

ODP Question Set #3

SubPro ODP: Policy Question Set 3 - Topic 24: String Similarity

1. Affirmation 24.1: The Working Group affirms Recommendation 2 from the 2007 policy, which states “Strings must not be confusingly similar to an existing top-level domain or a Reserved Name.”

Question: Recommendation 2 from 2007 does not allow for exceptions to the ‘confusingly similar’ requirement. In light of the outputs of Topic 24, the ODP will assume 24.1 is an affirmation with modification because **the working group is adding new elements to the standard of confusing similarity**. Does the Council agree with this assumption?

GNSO Council Response

It is true that the 2007 Recommendation does state simply that “Strings must not be confusingly similar to an existing top-level domain or a Reserved Name.” That said, a lot of work was done during the development of the Applicant Guidebook to figure out how to implement that Recommendation. It did so by creating a String Similarity review process as well as a String Confusion Objection. Those were not considered new elements to the 2007 principle, but rather just implementation mechanisms. The final SubPro Recommendations further refined the interpretation of what it means to be confusingly similar to an existing top-level domain or a Reserved Name. Thus, the SubPro Working Group did not believe that these refinements to implementation constituted a modification to the original 2007 Recommendation.

The Council agrees with the SubPro Working Group classification of this as an Affirmation of the policy. The Council believes that the policy itself is not being modified; only the interpretation from the 2012 Applicant Guidebook is being modified.

2. Affirmation 24.2 states: Subject to the recommendations below, the Working Group affirms the standard used in the String Similarity Review from the 2012 round to determine whether an applied-for string is “similar” to any existing TLD, any other applied-for strings, Reserved Names, and in the case of 2-character IDNs, any single character or any 2-character ASCII string. According to Section 2.2.1 of the 2012 Applicant Guidebook, “similar” means “strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.” In the 2012 round, the String Similarity Panel was tasked with identifying “visual string similarities that would create a probability of user confusion.” The Working Group affirms the visual standard for determining similarity with the updates included in the recommendations below.

Question: Recommendation 24.3 introduces the concept of singular and plural to string similarity, meaning “mouse” and “mice” would now be considered confusingly similar. Therefore, **does the Council agree** with the ODP’s assumption that Affirmation of 24.2 is an affirmation with modification, meaning **that the standard for determining string similarity is visual and, in light of Recommendation 24.3, also grammatical for subsequent rounds of new gTLDs?**

GNSO Council Response

Although we understand what you are getting at with the question, we just want to note that for future reference “grammatical” implies a broader scope to what the policy relates to which really just involves singulars/plurals.

As stated above, the policy itself is not being modified. The policy is that strings must not be confusingly similar.... The implementation of the 2012 round as set forth in the Applicant Guidebook defined confusingly similar as being purely visual. However, that was a choice that was made by the community at that point in time of how to implement the Recommendation. The SubPro Working Group affirmed the 2007 Policy Recommendation, but focused on the selected implementation mechanisms from 2012. Because the SubPro Recommendations focused on refinements to the implementation as opposed to the policy, it was properly classified as an Affirmation.

3. Recommendation 24.3 states “Applications will not automatically be placed in the same contention set because they appear visually to be a single and plural of one another but have different intended uses.”

Question: **Does the Council agree** with the ODP Team that based on this recommendation, **all applications must provide an intended-use RVC?** This will allow during subsequent rounds that the intended use of an applied-for string can be compared to the intended use of an existing string to determine whether it passes the string similarity review.

GNSO Council Response

The SubPro Working Group Recommendations do require that all applications must state the intended purpose of its application. This is no different than Question 18(a) from the 2012 New gTLD Round which asked all applicants to describe the “mission/purpose of your proposed gTLD.” That said, SubPro did not recommend that all applicants must have an intended use Registry Voluntary Commitment (RVC). SubPro only recommended that a Public Interest

Commitment (which could be in the form of an RVC) be agreed to where (a) there are two strings applied for that appeared visually as the plural/singular of each other, but where the application for those strings had different intended purposes or (b) there is an application for a string that represents a plural/singular or an existing gTLD or a Reserved Name, but where the intended purpose of that applications was different than the plain meaning of the reserved name or existing gTLD.

SubPro did not recommend that the responses to Question 18(a) be codified as PICs or RVCs for all applicants.

4. Recommendation 24.3 states “Applications will not automatically be placed in the same contention set because they appear visually to be a single and plural of one another but have different intended uses. “

Question: Does the Council agree that based on the wording of 24.3, the **intended-use test is only applicable to the possible delegation of singulars/plurals** not other visual or grammatical similarities? **Meaning** that applied for strings **.example and .examples might both be delegated** if they provide an RVC that indicates different intended use. However, **.example** (english) **and .exemple** (french), if determined to be visually similar, **will never both be delegated.**

GNSO Council Response

The SubPro Working Group has only addressed the situation in which there are singular/plural applications of an existing gTLD, Reserved Name or another application in the same language. In the example provided by SubPro, .spring and .springs could both be delegated if they provide a PIC or RVC committing to different intended uses. If they are a singular/plural but in another language, then this recommendation would not apply. Thus if they were deemed visually similar, then the normal visual similarity rules apply.

5. Recommendation 24.3 states “The Working Group recommends using a dictionary to determine the singular and plural version of the string for the specific language.”

Question: Does the Council agree that for each round **dictionaries should be updated to the most recently published version and it is only that version that is authoritative for the purposes of accessing string similarity?**

GNSO Council Response

The SubPro Working Group did not specifically address this particular question and therefore the Council is not in a position to answer this question. That said, the Council believes that the ODP’s question should be addressed during the implementation phase.

6. Recommendation 24.3 speaks only about singular/plural versions of the same word in the same language, not of other grammatical variations of the same word such as gender or conjugation.

_Question: Does the Council agree with the ODP assumption that only singular/plural versions can both be delegated if the intended use is different, not any other grammatical forms?

GNSO Council Response

The Council agrees that the SubPro WG Final Recommendation only addresses the issue of singular/plural versions of the same string. It did not make any recommendations with respect to other types of grammatical variations of an applied for string.

If the Council agrees, the ODP team believes the following example of .hand below will be applicable for subsequent rounds:

.hand and .hands

IF .hand and .hands are both applied-for strings in English THEN they both can be delegated if their intended use is different because they are singular/plural versions of one another.

- IF .hand and .hands are both applied for strings in German THEN they would be placed in a contention set ONLY IF they deemed to be visually confusingly similar, and one may be delegated subject to the outcome of the contention set resolution.
- IF .hand and .hände are both applied for strings in German THEN they can be delegated if their intended use is different because they are singular/plural of one another.
- IF .hand is an applied for English string and .hands is an applied for German string then they would be placed in a contention set ONLY IF they deemed to be visually confusingly similar, and one may be delegated subject to the outcome of the contention set resolution.

Question: In light of this, **does the Council agree that this will likely require each application to indicate which languages/scripts they intend to use via an RVC and that those languages must always be offered for the life of the TLD?** And to allow for future intended use determination, **these RVCs will have to be submitted by all strings not just those in contention sets** so that applications in future rounds can be assessed against existing RVCs.

GNSO Council Response: *The Council believes that these questions involve issues that should be resolved during the implementation phase. That said:*

- IF .hand and .hands are both applied-for strings in English THEN they both can be delegated if their intended use is different because they are singular/plural versions of one another.
 - GNSO Council Response: *This appears to be consistent with the SubPro recommendation.*

- IF .hand and .hands are both applied for strings in German THEN they would be placed in a contention set ONLY IF they deemed to be visually confusingly similar, and one may be delegated subject to the outcome of the contention set resolution.

