ICANN as a Regulator: Competition and Intellectual Property Issues

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Remarks at
“ICANN at a Crossroads: Privatization, Reform, Both, or Neither?” Conference

May 8, 2009
“ICANN at a Crossroads: A Proposal for Better Governance and Performance”

- Provides a timely and productive discussion of issues surrounding ICANN as the JPA is set to expire

- Governance issues

- Competition issues
Lenard and White: 
Competition Issues

- ICANN should have a clear mission of encouraging competition
  - Easy (too easy?) to agree. Already on books [“foundational”], so key is implementation

- ICANN should minimize its role as regulator
  - Agree. Recent work on theory of regulation suggests design of incentive compatibility that would align interests.

- ICANN should adopt an “open entry” policy for new gTLDs
Source: Zooknic
Two approaches to establishing future of ICANN

- Assume that market power exists, which “would require ICANN to take on greater regulatory responsibilities”
  - But ICANN is not equipped as a regulator
  - Does it solve the problem to assume/declare that “there is competition” between TLDs
- Or, “adopt a liberal policy of relatively free entry into domain space, with the objective of bringing the benefits of competitive gTLD market to consumers.”

But, this bifurcation and the policy conclusions that stem from them may be too simple and leave some questions unaddressed
Wrinkles/additional considerations

- Will entry reduce market power?
  - Are gTLD separate markets?

- Might entry actually harm consumer interests?
  - How are consumer benefits from gTLDs affected by the need for defensive registrations?
  - Might new entrants actually possess market power?

- Are there other, complementary, pro-competitive policies that do not require regulatory infrastructure?
  - Could we permit multiple entrants (registries) per gTLD?
    - Accepts, perhaps too quickly, the natural monopoly per registry argument
  - Could we promote competitive outcomes by promoting “competition for the market” rather than competition across registries?
Competition in Theory – Competition in Practice

- The *theory* of competition and competitive benefits is “noble”

- This creates an honest affinity toward the building block principles of competition (e.g. entry).

- The *practice* of competition is more complex and nuanced, preventing blanket ideological positions.

- Advancing competition in practice will require detailed analysis and careful exercise of complementary policies to sound competitive theory.