Strange New Brew: Reading the Tea Leaves in the New TLD Cauldron

August 13, 2012

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STRANGE BREW

A good cook is like a sorceress who dispenses happiness.

ELSA SCHIAPARELLI

Ask questions at any time using Q and A box. Download slides using green Resources button.

IN THE KITCHEN WITH ICANN

ICANN

ICANN (Internet Corporation for Assigned Names and Numbers) is a not-for-profit corporation that coordinates the unique names and numbers that identify websites (called IP Addresses)

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CURRENT STATE OF THE INTERNET

22 gTLDs and over 250 ccTLDs

.edu

.com

.us

.name

.org

.net

.biz

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ICANN'S NEW TOP–LEVEL DOMAIN PROGRAM

June 2008: ICANN approves a resolution calling for the implementations of an unlimited number of new gTLDs

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ICANN'S NEW TOP–LEVEL DOMAIN PROGRAM

Detailed information about the New gTLD Program:

http://www.icann.org/en/topics/new-gtld-program.htm

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ICANN'S NEW TOP LEVEL DOMAIN PROGRAM

January 2012: ICANN finally begins accepting applications

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ICANN'S NEW TOP LEVEL DOMAIN PROGRAM

- Technological glitches
- Potential reveal/release of confidential application data
- Delays
- Confusion

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ICANN'S NEW TOP LEVEL DOMAIN PROGRAM

But eventually:

June 13, 2012 – The Big Reveal

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ICANN'S NEW TOP LEVEL DOMAIN PROGRAM

The "ingredients" for the first round:

ICANN publishes the list of applied-for TLDs and applicants

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ICANN'S NEW TOP LEVEL DOMAIN PROGRAM

The "brew" begins to bubble in unanticipated ways …

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TODAY'S AGENDA

- What
- Where
- When
- Why
- How

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TODAY'S AGENDA: WHAT?

What's happened?

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TODAY'S AGENDA: WHERE

Where are we now?

AND

Where are we headed?

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TODAY'S AGENDA: WHEN

When are we really going to get to the "internet of the future"?

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TODAY'S AGENDA: WHY?

Why are we concerned?

What does the present state of the program likely mean for the TLD/gTLD market?

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TODAY'S AGENDA: HOW

How can you use this information to: advise, strategize, monetize?

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TODAY'S AGENDA: WHO

WHO?

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TODAY'S AGENDA: WHO

- Daniel Frohling , Partner, Loeb & Loeb LLP
- Jessica Lee, Associate, Loeb & Loeb LLP
- Sanjiv Sarwate, Principal Legal Counsel, Trademarks and Copyrights, Dell Inc.
- Ed White, Co-Founder and Chief Operating Officer, TLD Assets LLC

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REVIEW OF THE BREW

THE INGREDIENTS

- 1,930 applications
- 84 = “community” applications
- 1,846 = “standard” applications

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THE INGREDIENTS

APPLICATIONS BY TYPE

The TLD applications fall into two categories: standard and community-based. Community-based TLDs must be operated for the benefit of a clearly delineated community consisting of a restricted population. The majority of applications — more than 95% — were for standard TLDs.

Standard [1846] Community [84]

Nearly 40% of the applications were for a specific brand name (.Amazon, .Volkswagen, etc.). Other applications were designated as geographic names (.Africa, .London, etc.), cultural names (.art, .music, etc.), and Internationalized Domain Names (IDNs) utilizing non-English script.

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THE INGREDIENTS

Big plays for generic terms

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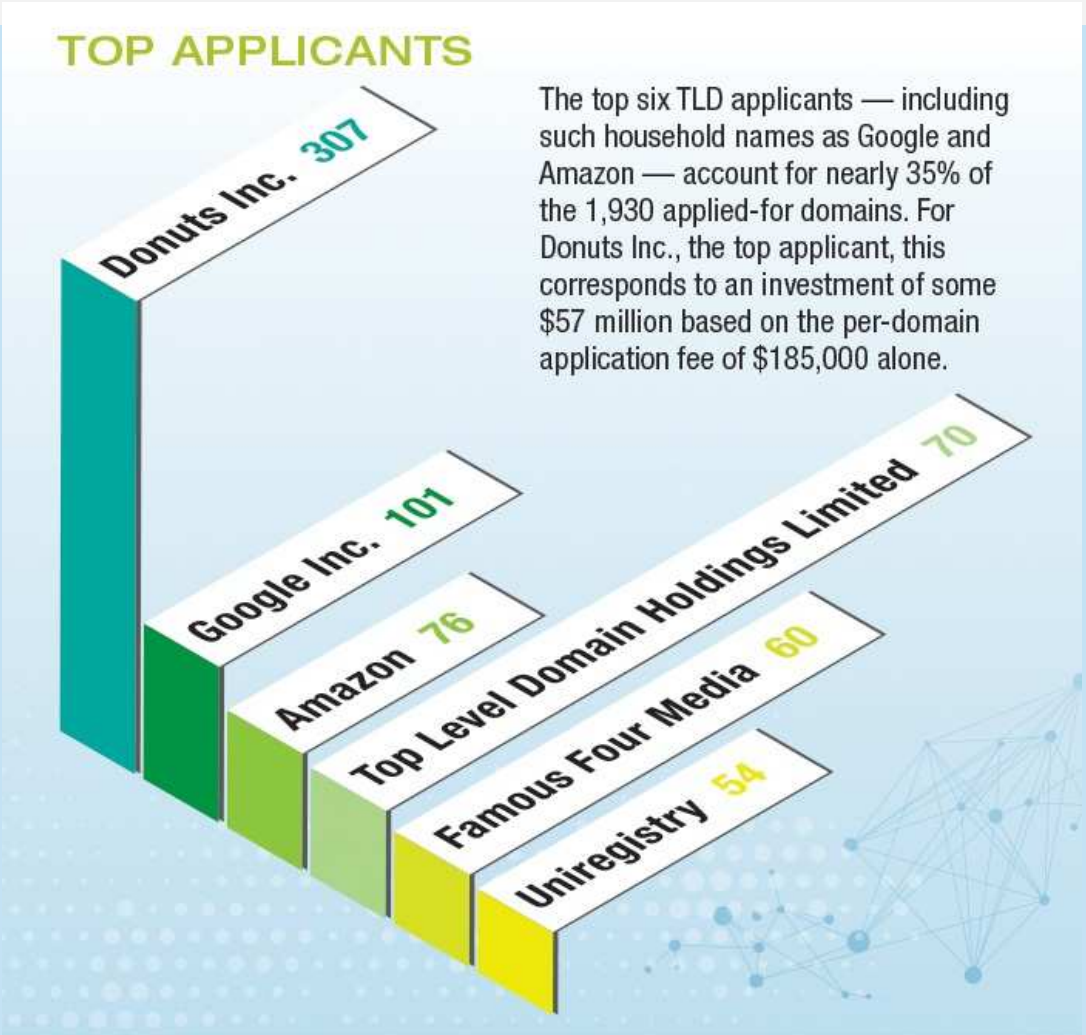
THE INGREDIENTS



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THE INGREDIENTS

Industries represented:

- Domain
- Media
- Retail
- Sports
- Health services
- Legal

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THE INGREDIENTS

Notable absences:

- .Disney
- .Espn
- .CNN
- .MTV
- .Facebook
- .Twitter
- .Ebay

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THE INGREDIENTS

Almost 40% (751) are for the same 230 strings

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THE INGREDIENTS

Major themes:

- Portfolio applicants
- Big generic plays by major brands
- Closing off high value namespaces
- Broadly contested gTLDs

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THE INGREDIENTS

MOST SOUGHT-AFTER DOMAINS

There are competing applications for 230 different domains, which accounted for nearly 40% of the total application pool. Qualified applicants seeking identical or similar domain strings will need to agree on a winner or face a "winner-takes-it" auction.

.app	[13]
.home	[11]
.inc	[11]
.art	[10]
.blog	[9]
.shop	[9]
.llc	[9]
.book	[9]

[Bracketed numbers represent competing applications.]

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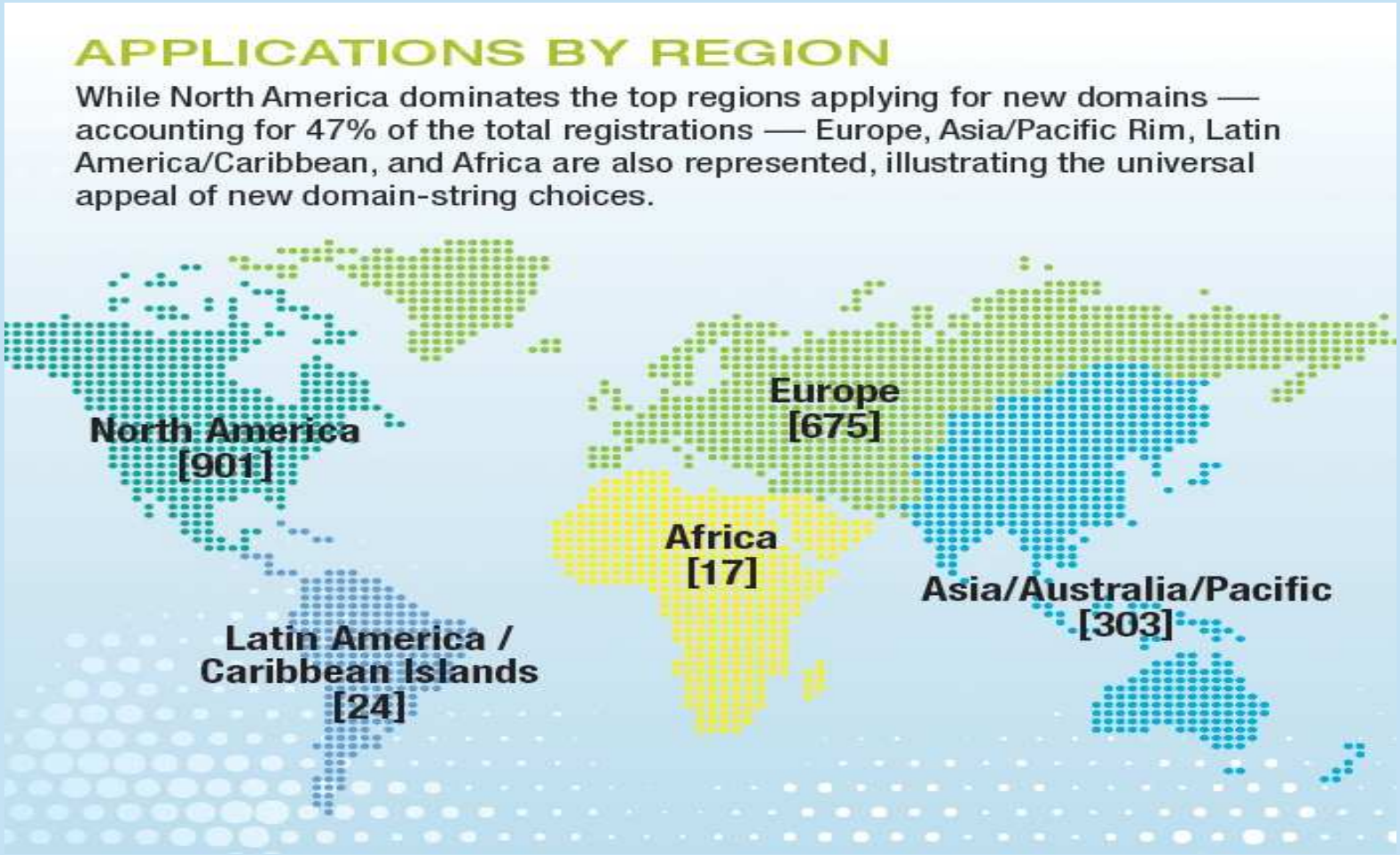
THE INGREDIENTS



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THE INGREDIENTS

Global impact:

- 116 names in language specific script or with accents
- 66 geographic designations
- 60 countries represented among the applicants

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THE BREWING PROCESS

Brewing process to date = a series of mishaps, missteps and mistakes

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THE BREWING PROCESS
A SERIES OF MISSTEPS

