.htm>.

Section 3.2.1 reads:

“The Add Grace Period is a specified number of calendar days following the initial registration of a domain. The current value of the Add Grace Period for all registrars is five calendar days. If a Delete, Extend (RRP Command Renew), or Transfer operation occurs within the five calendar days, the following rules apply: Delete. If a domain is deleted within the Add Grace Period, the sponsoring Registrar at the time of the deletion is credited for the amount of the registration. The domain is deleted from the Registry database and is immediately available for registration by any Registrar. See Section 3 for a description of overlapping grace period exceptions.”

Impacts to domain name registrants

When a domain name is utilized in the Domain Monetization activities, the domain name is no longer available to the original registrant. Though the registrant should have known that the domain name was in the process of being deleted (the domain name is removed from the zone file during RGP, therefore neither the domain name will resolve nor will email operate for that domain), sometimes registrants simply lose track of their domain names and their web site activity. Most registrars also contact registrants prior to the domain name expiring or entering RGP to alert the registrant that they should renew the domain.

Also, when a domain name is involved in Domain Monetization, it will not likely become available for any other registrant to registrar, especially if the domain name is receiving any tangible traffic (hence generating income for the DMs).

Impacts to Internet users

Internet users may click on a link in a web site that will direct them to a domain name that is no longer utilized for its original purpose, which is why it would have been listed on the web site that they were browsing. When the link resolves to a domain name that is involved in Domain Monetization, the user will be presented a list of links or other information that is not what they were originally seeking.

It should be remembered, however, that this same effect could be had if the domain name had been deleted by the registry via current mechanisms and registered by another registrant, who then utilized the domain for a web site or other purpose that was unrelated to the prior registrant's use of that domain name.

Summary

Though Domain Monetization has all the appearances of being “illegal” or unethical, it is argued by the registrars that participate or encourage the practice that they are not violating any ICANN contracts. In fact, most registrars argue that if a domain name has been “not renewed” and available for re-registration, that the registrant has overtly allowed this to occur as the registrant is given two opportunities to renew a domain – first when the registrar contacts them prior to the registration term ending, and secondly during RGP. This argument was first used when there was a rush to register domains that were being deleted, which was a predecessor activity to Domain Monetization.

The effect of DMs on the domain name industry, however, is that Internet users and domain name registrants are either directed to domain names that no longer have the content that they are seeking, or that the domain names are artificially kept from registration by staying in a perpetual 5-day hold (the ADD grace period).

Potential next steps for the ALAC:

Though there are a number of options available to the ALAC, several that are evident are:

- Request that the Registrar Constituency develop a Code of Conduct that disallows Domain Monetization
- Investigate whether ICANN has begun the process to adopt specifications or policies prohibiting or restricting warehousing of or speculation in domain names by registrars (RAA section 3.7.9). This is likely to be a GNSO Council effort.
- Request the GNSO Council to form a task force to investigate the impacts of Domain Monetization to Internet users and domain name registrants.