Registry Policies

As a part of domain name's attractiveness to consumers as a product, its registration policies and rights protection mechanisms can be used as a point of comparison. In order to discover differences or uniqueness of new gTLDs we analysed the registry policies of the top 30 new gTLDs[1] that related to protection of privacy and registration rules. [[Also, comparison between use of the Uniform Rapid Suspension System (URS) and its differences between Uniform Domain-Name Dispute-Resolution Policy (UDRP) was part of this analysis. ==*[A cross reference to the rights protection mechanisms section should be added]*==] For comparison purposes, the top five ccTLDs (by registration numbers) were included.[2]

The vast majority (90%) of those 30 new gTLD registries have a published Privacy policy. Generally, personal data protection is provided, 66.6% of these registries would not share personal data with third parties, except in cases required by law and in compliance with Whois policy. Many (30%) of them strictly underline that they are not selling personal data to third parties. 6,6% of these registries share personal data of its registrants with third parties. 13,3% of them will ask for registrant consent before sharing the registrant's personal data. most (43,3%) have strict obligations to take reasonable measures to provide the security of

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[1] Registries of the top 30 strings by registration number were analysed: .xyz, .top, .wang, .win, .club, .link, .site, .science, .bid, .xin, .red, .ren, .party, .online, .click, .loan, .xn--ses554g (网址), .date, .website, .space, .kim, .work, .tech, .lol, .webcam, .nyc, .realtor, .review, .news, .guru. Listed strings are managed by following companies: .XYZ, Jiangsu Bangning Science & Technology Co., Ltd, Zodiac Leo Limited, First Registry Limited, .Club Domains LLC, Uniregistry, Corp., Radix, Famous Four Media, Elegant Leader Limited, Afilias, Beijing Qianxiang Wangjing Technology Development Co., Ltd, Hu Yi Global Information Resources (Holding) Company, (Minds + Machines) Top Level Domain Holdings Limited, Neustar + (The City of New York, a municipal corporation under the laws of the State of New York, by and through the New York City Department of Information Technology & Telecommunications), Real Estate Domains LLC, Rightside, Donuts.

[2] .cn, .de, .uk, .nl and .ru

personal data. 33,3% registries have information in their policies regarding collecting of cookies.[3]

Of the five compared ccTLDs all have rules which do not permit sharing personal data with third parties. On the other hand, there are differences among them regarding data that they are publishing through Whois. ccTLDs do not have unique Whois policies, so that is the reason for those differences. Three of those ccTLDs have information about collecting of cookies. Regarding content, three of them have no applicable rules, the remaining two have certain rules for dealing with illegal content. Three of the ccTLDs are open to registration by anyone, the remaining two require at least a local address within the jurisdiction of the ccTLD.

For the gTLDs there are no location within jurisdiction requirements, except for .nyc (only businesses and organizations with an NYC address and individuals with a primary residence in NYC can register a .nyc domain name). Regarding eligibility to register, 20% of registries are referring to TMCH for registration priority. All of these registries have compliance procedure for abusive behavior or other violation of policy. Registries have provided online forms for filing the complaint or a specific address for this purpose. Also, all of them have the

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[3] "Regulation (EU) 2016/679 of the European Parliament and of the Council," *Official Journal of the European Union*, (2016).
http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=en
will have strong impact on privacy issue in many fields, including domain names.
McKay Cunningham, "Free Expression, Privacy and Diminishing Sovereignty in the Information Age: The Internationalization of Censorship," *Arkansas Law Review, Forthcoming* (2015): 7. https://ssrn.com/abstract=2706730
("The Data Protection Regulation (Regulation), set to become effective in 2017, envisions worldwide applicability of European privacy law. The Regulation, "for the first time, leaves no legal doubt that no matter where the physical server of a company processing data is located, non-European companies, when offering services to European consumers, must apply European rules.")

right to act in case of abusive usage of domain name. None of these registries have policies which regulate parked domain names.

For the compared ccTLDs, three have registrations are open to anyone, the remaining two require at least a local address. All five ccTLDs have compliance procedures for abusive behavior or other violations of policy. In relation to abusive usage of domain names all refer to relevant policy or law. Besides that, one has a "blacklist" database: domains on that list are not allowed to be repeatedly registered or utilized. Regarding parked domain names, the five ccTLDs do not have any concrete policy.

Most gTLD registries (73% of them) have different voluntary PICs, such as security issues, abuse prevention, additional rights protection mechanisms, etc. Besides voluntary PICs, there are mandatory PICs for all new gTLDs as a part of the Registry Agreement. All new gTLD Registry Operators will use only ICANN accredited registrars and include GAC safeguards.[4] With PICs included, as an additional value of new gTLDs, non-price competition was partly improved for new gTLDs when compared to legacy gTLDs. To that extent, expectations of consumers for gTLD restrictions are increasing. While both consumer and registrants felt that more restrictions could be protective, registrants were slightly more opposed to restrictions, relative to consumers.[5] Global users generally believe that restrictions increased trust.[6] Regarding specific restrictions there are wide differences among regions. For example, North America is more likely to want local presence restrictions while Asia is more likely to want

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[4] ICANN Board Resolution 2013.07.02.NG07–2013.07.02.NG08, "Category 1 Safeguard Advice from GAC," (2013), accessed 1 December 2016,
https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-07-02-en#1.c