April 12, 2012

ICANN suspends the gTLD application system

Early June 2012

Storm begins to brew around the technical glitches in the digital archery system

June 17, 2012

GAC notifies ICANN's Board that it will not offer advice on the new gTLD applications before April 2013

June 21, 2012

ICANN announces its new gTLD Program Director, Michael Salazar, "resigned," amidst rumors that he was fired

June 28, 2012

Digital Archery is officially abandoned

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THE BREWING PROCESS

Suspension of application process in April – with only 12 hours to go before the end of the application window – as a result of “software glitch” in TAS

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THE BREWING PROCESS

Digital archery = a complete misfire:

- Applicant and community criticism over batching and digital archery process
- ICANN suspends digital archery, questions batching and seeks input
- ICANN formally eliminates batching for initial evaluation process but seeks input on using it in announcing results and/or delegation

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THE BREWING PROCESS

Internal and community tension = a lot of heat in the kitchen:

- ICANN fires program director
- GAC refuses to play on ICANN's timeline
- Applicants and ICANN community levy significant criticism over batching, digital archery, schedule for revealing approved gTLDs

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THE BREWING PROCESS

Brew time = your results may vary:

- ICANN forced to revise timelines
- ICANN indicates it will seek community input on process

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THE BREWING PROCESS

What step of the recipe are we on?

Initial evaluation:

- Single batch
- ICANN to evaluate and move applications to next phases “as soon as practicable”
- ICANN reports “significant” progress working with evaluators to accelerate process while keeping accuracy and consistency

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THE BREWING PROCESS

What step of the recipe are we on?

Initial evaluation:

- Applications distributed to take advantage of similarities in applications
  - Same applicant
  - Same “back-end” provider

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THE BREWING PROCESS

What step of the recipe are we on?

Initial evaluation:

- Applications distributed to keep service providers “working efficiently”
- Service providers estimate evaluating about 300 applications/month
- Few months to ramp up to full capacity

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BREWING PROCESS

ICANN ISSUES PROGRESS REPORT

- No digital archery
- Initial evaluation is underway
  - ICANN is working to accelerate the schedule (initial results due in May or June 2013)
- ICANN will build a roadmap
  - Community feedback will be in taken into account
- ICANN will open Applicant Comments Process and allow community input

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BREWING PROCESS

ICANN ISSUES PROGRESS REPORT

Roadmap:

- Detail next steps and timeliness
- Assess implications to applicants
- Assess risks to the program

Timeline:

- ANNOUNCED RELEASE DATE: AUGUST 6, 2012
- ACTUAL RELEASE DATE: ???

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BREWING PROCESS

ICANN SEEKS PUBLIC COMMENT ON "METERING"

- How to ensure sufficient smoothing of the delegation rate?
- How can applications be allocated to particular release times in a fair and equitable way?

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THE BREWING PROCESS

Brew time = your results may vary:

- August 10, 2011 – ICANN extends the deadline for public comments to September 26, 2012

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THE BREWING PROCESS

What step of the recipe are we on?

GAC Early Warning – October 2012:

- Early Warning - notice from one or more governments that an application raises sensitivities or concerns for that government.
  - Any GAC member can submit
  - Consensus not required
- Effect
  - Withdrawal/refunds
  - Remediation
  - Go forward

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THE BREWING PROCESS

What step of the recipe are we on?

Formal Objection Period:

- Currently set to run through early 2013
- ICANN has made no announcements about objection period

