

Ad Hoc Domain Tasting Working Group
CADNA Response

“Request for Information on Domain Tasting” questionnaire is available online at:
www.gnso.icann.org/issues/domain-tasting/faqs-definitions-domain-tasting-10aug07.pdf

1) Category

- a. IP rights owner
- b. Registrant
- c. IP rights Owner Representative

2) Which of the above categories a-I may benefit from domain tasting - and in what?

Domain tasting, defined by the Ad Hoc Group as the “monetization practice employed by registrants to use the add-grace period (AGP) to register domain names in order to test their profitability,” enables interested parties to test domain names for value at no cost. The practice of domain tasting, as is evident from ICANN’s Monthly Registry Reports, has resulted in a significant rise in the number of total new registrations - the top 10 tasting registrars account for nearly 10% of all domain growth over the past 2 years. Both registrars and registries benefit from the practice of tasting, since it leads to more registrations and in turn more revenue. Additionally, ICANN benefits from the increase in the number of registrations since there is a payment made to them per domain name registered.

Additionally, the registrants of names that are identified via tasting benefit greatly from being able to retain only those names that have proven their worth and traffic, and thus incur cost only on names that have a proven ROI.

It is important to note that most domain tasting appears to be done by registrars themselves, where they are both the registrar and the registrant of domain names. The reason for this is that registrars have the technology to directly connect to the registry and thus add/drop names automatically and in real time. It is with this connection and systematic ability to spin and test names that tasting can scale and begin to deliver significant revenue to the party.

3) Which of the above categories (a-I) may be disadvantaged by domain tasting - and in what way?

Domain tasting allows users to unfairly exploit a system loophole whereby they are able to test the value of domain names (based upon the traffic they generate) on a massive scale and operate virtually risk free. This practice was not the intended use of the AGP and is not in the spirit of the inherent interests of the Internet. This abuse of the AGP and the subsequent domain registrations and kiting that occur as a result of it make it much more difficult for businesses to protect themselves and their customers against online harms and frauds, thus expanding the list of harmed and disadvantaged parties.

Nearly all of the categories referenced are disadvantaged and additionally harmed, by domain tasting. From the impact on consumer choice, to unfair business practices, to the resulting harms from names identified in tasting, there are no winners in domain tasting besides the select few registrars who have skirted the line of entrepreneurship and fraud, the registries that enable tasting, and ICANN.

The names that are registered are names that have been proven to receive direct navigation traffic. While many names that are tasted are of a generic nature, a similarly large number of names are based upon trademarks and famous brands. Consumer behavior demonstrates that individuals identify with brands and often conceptualize products and services in concert with brand names. Consumers directly navigate by typing in branded names for that same reason.

Data on this practice can be seen by examining the registration of any branded name. This is particularly true after a new launch. For example, Apple announced their “new” iPod with a touch screen on 9/6/07. By 9/7/07 there were hundreds of domain names in play – none of which Apple owned (e.g., ipodtouchtv.com, ipodtouchstore.com, ipodtouchnano.com, etc.). These names were registered in the hope that consumers looking for information from Apple on the new iPod would directly navigate to these sites.

Instead of ending up on the brand owner’s site, unsuspecting consumers could be routed to sites that expose them to spyware, promote the sale of what turns out to be counterfeit goods, expose their personal information for further exploitation, or display a pay-per-click site, none of which was the consumer’s want or expectation.

Who is harmed and how?

a. Individual Internet Users (The general public)

Domain tasting has contributed to a dramatic increase in domain registrations, and some of the registrants of those names are cybersquatting on well-known brands. In those situations, the registrant is able to harm consumers (through spam, spyware and other crimewares, phishing, and the sale of unwanted counterfeit goods) by using the brands to bridge the trust gap.

b. Non Commercial Internet User (Would-be Registrants)

Domain tasting has contributed to a dramatic increase in domain registrations, as is evident from ICANN's Monthly Registry Reports, and has resulted in a significant rise in the number of total new registrations - the top 10 tasting registrars accounted for nearly 10% of all domain growth over the past 2 years. The number of available .COM domain names is dwindling and consumers are left with fewer choices and fewer opportunities. Consumers with legitimate interests in registering domains are left with less desirable and less relevant choices. Furthermore, high-volume tasters have a distinct advantage over other consumers in this competition for desirable domains because they are able to identify names that they want through automated means and direct connections to the registry.

