Consumer Choice

The Review Team also considered the question of whether the introduction of new gTLDs increased the choices available to registrants. As discussed previously, the expansion of the program gives registrants new options in terms of new languages, character sets, geographic identities, and new specialized categories. However, we hoped to understand whether registrations in the new gTLDs represented a positive choice available to registrants or if a significant number felt obliged to register defensively in new gTLDs to protect their brand or identity. In particular, there has been considerable discussion of whether trademark holders would find it necessary to register those trademarks as domain names in new gTLDs in order to prevent others from doing so. There have been a number of studies of the extent to which registrants have engaged in such "defensive" registrations which we have supplemented with our own analysis. We initially address the general topic of consumer choice and then perform a specific analysis related to trademark holders below.

In evaluating these results, it is important to note that not all instances of duplicate registrations are necessarily "defensive" in nature. In particular, a trademark holder might register the same mark in multiple domains in order to increase the probability that it will be found through user searches, a consideration that has become increasingly important as the number of domains has grown.[1] 52% of registrants interviewed by Nielsen gave as one of the

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[1] Consider users that search for web sites by guessing Internet addresses. As the number of TLDs increases, finding the "correct" website by guessing becomes more difficult and, on average, the number of required guesses is substantially increased. Faced with this fact, one would expect that some "guessers" would use search engines more frequently than in the past. However, some registrants may still choose to register in several TLDs in order to reduce the number of guesses that a user must make in order to find them.

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reasons for registering duplicate domain names "To help ensure my site gets found in searches."[2] Nonetheless, 51% of the respondents to the Nielsen registrant survey indicated that they engaged in duplicate registrations "To protect my brand or organization name" and the same percentage gave as a reason "To keep someone else from having a similar name."[3] Thus, it appears that "defensive" registration is a not insignificant phenomenon, apparently because the costs of challenging registrations by others can be considerably greater than the costs of registering their marks in multiple domains.

Previous Studies

Krueger and Van Couvering surveyed 1,043 brand names of Fortune 100 companies and found the following registration percentages: (1) 100 % in .com; (2) 76% in .org; (3) 84 % in .net; (4) 69% in .info; (5) 65% in .biz; and (6) 57% in .mobi.[4] Zittrain and Edelman found that, 6 months after open registration in .biz began, 91 percent of a sample of .biz domain names were also registered in .com, 63 percent were also registered in .net, and 49 percent were also registered in .org.[5] Strategies International analyzed the extent of duplicate name registrations and the presence of the same registered name holder between four of the then-new and three

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[2] Nielsen, *ICANN Global Registrant Survey Wave 2* (August 2016), accessed 25 January 2017, , 13. https://www.icann.org/news/announcement-2-2016-09-15-en ~~Nielsen, ICANN Global Registrant Survey Wave 2 Data Tables, August 2016, (Nielsen Registrant Survey), p. 13, https://newgtlds.icann.org/en/reviews/cct/registrant-region-2015-2016-nielsen-15sep16-en.pdf.~~

[3] Nielsen, *Registrant Survey Wave 2* (2016). , ~~Nielsen ICANN Global Registrant Survey Wave 2 Data Tables, op. cit.~~ Many registrants chose both responses; a total of 60% of registrants of new gTLDs selected one of the two responses.

[4] F. Krueger and A. Van Couvering, "An Analysis of Trademark Registration Data in New gTLDs," *Minds + Machines Working Paper,* (2010-02): 51. ~~F. Krueger and A. Van Couvering, "An Analysis of Trademark Registration Data in New gTLDs," Minds + Machines Working Paper 2010-02, p. 51.~~

[5] Berkman Center for Internet & Society Harvard Law School, *Survey of Usage of the .biz TLD* (June 2002), accessed 25 January 2017, , https://cyber.law.harvard.edu/tlds/001/ ~~J. Zittrain and B. Edelman, "Survey of Usage of the .biz TLD", https://cyber.law.harvard.edu/tlds/001/.~~

Commented [4]: This statement is directly contradicted by the conclusion below that "defensive registrations represent a significant component of the registrations in the new gTLD," which is later contradicted by the finding that the median registration rate for trademark owners was three. What are we trying to say?

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legacy TLDs and found that: "The statistics for .info indicate that only 11% of registrants hold the same name in .com, which suggests that .info has created significant new opportunities. With .biz, 42% of duplicate registrations appear to be registered to the same party, thereby suggesting that they are protective in nature."[6] Katz, Rosston, and Sullivan analyzed the overlap in domain registrations for 200 of the top 500 global brands as ranked by Brand Finance and found (at 61) "that a very high percentage of them were registered in the different TLDs" that they examined.[7] However, they also found "a big range in the share of registered domains with content" and that the percentage of active sites "was quite low" except for .com.   Finally, Halvorson et al, who employ a variety of measures to identify matches of registrants between .com and .biz, found "at least some degree of a match for around 40% of the [biz-com] pairs [they] could assess."[8] Using what they describe as "stronger indicators" they classified 11.6% of biz domains as "defensive."

The CCT-RT Analysis

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[6]Summit Strategies International, *Evaluation of the New gTLDs: Policy and Legal Issues* (July 2004), accessed 25 January 2017, 102. ~~Strategies International, Evaluation of the New gTLDs: Policy and Legal Issues, July 10, 2004, Table 12 –~~ Same Registered Name Holder in .com/.net/.org, at 102 It is important to note, however, that the authors point out that "The data…is based on an extremely small sample of only 100 names for .biz and .info." This study was prepared for ICANN.

[7] M.L. Katz, G.L. Rosston, and T. Sullivan, *Economic Considerations in the Expansion of Generic Top-Level Domain Names, Phase II Report: Case Studies* (December 2011), accessed 25 January 2017, https://archive.icann.org/en/topics/new-gtlds/phase-two-economic-considerations-03dec10-en.pdf ~~M.L. Katz, G.L. Rosston, and T. Sullivan, "Economic Considerations in the Expansion of Generic Top-Level Domain Names, Phase II Report: Case Studies, December 2011.~~ These domains were .com, .net, .org, .biz, .info, .mobi, and .us. This study was prepared for ICANN.

[8] T. Halvorson, J. Szurdi, G. Maier, M. Felegyhazi, C. Kreibich, N. Weaver, K. Levchenko, and V. Paxon, "The BIZ Top-Level Domain: Ten Years Later" in *Passive and Active Measurement*, eds N. Taft and F. Ricciato. (Germany: Springer Berlin Heidelberg, 2012), 221-230, 228. http://www.icir.org/vern/papers/dot-biz.pam12.pdf

~~T. Halvorson, J. Szurdi, G. Maier, M. Felegyhazi, C. Kreibich, N. Weaver, K. Levchenko, and V. Paxon, "The BIZ Top-Level Domain: Ten Years Later," in N. Taft and F. Ricciato (Eds.): PAM 2012, LNCS 7192, pp. 221-230, 2012, p. 228.~~

The ~~The~~ Global Registrant Survey, Wave 2, which was commissioned by ICANN, found that 35% of all surveyed registrants had registered at least one name in a new gTLD.[9] Of those, 60% indicated that they had registered to "protect existing domain(s) and ensure no one else got a domain similar" while 34% indicated that they registered to "appeal to new Internet users or new types of customers" and 6% registered because the "name I wanted was not available using older gTLDs."

We also performed an analysis of strings registered as second level domains in new gTLDs and comparable strings registered in .com, which is currently by far the most popular of the legacy gTLDs. Our analysis focused on two potential patterns. In the first case, we looked to see if the **identical string** registered as a second level domain in a new gTLD was registered as a second level domain in .com (e.g., if example.tld was registered, was example.com also registered?)[10] We found that 82% of registrations in new gTLDs had identical matches in .com. However, there was considerable variation in the percentages of identical matches across gTLDs. Amongst 414 gTLDs with at least 1000 registrations, 32 had at least 99% of their second level domains as exact matches in .com, including both .wang and .xin which are amongst the X ???the third and eleventh largest new gTLDs in registration volumes, as of November 2016amongst the X largest new gTLDs~~are amongst the X largest new gTLDs~~; and nearly two-

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[9] Nielsen, *Registrant Survey Wave 2* (2016), 164.~~Nielsen, ICANN Global Registrant Survey Wave 2 Data Tables, op. cit., p. 164.~~

[10] Analysis Group, *Summary of Trademark Strings Registered in Legacy gTLDs Trademark Strings that are also Brand TLDs* (October 2016), accessed 25 January 2017, https://community.icann.org/download/attachments/56135378/New%20gTLD%20Registrations%20of%20Brand%20TLD%20TM%20Strings%2010-18-16.pdf?version=1&modificationDate=1481305785167&api=v2 ~~See https://community.icann.org/download/attachments/56135378/New%20gTLD%20Registrations%20of%20Brand%20TLD%20TM%20Strings%2010-18-16.pdf?version=1&modificationDate=1481305785167&api=v2~~

thirds (271) had at least 95% of their second level domains as exact matches in .com. At the other extreme, 10 gTLDs had less than 50% of their second level domains as exact matches in.com. Of these, half were IDNs. In general, IDN gTLDs contained fewer identical matches to .com, with only about 70% of registrations in IDN gTLDs being identical matches for domains in .com. Unfortunately, because our analysis did not include Whois data we were unable to determine whether the same registrant had registered both domains.

In a second analysis, we looked to see if the **combined string** representing both the TLD and the SLD was registered as a second level domain in .com (e.g., if example.tld was registered, was exampletld.com also registered?) In this analysis, we found that only 8% of registrations in the new gTLDs were also registered in .com in the combined form.

Overall, we conclude that while defensive registrations represent [a significant component] *we could use X%* of the registrations in the new gTLDs, many registrants choose to register in new gTLDs to broaden the appeal or reach of their offerings even when similar options remain available in legacy gTLDs.

CCT Analysis : Trademarks

In addition to this general analysis, we examined the prevalence of defensive registrations by trademark holders. We, together with the Analysis Group, used data from the most recent "round" of gTLD entry to analyze the same issue. Specifically, we began by identifying a number of trademarks for which one might expect some degree of "defensive" registrations together with the identity of the registrant. The data collected by Analaysis Group were a 25% random sample of trademark holders that were obtained from a database administered by Deloitte that contains all recorded trademarks in the Trademark Clearinghouse Database.

Identities of registrants were obtained from the Whois domain registration database.[11] The trademark strings ~~that we~~ analyzed were limited to verified or corrected Latin text strings in the Trademark Clearinghouse. Matches were identified as those involving an exact match in accordance with ICANN's matching criteria where the registrant was identified as the trademark holder associated with the registered string based on an approximate text comparison between registrant and trademark holder names.

Using these data, we determined: (1) whether each of the trademarks in our data was registered by the trademark holder in least one legacy gTLD; (2) whether the same string was registered by the trademark holder in at least one new gTLD; and (3) for those strings that were registered by the trademark holder in at least one new gTLD, the number of new gTLDs in which the trademark holder had registered the string. We found that 54% of the strings that were registered in a legacy gTLD were also registered in at least one a new gTLD. We also found that, of these strings, 3 was the median number of registrations in new gTLDs~~.~~ That is, half of the trademarks that were analyzed were registered in 3 or fewer new gTLDs.[12] We also found that three-quarter of these strings were registered in 7 or fewer new gTLDs and that 90% of these strings were registered in 17 or fewer new gTLDs.[13] At the same time, a small number of

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[11] Analysis Group, *Independent Review of Trademark Clearinghouse (TMCH) Services Draft Report* (July 2016), accessed 25 January 2017, https://newgtlds.icann.org/en/reviews/tmch/draft-services-review-25jul16-en.pdf

~~For more detail see J. Liu, G. Rafert, and K. Seim, Independent Review of Trademark Clearinghouse (TMCH) Services Draft Report, Sec. IV.~~

[12] The mean number of duplicate registrations was 8 but statistic is strongly influenced by a small number of trademarks that were registered in a very large number of domains. For example, one trademark was registered in 406 domains.