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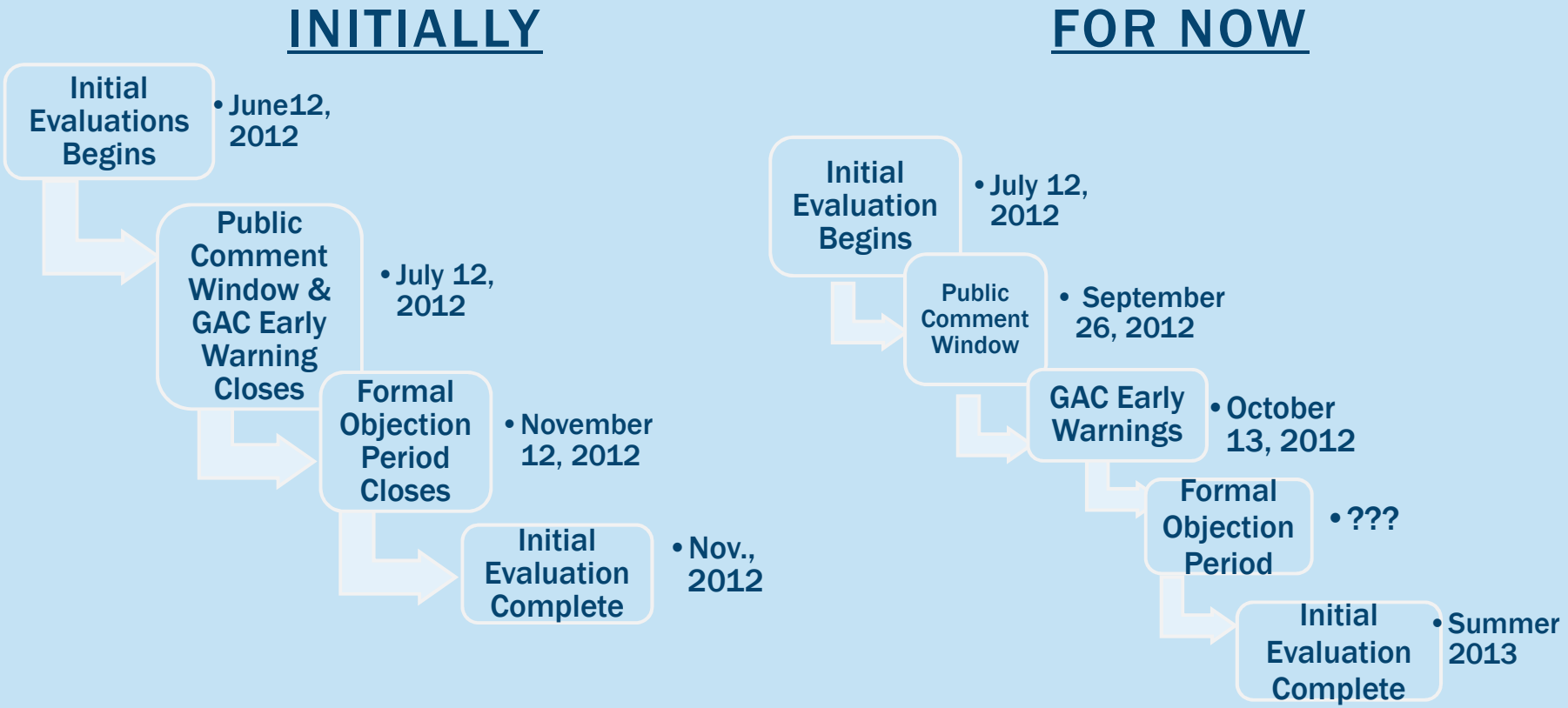
THE BREWING PROCESS
REVISING TIMELINES



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READING THE LEAVES – STAKEHOLDERS, PROCESS, ICANN

READING AT THE RIM: THE FIELD OF INTERESTED PARTIES

- "Portfolio" applicants
- Large/strategic generic forays by major brands
  - Closed gTLDs (Amazon)
- Independents

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READING AT THE RIM:
THE FIELD OF INTERESTED PARTIES

- Branded
- Community
- "Observers"

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WHAT'S BUBBLING UP

Public comments:

- 5,912 comments (and counting) have been submitted in the eight weeks since the Public Comment period opened
- Over half were submitted in August alone

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WHAT'S BUBBLING UP

Public comments – Major themes:

- Trademark Protections
  - Calls for block lists
- Public Welfare
  - .Health, .Charity
- TLD Confusion
  - Public TLD (Unifiedroot.com)

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WHAT'S BUBBLING UP

Public comments – Major themes:

- Unfair Competition
  - L'Occitane objects to L'Oreal's .beauty, .makeup, .skin applications
- Specific Applicants/Applications
  - Donuts Inc., .Patagonia, .OldNavy

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BREWING ON THE OUTSIDE

- Congress
- ANA
- Informal

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ICANN: CAN THE CALDRON COPE?

- "New gTLD Program" 9 years in evolution (4 formal, including 350 page Guide)

- Process in disarray
  - Batching/ Digital Archery
  - Timeline/milestones
  - Lack of transparency
  - Open to influence
  - Is anything certain?

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READING THE LEAVES: THE PARAMETERS? – SEEABLE AND HIDDEN

- Players
- Process
- ICANN
- Market

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STAKEHOLDER ASSESSMENT: OPPORTUNITIES AND RISK

STAKEHOLDER ASSESSMENT

TLD Assets LLC

- TLD strategy and development
- Application process
  - Quality management
  - Thorough review

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STAKEHOLDER ASSESSMENT

Dell, Inc.

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STAKEHOLDER ASSESSMENT OF THE MARKET

- How does the market differ from pre-reveal day expectations?
- Surprises in terms of who did and did not apply?

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STAKEHOLDER ASSESSMENT OF THE MARKET

Which groups form the key constituents (both participants and observers)?

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STAKEHOLDER ASSESSMENT OF THE MARKET

How are the key constituents likely to evolve?

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STAKEHOLDER ASSESSMENT OF THE MARKET

What does that mean for the market?

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ASSESSMENT OF THE PROCESS

Update from Prague:

- Who attended and who didn't?

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ASSESSMENT OF THE PROCESS

Update from Prague:

- What was the tone on the frontlines?

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ASSESSMENT OF THE PROCESS

Update from Prague:

- Any themes you can identify among the comments and questions raised?

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ASSESSMENT OF THE PROCESS

Have ICANN's missteps caused increased uncertainty?

- Successful implementation or management?
- Ultimate success?

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ASSESSMENT OF THE PROCESS

Will the uncertainty and changing timelines affect plans for “Brand” applicants or brand protection strategies?

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ASSESSMENT OF THE PROCESS

Will uncertainty and changing timelines affect business plans for gTLD operators?

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ASSESSMENT OF THE PROCESS: BATCHING

What are your thoughts and reactions to the single batch approach to evaluations?

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ASSESSMENT OF THE PROCESS: BATCHING

How will this approach and timing affect the success of the new gTLDs?

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ASSESSMENT OF THE PROCESS: ICANN'S REPORT

ICANN's report "New Roadmap" addressing:

- Next steps
- Timelines
- Applicant implications
- Program risks

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ASSESSMENT OF THE PROCESS: REQUEST FOR COMMENT

- Limited to metering
- What metering measures do you think will help smooth the process?

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ASSESSMENT OF THE PROCESS

What else could/should ICANN be doing?

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INFLUENCING THE PROCESS

The public comment period:

- Quality of the comments?
- Impact on evaluations?

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INFLUENCING THE PROCESS

What impact will the extended comment period have?

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INFLUENCING THE PROCESS

Other methods by applicants, stakeholders and others for influencing ICANN or GAC?

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INFLUENCING THE PROCESS

Coordinated effort:

Tiffany & Co, Prudential, Pfizer

How effective will these groups be in influencing the process?

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INFLUENCING THE PROCESS AND OUTCOME

Coordinated efforts:

Congress and the Judiciary Committees

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INFLUENCING THE PROCESS AND OUTCOME

Are other players using the comment period to influence the process?

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INFLUENCING THE PROCESS AND OUTCOME

How are you monitoring the comments or planning to respond?

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THE EVALUATION PROCESS

Key parameters for ICANN's evaluation?

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THE EVALUATION PROCESS

Predictions:

- Focus of evaluations?
- Thoroughness of evaluations?

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THE EVALUATION PROCESS

Impact on the strategies of:

- Applicants?
- Stakeholders?
- Others?

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BRAND PERSPECTIVES

Protecting trademarks and IP:

- Trademark Clearinghouse
- Changes to IP protection strategy in the Sunrise period?

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GLOBAL READ OF THE LEAVES

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