c. Government

The AGP, domain tasting, and subsequent domain registrations are catalysts for government involvement. In cases where domain names that contain others' trademarks are identified to have value during the AGP and end up being used in cyber-crime, governmental organizations become involved. The volume of domain names that are in the AGP at any given time allow parties to operate in virtual hiding for the 5 day window- it is nearly impossible for enforcement to cut through so many millions of names. In addition, with criminals registering and using domain names of government bodies and personnel, the government falls victim to cybersquatting practices as well. ICANN has a connection with the US Commerce Department, so if problems persist, the US government will unavoidably become more directly involved in policing Internet fraud.

d. IP Owners

Because branded and trademarked names inherently garner large volumes of traffic, cybersquatters often register domains that contain these names, either in their original form or with common spelling errors or typos in order to redirect visitors and consumers onto fake websites.

As noted previously, it is important to talk about domain registrations when discussing domain tasting. Tasting enables the identification of domain name registrations. Names that are identified as having value are often cybersquatted names.

Cybersquatting is costing brand owners worldwide well over \$1 billion U.S. dollars every year as a result of diverted sales, the loss of hard-earned trust and goodwill, and the increasing enforcement expense of protecting consumers from Internet-based fraud. Depending on the brand owner's industry, the total impact of cybersquatting on a single brand could be in the tens of millions of U.S. dollars when taking into consideration the value of lost leads and sales, costs of dilution, confusion, poor customer experiences and millions of lost unique Web site visitor impressions every week.

e. IP Rights representative

CADNA, as an IP Rights Representative, is a coalition of brand owners that is working to make the Internet a less confusing and safer place for consumers and businesses alike. The coalition is taking action to end the practices of domain name tasting and kiting and to reduce instances of cybersquatting. Our membership is concerned about the impact of these practices on their business, on their IP rights, and on their consumers.

4) Do you believe that domain tasting impacts the security and stability of the Internet - if so, in what way?

Yes – Domain tasting impacts the security and stability of the Internet. We look at security and stability from the user perspective and not from an infrastructure standpoint. As noted previously, tasting enables users to identify names that garner traffic and reach an intended audience. Such names can be used by criminals to steal, sell counterfeit goods, or just to confuse the public. In all examples where domain registrations ultimately are used for harm just because that garner inherent traffic, the security and stability of the Internet is threatened.

5) Have you requested the deletion of a domain name during the AGP - if so, how many times and for what reason?

No

6) Have you been disadvantaged by domain tasting - if so, how?

As a coalition of brand owners that are representatives of their customers, CADNA has been disadvantaged by domain tasting. Our members encounter domain registrations that are in place because of tasting on a regular basis and as mentioned, cybersquatting on a single brand could be in the millions of U.S. dollars when taking into consideration the value of lost leads and sales, costs of dilution, confusion, poor customer experiences, litigation costs, and lost unique Web site visitor impressions every week.

7) Do you have any other suggestions in addition to A-C above?

Yes. In addition to these recommendations, CADNA will be issuing a whitepaper examining Delete Caps, Activation After Payment and other domain tasting solutions in much greater detail.

- a. Activation After Payment (no refunds on active names) – This is a practice that is employed by a number of ccTLDs, though Activation-After-Payment should not be seen as a prevention method against domain tasting simply because other TLDs employ the practice. No TLD is like .COM in terms of traffic, customer adoption and value, and thus comparing it to other TLDs such as .ORG is often not relevant.*

The spirit of the Activation-After-Payment policy is that a domain name is only active in the root after full payment has been made. In practice this would eliminate the ability for tasting registrars and other large tasters to have an unfair competitive advantage over the general public; they would no longer be able to ascertain traffic metrics on non-active names and would thus have to pay for every name they wish to understand and garner traffic on. Any name would have to be paid for before a PPC site or any other content would be able to resolve on that site.

This policy, though, would keep the AGP in place for mistakes and charge backs since there is no need for such names to be live.

- b. Cap the number of “free” deletes a registrar is able to have as a portion of their total number of “adds.” The deletes should be a very small number (the average percentage of all registrar deletes except for the top ten and bottom ten, for example).*

8) Which additional disadvantages would each suggestion bring?

The only suggestion presented by the ad hoc group that is viable at all is eliminating the AGP. Eliminating the AGP would not create any disadvantages.

9) Which additional benefits would each suggestion bring?

Eliminating the AGP will create an Internet where abusive practices in the name space are less frequent. All named categories would benefit from this. Domain tasting occurs today because of abuse of a loophole in policy. This loophole needs to be closed while taking into account all groups needs.

10) Should any of these suggestions be implemented, and if so, please explain why or why not?

Option A is a viable option (as noted previously).

11) If domain registrations are offered at no cost to the registrant by a registry (outside of special promotions), would this effectively permit domain tasting?

Yes. Because tasting is primarily done by registrars, allowing domain registration at no cost would exacerbate the already rampant problem of tasters testing the profitability of domain names. Offering domain registrations to the general public would allow anyone to taste domains.

12) Are you opposed to offering domain registrations at no cost to the registrant?

Yes. As explained above, this practice would increase the prevalence of domain name tasting, and thus would lead to more registrations and undoubtedly more cybersquatting; all of which could cause further harm to brand owners and consumers alike.

13) Should ICANN impose a minimum registration fee on domain registrations - if so, what should the minimum fee be?

No. Minimum registration fees may make cybersquatters more selective but it will not eliminate the practice of domain name tasting.

14) Please provide any statistical or other factually supported information (with source or source data included for third party validation) that could be useful for analyzing domain tasting issues.

CADNA is conducting a statistical audit of domain tasting and kiting via a long-term study of many tens of thousands of domain names. At the time of this writing that analysis is incomplete; however, CADNA will make it available upon completion (most likely in the month of September).

15) Please name any expert persons you know of regarding any issues raised by this RFI.

CADNA, its members, and FairWinds Partners, who is involved with the administration of CADNA, are all experts in the domain name space and are committed to working towards furthering stability of and the confidence in the name space.

16) Please provide any other comments you may have to this RFI.

Given the global community's increasing reliance on the Internet as a portal for the conduct of commerce and the open exchange of information, policymakers must act to shore up accountability and transparency on the Internet. If we fail to modernize our policies, if we allow policies to exist that enable practices that have a negative impact on consumers and businesses alike, then we risk squandering the Internet's potential, failing ourselves and failing future generations.

Though there are policies in place to protect against cybersquatting, the ever-changing landscape of Internet fraud has made it so that the practice is as alive and profitable as ever. CADNA views tasting as an unfair contributor to practices that can lead to cybercrime. As has been shown by ICANN's latest report, tasting has driven up the total number of domain registrations. In addition, according to a recent industry report, there are over 1 million kited sites re-registered daily, collectively bringing in \$100-125 million in annual revenue for profiteers and some criminals. All domain tasters are not cybersquatters, but domain tasting leads to a net negative impact on the Internet community as a whole and thus should not be allowed to continue.

As mentioned before, diverted sales, the loss of hard-earned trust and goodwill, and the increasing enforcement expense of protecting consumers from Internet-based fraud has taken a great financial toll on brand owners and negatively impacted consumers and the Internet community as a whole. Cybersquatted domain names are a large part of this overall problem, and domain tasting enables fraudsters to know which brand related names to register because of the traffic they get. Because of that, cybersquatters are able to successfully lure consumers into purchasing counterfeit products (including potentially harmful counterfeit prescription drugs), giving away their personal information (which could lead to further financial loss) and unwittingly exposing themselves to spyware deposits -- in addition to creating an overall negative online experience for the many people that look to the Internet to fulfill their personal and professional needs.

Today, approximately 30-32 million domain names are involved in kiting or were identified and registered via tasting (in many ways the majority of PPC sites we see today are a result of domain tasting since their business model is based upon names needing traffic), with approximately 2 million names being tasted every day. Because ICANN's AGP policy enables tasting and kiting, ICANN needs to take action to eliminate the loopholes that allow for these practices. Furthermore, registrars that are using domain tasting to identify names to register are warehousing domain names. Such registrars are abusing their fiduciary duties to the public, and ICANN should explicitly ban tasting and this practice of warehousing names in the Registrar Accreditation Agreement. To date, ICANN has not addressed these loopholes, thereby failing to protect both consumers and the intellectual property community.

Our hope is that this Ad Hoc group's work leads to policy reform, and CADNA is committed to working with ICANN and each representative constituency as necessary to ensure the rights of all users are protected and that the ultimate result is a better Internet for consumers, domain investors, registrars, brand owners, and all other relevant parties.

We hope to collaborate with other like-minded organizations to advise and work with ICANN to find new solutions to this ever-evolving problem of Internet fraud.