Creating the appropriate Term:

Deceptive Brand Tread Notice

Deceptive Brand Encroachment Notice

Fake Squat Notice

More????

*** Slamming will be referenced within this document until the appropriate term has been defined and agreed.

5.5 Slamming

5.5.1   Issue / Definition

"Slamming" is a deceptive practice by where an existing registrant obtains and may act on a notice to register a domain name of like string in another TLD. It is separate from but related to fake renewal notices due to the deceptive tactics. However, the rogue sales and marketing practices focus on <u>new registrations</u> versus existing registered domains, and suggested costs of registration are typically exponential greater than current market rate. Both Fake Renewal Notices and Slamming appear to be primarily spawn from resellers, but detailed research is required for accurate analysis.

5.5.2   Background

What is the ICANN issue?

- New Domain Registration issue (deceptive/fraudulent practices on the part of a registrar/reseller)
    - o Pretending to receive a legitimate request from a new client with intent to register a domain and trademark the name within the respective jurisdiction.
    - o A notice is sent to the current registrant of a domain name (typically within .com, .org, .net, or all) stating the intent of the above customer and that the registrant has a limited time to protect the brand in the said country where the threat of the trademark is requested.
    - o No formal data exists as to the extent of deception and monies paid to this regard, but the prevalence of the scam is widely recognized. Informal review of this issue does indicate that the deceptive practices occur mostly within ccTLDs, but this does not omit the issue from occurring in gTLDs.
- WHOIS abuse issue (deceptive/fraudulent practices on the part of a non-registrar/non-reseller)

- o Obtaining contact information through questionable means or in violation of RAA section 3.3.6.4.

What is ICANN's role?

- If the perpetrator is a registrar or reseller, ICANN policy applies through the RAA.
- If the perpetrator is not a registrar/reseller, ICANN's role still applies, but it falls into the realm of WHOIS abuse.
- What within the Chain of Agreements should be explored?

Is this within ICANN's Scope?

- Because the deceptive tactics takes place prior to Registration, ICANN scope is questioned.
- However, in the instances where a consumer is deceived and commits to the defensive registrations, scope should fall within the ICANN policy realm.
- The GNSO Scope Test (Draft):
  - o Which TLD Does the Slam occur? G, CC, (gTLD = Pass)
  - o Does the Slam involve Contracted Parties? Ry, Rr, Reseller (Yes = Pass)
  - o Did the Slam result in a Registration? (Yes = Pass)
  - o Does the Slam involve a Trademark or Brand? (Yes = UDRP, No = Confusing Prevailing Right)
  - o Other test attributes?
- Side Question - What policies and agreements are bound to the .CO rollout? Following RPMs.

What actions can Law Enforcement take?

- Does the extent of this issue warrant Law Enforcement attention?
- Is the cost/risk per incident great enough?
- Jurisdiction issues
- Link to examples: http://forum.icann.org/lists/gnso-rap-dt/msg00624.html

An example of a slamming notice can be found on the RAP Mailing Archive, please see document at:

http://forum.icann.org/lists/gnso-rap-dt/msg00621.html

5.5.3 Recommendation Options

Comments (James Bladel):

James Bladel 25/4/10 00:55
Comment: I think this only applies if the registrar has a bulk transfer agreement in place with the "slammer." If they are an unaffiliated 3rd party and not a registrar, then this doesn't apply.

James Bladel 25/4/10 00:01
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James Bladel 25/4/10 00:09
Comment: Definitely WHOIS mining, but how is the registry or registrar responsible if it's an unaffiliated 3rd party?

James Bladel 25/4/10 00:21
Comment: This is key. The behaviour is a threat to act, but what's the role of ICANN if it's a bluff? Could a slammer economically follow through on these threats?

James Bladel 25/4/10 00:01
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James Bladel 25/4/10 00:22
Comment: We are on very shaky ground with this claim. ICANN is not a consumer protection organization, and testing for a "defensive" registration is ambiguous.

James Bladel 25/4/10 00:12
Deleted: g

James Bladel 25/4/10 00:22
Comment: Should note that –ALL- must be true for this to be within ICANN's remit.

James Bladel 25/4/10 00:23
Comment: Not sure how this is relevant. ccTLDs make their own rules, and while CO has taken an active role in guarding brands, others (.CM) have welcomed brand-jacking.

James Bladel 25/4/10 00:01
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James Bladel 25/4/10 00:01
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Recommendation 1:

The RAPWG recommends nothing and remain in the status quo.

    The WG feels this issue falls outside the scope of ICANN policy development and enforcement.

Recommendation 2:

The RAPWG recommends the GNSO pass this issue over to the CCNSO for research, investigation and ~~*to develop policy about this issue*~~ *potential remedial action.*

    The WG realizes that this issue appears to predominately exist within Country-Code top level domains and thus out of scope for the GNSO. The GNSO is to follow protocol for inter-Supporting Organization transfer of issue requests.

Recommendation 3:

The RAPWG recommends the GNSO monitor for this abuse in the Generic space and designate a team (ICANN Staff) to conduct research and create education for awareness.

    The WG believes this issue warrants formal definition but understands the lack of credible data to substantiate it does not warrant a PDP. However, the issue does appear to be wide spread enough and the deceptive tactics used provide an indication that harms do exist and any policy making body should understand the scope and breath prior to any further decisions. Equally important, the team responsible for the research should be tasked with creating a disseminating education and awareness of this issue.

Recommendation 4:

The RAPWG recommends the initiation of a Policy Development Process by requesting an Issues Report to investigate "Slamming" in conjunction with fake renewal notices.

    The WG agrees that this issue.