GNSO Council Response:

- *We are interpreting this question to be asking that if the German word for Hand is applied for (.hand) by one applicant and the German word for Hands (.hände) by another applicant, what would happen?*
 - *It is our interpretation of the SubPro recommendations that if the applied for strings are the plural/singular of each other then they would be placed in the same contention set regardless of whether they were determined to be “visually confusingly similar.”*
 - *Stated differently, plurals/singulars of each other in the same language are deemed to be confusingly similar regardless of whether they are deemed to be visually similar.*
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- IF .hand and .hände are both applied for strings in German THEN they can be delegated if their intended use is different because they are singular/plural of one another.

GNSO Council Response:

- *The Council interprets this question to be asking if .hand (the German word for hand) and .hände are applied for, can they both be delegated?*
 - *In that case the SubPro Recommendation applies whereby they can both be delegated if they have different intended uses.*
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- IF .hand is an applied for English string and .hands is an applied for German string then they would be placed in a contention set ONLY IF they deemed to be visually confusingly similar, and one may be delegated subject to the outcome of the contention set resolution.

GNSO Council Response:

- *The Council believes that the SubPro Recommendations on Singular/Plural only apply if they are in the same language.*
- *If they are not in the same language, then the other rules set forth in the Applicant Guidebook would be applied to determine whether they would be placed in the same contention set. This would include the visually similar test as in the question, but may also include strings that are determined to be confusingly similar as a result of a string confusion objection.*

Question: In light of this, **does the Council agree that this will likely require each application to indicate which languages/scripts they intend to use via an RVC and that those languages must always be offered for the life of the TLD?** And to allow for future intended use determination, **these RVCs will have to be submitted by all strings not just those in contention sets** so that applications in future rounds can be assessed against existing RVCs.

Clarification on the Previous Question by ICANN ODP Team

It's a similar question to and follows from the previous question – only there may be impact for the second level when it comes to their registration policies. For example, if we have a German application for hand [Which also means “hand” in German]] and hands [which only has an english meaning since the plural of hands in German is “.hände]”, and they are allowed because the applicants are considering those strings as different uses because of different meanings in different languages – part of their RVC might be limiting or allowing registrations according to IDN tables for the relevant scripts/languages that will be in use for the registry. If that is the case, would an RVC be a mechanism to memorialize that commitment? And if so, would that be needed from all applicants in the event that a later round produced an application for a TLD found to be similar but intended to be used differently – or, as it seems from some of the other responses – would it only be up to the later applicant to demonstrate how the intended use is different and propose the appropriate RVC?

GNSO Council Response:

In a string similarity review, the two applications if filed in the same round would be flagged for a potential violation of the plural/singular rule because they appear to be the plural/singular version of the other. However, under the exception if they can show that they are for different purposes (and commit to being used for different purposes) they can be allowed to coexist. If the way to do that in this example is for the applicant for .hand to commit to only allowing German registrations and the applicant for .hands to only allow English registrations and they have a way to enforce that, then yes they can coexist. But if either one of the applicants refuses

to commit to that, then they would be placed in the same contention set and not allowed to coexist.

If .hands existed and there was an application in a subsequent round for .hand, then Council believes it would be only the applicant's burden to differentiate itself from the existing registry and ICANN would not go back to the original registry to limit its scope. Council does not believe the SubPro recommendations intended for ICANN to reach back into the existing TLD and force that registry to change to allow for a new registry to exist.

The example ICANN has provided is not the most likely scenario as discussed by SubPro. The SubPro Working Group discussed the more likely scenario where one of the applicants is a brand that looks like the plural/singular of an existing TLD or applicant, but where they have different meanings:

Examples

- 1. .apple exists (as a brand TLD), but someone wants .apples to use its dictionary sense*
- 2. .fire exists (as a brand TLD), but someone want .fires in its dictionary sense*
- 3. 2 applications are filed, one for .slack (as a brand), the other for .slacks (for pants) -*
- 4. 2 applications are filed, one for .ring (to use as the brand for alarms), and .rings (in the jewelry sense).*