[5] Nielsen, *ICANN Global Registrant Survey Wave 2* (August 2016), accessed 1 December 2016, 29. https://www.icann.org/news/announcement-2-2016-09-15-en (added in the next sentence)
https://community.icann.org/download/attachments/56135378/2016%20ICANN%20Applicati on%20Process%20ICANN%2057%20Topline%20v1.1.pptx?version=1&modificationDate=1 478068208000&api=v2 (this is link to Application Process Survey?)
[6] Ibid. (page. 31)

credential validation.[7] Clear majority of consumers feel that there should be at least

some level of restrictions on who can register domain name, such as credentials, location and

consistent use.[8]

On the other hand, there are many similarities with policies of legacy gTLDs. Most of the

legacy gTLD registries were already involved in domain name industry, so they had

developed policies based on their previous experience and background. Besides that, for some

issues rules were already set by ICANN or they were part of accreditation process so in those

cases there were no need or incentive for further developments by registries.

Uniform Rapid Suspension System (URS)[9] is a rights protection mechanism developed in

order to provide protection of rights holders under the new gTLD program. Comparing to the

previously existing Uniform Domain-Name Dispute Resolution Policy (UDRP), which

applied to the legacy gTLDs, URS is faster in taking down websites that are found to infringe

on intellectual property rights as well as in fighting cybersquatting. Looking at the numbers,

in 2012 there were 3,987 (UDRP) cases filed prior to new gTLDs coming onto the market, but

when URS became available there were slightly fewer UDPR cases filed, in 2014 there were

3,436 (UDRP) & 229 (URS) and 2015 there were 3,466 (UDRP) & 220 (URS). Therefore,

there are fewer UDRP cases if we compare it with number when URS was not available, but it

is too early to conclude if users recognized URS as a substitute for UDRP. These findings are

based on Competition, Consumer Trust and Consumer Choice (CCT) Metrics Reporting,

[7] Ibid. (page 30)
[8] Nielsen, ICANN Global Consumer Research Wave 2 (June 2016) accessed 23 January 2017, 9,
https://newgtlds.icann.org/en/reviews/cct/phase2-global-consumer-survey-23jun16-en.pdf
[9] ICANN, *Uniform* Rapid Suspension System (URS) Rules (June 2013), accessed 1 December 2016,
https://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf

including metrics related to Rights Protection Mechanisms[10] and Rights Protection

Mechanisms Review Report.[11]

Compared to UDRP, fees are lower for URS and range from USD 300 – 500. The UDRP

provider (WIPO) charges from USD 1500 – 2000 for a single panelist and from USD 2000 –

4000 for three panelists.[12]

Generally, URS has more extensive rights protection mechanisms. Its limitation is that it was

designed to be used for obvious cases of infringement.[13] URS is faster and cheaper than

UDRP, but its only purpose is to suspend domain name registrations. URS was built to

combat obvious cases of trademark infringement by means of suspension of the domain name.

Thus, the same domain name could be registered by another potential infringer once it is

released. Some rights holders prefer having the domain names transferred to their portfolios,

which cannot be achieved by using URS. Still, it is a fairly effective, cheap, and fast right

protection mechanism despite the limitations mentioned above. In general, even though it is

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[10] ICANN, "Competition, Consumer Trust and Consumer Choice (CCT) Metrics Reporting: Rights Protection Mechanisms," accessed 1 December 2016,
https://www.icann.org/resources/pages/cct-metrics-rpm-2016-06-27-en

[11] https://newgtlds.icann.org/en/reviews/cct/rpm

[12] WIPO, "Schedule of Fees under the UDRP," last modified 1 December 2002,
http://www.wipo.int/amc/en/domains/fees/

[13] D. S. Prahl and E. Null, "The New Generic Top-Level Domain Program: A New Era Of Risk For Trademark Owners And The Internet," *The* Law Journal of the International Trademark Association 101, (2011): 1784.
http://www.inta.org/TMR/Documents/Volume%20101/vol101_no6_a4.pdf
("…the URS is designed to be used for obvious cases of infringement and requires the complainant to prove bad faith and meet the clear and convincing evidentiary standard. In United States jurisprudence, there are generally three standards of proof from least to most onerous, (1) "preponderance of the evidence," (2) "clear and convincing," and (3) "beyond a reasonable doubt. Because ICANN requires the clear and convincing standard for a URS, the URS panelist will take a more exacting look at the facts and evidence than is required in a UDRP proceeding, where the preponderance of the evidence standard applies.") Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1976382

too early to say whether it is substitute for UDRP or not, certainly it is an additional value implemented with New gTLD Program.

Recommendation: Privacy issue should be more strictly regulated by ICANN and those rules should be mandatory for all gTLD registries. Registries should not be allowed to share personal data with third parties without consent of that person or under circumstances defined by law. Also, it is necessary to be aware of new European personal data regulation (The General Data Protection Regulation - GDPR), especially on issues such as worldwide applicability of the Regulation and 'right to be forgotten'.

Rationale/Related findings: As mentioned above, according to their policies one part of the registries share personal data of its registrants with third parties. Furthermore, in some policies there is very clear statement that they have right to sell personal data.

To: ICANN Board

Must be completed prior to subsequent rounds: Yes

Consensus within team: