VII. 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 in this report, the expansion of the program gives registrants new options in terms of new languages, character sets, geographic identities, and new specialized categories. However, we sought to establish 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 (see below) of the extent to which registrants have engaged in such "defensive" registrations, and in anticipation of this Review, ICANN commissioned Nielsen to perform the Global Registrant Survey to gain insights from registrants. More recently, INTA conducted a study of its membership, which reflects the experience of trademark holders. The Review Team examined each of these studies, and supplemented them with our own analysis. We initially address the general topic of consumer choice and then perform a specific analysis related to trademark holders below.[120]

In evaluating these results, it is important to note that not all instances of duplicate registrations are necessarily "defensive" in nature. For example, 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.[121] In fact, a total of 52% of registrants interviewed by Nielsen gave as one of the reasons for registering duplicate domain names "To help ensure my site gets found in searches."[122] However,51% of the respondents indicated that they engaged in duplicate registrations "to protect my brand or organization name" and the same percentage gave as one of the reasons "to keep someone else from having a similar name."[123] The INTA Survey found that "new TLD registrations primarily duplicate legacy TLD or ccTLD registrations"[124] and, in particular that only 17% of respondents had registered names in the new gTLDs for the first time in new gTLDs versus duplicating existing domains in legacy gTLDs or ccTLDs. Thus, it is appears that "defensive" registrations are a real phenomenon, apparently because

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[120]In this chapter, the term consumers is used primarily to refer to domain name registrants and not consumer end-users, whose behavior and beliefs are largely covered in the Consumer Trust chapter.
[121]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.
[122]Nielsen, *Registrant Survey Wave 2* (2016), p. 13.
[123]Ibid. Many registrants chose both responses; a total of 60% of registrants of new gTLDs selected one of the two responses. It is worth noting that at least some respondents indicated that they were both registering domains to be more likely to be found in search and either to protect their brand or to prevent others from registering the name, indicating that it may not always be possible to categorize a registration as strictly "defensive" or not.
[124]INTA Survey, Slide 19

the costs of challenging registrations by others can be considerably greater than the costs of registering their marks in multiple domains.[125]

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.[126] Zittrain and Edelman found that, six months after open registration in .biz began, 91% of a sample of .biz domain names were also registered in .com, 63% were also registered in .net, and 49% were also registered in .org.[127] 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 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."[128] 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.[129] 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."[130] Using what they describe as "stronger indicators" they classified 11.6% of biz domains as "defensive."

CCTRT Analysis

The Global Registrant Survey, Wave 2, found that 35% of all surveyed registrants had registered at least one name in a new gTLD.[131] 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."

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[125]Appendix G: Bibliography includes a series of questions that may be included in future surveys of domain name registrants to better understand the choices they make when registering domain names.
[126]F. Krueger and A. Van Couvering, "An Analysis of Trademark Registration Data in New gTLDs," *Minds + Machines Working Paper,* (2010-02): 51.
[127]Berkman Center for Internet and Society Harvard Law School, *Survey of Usage of the .biz TLD* (June 2002), accessed 25 January 2017, https://cyber.law.harvard.edu/tlds/001/
[128]Summit Strategies International, *Evaluation of the New gTLDs: Policy and Legal Issues* (July 2004), accessed 25 January 2017, 102. 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.
[129]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 These domains were .com, .net, .org, .biz, .info, .mobi, and .us. This study was prepared for ICANN.
[130]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
[131]Nielsen, *Registrant Survey Wave 2* (2016), p. 164.

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?)[132] 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. For example, among 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 the third and eleventh largest new gTLDs in registration volumes, as of November 2016; and nearly two-thirds (271) had at least 95% of their second level domains as exact matches in .com. At the other extreme, 10 gTLDs had fewer 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 to 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 examined whether 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 some registrants are motivated by defensive objectives 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

The INTA Survey indicated that amongst its respondents of trademark holders, "nearly all of the new domains registered as duplicates to a Legacy or ccTLD were intended primarily to prevent the name from being used by another registrant."[133] In order to better understand the prevalanence of these defensive registrations by trademark holders, we, together with the Analysis Group, used data from the most recent "round" of new gTLDs 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 Analysis 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.[134] The trademark strings analyzed were limited to verified or corrected Latin text strings in the Trademark Clearinghouse. Matches were identified as

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[132]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

[133]INTA Survey, Slide 22

[134]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

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.[135] 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.[136] At the same time, a small number of 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. Extrapolating the sample across all marks, we would expect that trademark holders would have made approximately 80,000 total registrations of their trademarks in new gTLDs as of September 2016, which represents .3% of all registrations within new gTLDs[137]. 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 lower than some had feared prior to the inception of the program, 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…." [138] 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."[139] At the time of publication, we did not have any

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[135]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.

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

[137]The TMCH review found a total of 19,642 registrations by trademark holders of their mark using a 25% sample. Extrapolating this to 100% gives us an expected total of 78,568 total registrations. In comparison, as of September 2016 there were a total of 24,814,734 registrations across all new gTLDs.

[138]Rightside Registry, "DPML," accessed 21 September 2016, http://rightside.co/registry/dpml/

[139]Donuts Registry, "DPML," accessed 21 September 2016, http://www.donuts.domains/services/dpml. 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

data related to the costs incurred by trademark holders making use of these blocking services, although we expect to obtain more information prior to the publication of our final report.

registrations in each of the three 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
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. [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