ALAC Advice to the ICANN Board

On 24 June 2013, as requested by the GAC, the Board New gTLD Program Committee (NGPC) considered the issue of singular and plural stings being confusingly similar and decided to let the original process stand (subject to individual objections).

Since that time, the situation has evolved, and we are now in a position where it is difficult to believe that we are using transparent, predictable and objective criteria for evaluating confusingly similar strings as called for in the original GNSO New gTLD Policy recommendations 1 and 9.

As examples, recent string similarity objection decisions have ruled:

- .sport is confusingly similar to .sports
- .tour is confusingly similar to .tours
- .car is not confusingly similar to .cars
- .hotel is not confusingly similar to .hotels
- .tv is not confusingly similar to .tvs
- .pet is not confusingly similar to .pets.
- .com is confusingly similar to .cam
- .com is not confusingly similar to .cam
- .shop is not confusingly similar to the Chinese string for .shop
- .shop is confusingly similar to the Chinese string for .onlineshopping

The ALAC is particularly concerned with the issue of singular vs plural strings. A central issue is that the "confusingly similar" test relies purely on visual similarity. Based on the initial evaluation (and the recent NGPC decision), adding an "S" makes it a recognizably different string.

The Applicant Guidebook section 2.2.1.1 describes the string similarity review:

> *This review involves a preliminary comparison of each applied-for gTLD string against existing TLDs, Reserved Names (see subsection 2.2.1.2), and other applied-for strings. The objective of this review is to prevent user confusion and loss of confidence in the DNS resulting from delegation of many similar strings.*
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> *Note: In this 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.*
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> *The visual similarity check that occurs during Initial Evaluation is intended to augment the objection and dispute resolution process (see Module 3, Dispute Resolution Procedures) that addresses all types of similarity.*

The ALAC disagrees with the NGPC decision. The problem is the belief that "visual similarity" relies purely on what, in computer terminology, would be called "pattern matching". Pattern matching is

certainly part of human perception, but it is not limited to that. At issue is whether two strings will be PERCEIVED as being equivalent, and perception is a far more complex (and less understood) issue.

At issue are strings pairs such as:

- hilton.hotel and hilton.hotels;
- soccer.sport and soccer.sports;
- poodle.pet and poodle.pets; and
- taj-mahal.tour and taj-mahal.tours.

Will these be memorably equivalent or different to typical Internet users (the ones who have no knowledge of terms such as ICANN, domain name, TLD and second level)?

If both singular and plural TLDs are delegated:

- Some registrants would register (and defend) their 2nd level names in both TLDs and map them to the same web and e-mail services. This would reduce the impact on users, but would of course increase costs to registrants who must double their registrations. Moreover, due to either policy differences between the two TLDs, or due to timing constraints, such duplication may not be possible.
- Other registrants would use only one of the TLDs, resulting in quasi-random behavior from a user's perspective. One cannot expect the typical Internet user to be able to differentiate between two such name spaces, and therefore the ALAC, which is responsible for representing the interests of Internet users in ICANN, believes that we have a genuine case of "confusingly similar".

The ALAC advises the Board to revisit the issue of new TLD strings which are singular and plural versions of the same word, and ensure that ICANN does not delegate strings that are virtually certain to create confusion among Internet users and therefore result in loss of faith in the DNS.

The ALAC is also concerned with the lack of predictability and consistency in objection decisions. Certainly allowing identical strings to be individually evaluated (based on different arguments and by different panelists) does not appear to have been a wise move. Moreover the clear lack of consistency among the evaluations of different panellists implies that overall, we will put either some TLDs in contention sets where it is not justified, or delegate strings that will cause user confusion.

It is not clear how this can be fixed at this time, but proceeding with no change is either going to unfairly disadvantage some applicants and their target markets or cause certain user confusion.

The ALAC advises the Board to review not only the obvious cases such as .cam/com but the general case and determine a viable way forward which will not create contention sets where it is unwarranted, nor delegate multiple TLDs destined to ensure user confusion and implicit loss of faith in the DNS.