[13] In assessing these findings, it is important to emphasize that the extent of duplicate registrations that we observe may have been influenced, to some degree at least, by the use by trademark holders of the blocking services described above. That is, to the extent that trademark

trademarked strings were registered in a large number of TLDs: 4% of trademarks were registered in at least 100 new gTLDs, and one was registered in 406 new gTLDs. We conclude from this analysis that, although the direct cost of the new gTLD program for most trademark holders related to defensive registrations appears to be been relatively low, a small fraction of trademark holders are likely incurring significant costs.

In addition to defensive registrations, some registries offer a service through which a trademark owner can block others from using its marks without the need to purchase the domain name itself. For example, Rightside offers what it describes as "a cost-effective one-step, registry-wide solution to protecting your client's trademarks against cybersquatting…with our Domain Protected Marks List (DPML)" as an alternative to having "to defensively purchase trademarks and trademarks + terms on every TLD…." [14] Similarly, Donuts notes that its "Domains Protected Marks List (or DPML) protects trademark holders against cybersquatting at a fraction of the cost of defensively and individually registering the terms across all Donuts domains." [15] At the time of publication, we did not have any data related to the costs incurred by

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holders obtained protection through blocking, they may have had ess need to register their trademarks "defensively".

[14] Rightside Registry, "DPML," accessed 21 September 2016, http://rightside.co/registry/dpml/ https://rightside.co/registry/dpml, viewed on September 21, 2016.

[15] Donuts Registry, "DPML," accessed 21 September 2016, http://www.donuts.domains/services/dpml http://www.donuts.domains/services/dpml, viewed on September 21, 2016. According to domainname.com: "Three of the largest new top level domain registries has [sic] created a new domain name blocking tool. Many clients prefer to avoid defensive registrations but these services offer some economies of scales and are worth considering for key brands. The service is offered by three new gTLD providers; Donuts (covering 172 TLDs) Rightside (covering 36 TLDs) and Minds & Machines (covering 16 TLDs) The blocking tool allows trademark owners to block their marks and related terms, at the second level, in all supported new gTLDs, for one fee per registry. The service is designed to be an economical way for trademark owners to protect their rights from cybersquatters. With the block it is not necessary for trademark owners to take out defensive registrations in each of the three

trademark holders making use of these blocking services, although we expect to obtain more

information prior to the publication of our final report.

Registry Policies

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providers TLDs In order to obtain a block, the term you want to block must be based on a trademark validated by the Trademark Clearinghouse."

"Cost Efficient Domain Name Protection!" *Domain Info*, 4 November 2015, accessed 28 September 2016, http://domainincite.com/21404-icann-retires-affirmation-of-commitments-with-us-gov

https://www.domaininfo.com/content/page/cost-efficient-domain-name-protection/, viewed on September 28, 2016. Recently, Donuts announced a new version of its blocking service that will allow brand owners the opportunity to obtain blocking in return for a fee of $10,000. [See Jack Jack Elis, "Donuts unveils enhanced trademark protection offering; expert urges lower cost options in next gTLD round," *World Trademark Review*, 29 September 2016, accessed 29 September 2016, http://www.worldtrademarkreview.com/blog/Detail.aspx?g=fa934d21-cfa7-459c-9b1f-f9aa61287908"Donuts unveils enhanced trademark protection offering; expert urges lower cost options in next gTLD round, http://www.worldtrademarkreview.com/blog/Detail.aspx?g=fa934d21-cfa7-459c-9b1f-f9aa61287908, viewed on September 29, 2016.] **THIS FOOTNOTE SHOULD PROBABLY BE TRIMMED SOMEWHAT BUT I HAVE LEFT THE LONGER VERSION IN FOR NOW.**