ccNSO Council comments on SSAC input to the ICANN Board on proposed amendments to the EPSRP Guidelines

Executive Summary

In this accompanying paper an analysis of the 'SSAC Comments on Guidelines for the Extended Process Similarity Review Panel for the IDN ccTLD Fast Track Process' (the 'SSAC Comment') is provided to inform the ICANN BOARD in depth on the WG groups assessment of the SSAC Comment.

The SSAC Paper asks that 'the advice offered here should be evaluated on its merits'. On its merits, the SSAC Paper falls below the usual quality of SSAC inputs, and should be rejected by the ICANN Board, for the following reasons:

- The scope of the ccNSO Working Group's activities is limited by definition. Assuming a more expanded scope results in arguments that are **not part of the current consultation process**.
- **Misrepresentation of the work of the EPSRP** with respect to assumed inconsistency with RFC 6912. If a future application poses a threat to the security and stability of the DNS, such a threat will be highlighted by the DNS Security Panel. The Working Group proposal seeks to ensure that the expert evaluators of confusing similarity, the EPSRP, are given the guidance they have asked for in relation to the interpretation of split recommendations.
- **Discriminative interpretation** of standard for confusing similarity for gTLDs, (ASCII) ccTLDs and IDN ccTLDs.
- Conclusions are **based on errors of fact and scope**. This results in a mis-representation and exaggeration of the risks involved and appears alarmist.
- Inconsistency **between DNS Security Panel reports and SSAC Comments**
- The submission of the paper direct to the ICANN Board, rather than participating in the Working Group or through public comment, **does not comply with the bottom-up multistakeholder model** and could be construed as an **attempt to exercise a policy veto**.

The ICANN Board should consider the conclusions of the SSAC Paper in light of this document and in the correct context.

Detailed Analysis

The limited scope of the ccNSO EPSRP Working Group mandate

The SSAC notes with apparent criticism that the changes proposed by the Working Group 'focus almost exclusively on a distinction between "uppercase" and "lowercase" letters.' The ICANN Board expressly tasked the Working Group to provide further guidance on the interpretation of split recommendations (ie different outcomes for upper and lower case).

The ICANN Board resolution of June 2015 sets out the mandate of the ccNSO Working Group, as follows (emphasis added):

> *To provide further guidance on and refinement of the methodology of the second string similarity review process,* **including the interpretation of its split recommendations***, to be applied to the relevant current and subsequent cases in the IDN ccTLD FastTrack process as well as to inform the proposed policy for the selection of IDN strings.*

After careful consideration and discussion, the Working Group did not feel that there was a requirement to refine the methodology of the second string similarity review process, as the scientific evaluation methodology was felt to be robust and appropriate.

Therefore, the ccNSO Working Group limited its activity to two areas in the EPSRP Guidelines document:
- Recommendation on split recommendations (upper and lower case). As part of its work the WG encountered related issues, which were listed and discussed in a separate document.
- Addition of observations to guide evaluators

Several of the SSAC findings seem to build on the misunderstanding that changes were being proposed to the EPSRP process, timeframes and deadlines (see SSAC Comment, p 6, section 3 "Findings", first paragraph). However, the ccNSO EPSRP Working Group report does not include any proposal to change the detailed methodology, timeframes or to the Implementation Plan.

Misrepresentation of proposed Guidelines EPSRP with respect to RFC 6912

The SSAC Comment quotes extensively from RFC 6912 and concludes that *'the apparent intention of the EPSRP was to create a way for ICANN to bypass the conservatism, inclusion and stability principles in order to approve new IDN ccTLDs that would be rejected if those principles were applied.'* This interpretation is incorrect and the Working Group fails to understand why **SSAC did not raise this concern at the appropriate times and fora**:
- First in 2013, when the EPSRP was first proposed and extensively submitted to community input during a public comment period.
- Secondly, during the third review process of the IDN Fast Track process[1] (January – February 2015), which resulted in the Board request to the ccNSO in June 2015.

Following the first and second review of the IDN ccTLD Fast Track Process, a second panel using a scientific-based methodology was established in 2013. This change was proposed after extensive discussion and introduced as part of the overall policy. At the request of the ccNSO and in line with GAC advice, the scope of the EPSRP is to improve the evaluation of possible confusing similarity in IDN ccTLD strings under the IDN ccTLD Fast Track process. Originally, this similarity review was performed by the DNS Stability Panel, which as far as we know, includes members of the SSAC community. Some of the evaluations were recognised by the applied-for strings registry managers as failing in both the quality of output, methodology, and qualification of individual evaluators.

The Working Group is disappointed that – without having taken the trouble to inform itself of the facts by participating in the Working Group, or even the public comment period – the SSAC has chosen to make what is effectively an allegation of bad faith direct to the ICANN Board.

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[1] https://www.icann.org/public-comments/idn-cctld-fast-track-2015-01-15-en

Nothing in the Working Group's output or discussions have rejected or attempted to undermine RFC 6912. For the reasons explained below, the Working Group's recommendations are consistent with the RFC:

- **Conservatism**. The EPSRP Guidelines are a subsidiary document to aid interpretation of the 'Final Implementation Plan for IDN Fast Track Process', 2013 (the 'Implementation Plan')[2]. The first sentence of Implementation Plan Module 3 ('TLD String Criteria and Requirements') states: 'A *conservative* approach for potential IDN ccTLD strings has been adopted'. The Working Group had the option to proposed updates or amendments to the Implementation Plan – it did not do so. The conservatism principle is mandated by the Implementation and flows through to the Guidelines.
- **Inclusion.** There can be no question of breach of the Inclusion principle. The DNS Security Panel will continue to evaluate every IDN string for its security and stability impact on the DNS.
- **Stability**. The DNS Security Panel has previously found no threat to security or stability of the DNS, even from applications which it failed for other reasons – Greece and the European Union. No safety issues arise in the current case, and there is no inconsistency with RFC 6912.

Discriminative interpretation of standards for confusing similarity within the gTLDs, (ASCII) ccTLDs and IDN ccTLDs environments

Evaluation of the risks posed by the IDN ccTLD process has to take place in the context of the enormous expansion of the namespace since 2012. In commenting on the Conservatism principle, the SSAC Paper fails to mention the impact of the new gTLD programme. A process which resulted in the co-existence of 'fan/fans', 'pet/pets', 'accountant/accountants' and numerous other singulars and plurals cannot be described as adhering to the principle of 'Conservatism'. The approval by ICANN of more than 1,500 new gTLDs (including several strings that were near identical to one another) did not apparently result in the destabilization of the DNS. Yet the SSAC Paper claims that non-ASCII ccTLD strings pose a grave threat. The SSAC Paper chooses to **overstate the perceived risks** associated with IDNs while ignoring the significant – and apparently harmless - inroads into the Conservatism principle made by the new gTLD programme.

The SSAC Paper states in relation to non-ASCII characters that, 'the number and kinds of possibilities for usability and confusability problems is much greater [than with ASCII characters].' A natural conclusion from this statement is that IDNs should hold to stricter criteria than ASCII strings. Such an outcome would discriminate against billions of Internet users who cannot currently use the domain name system in their mother-tongue. It would breach the conditions for the IANA transition laid down by the US Department of Commerce[3], by adversely impacting the openness of the DNS. It would also have an adverse impact on human rights, including freedom of expression, and the freedom to seek, receive and impart information[4]. ICANN's adherence to international law including human rights is now enshrined in its Bylaws.

Errors of fact and incorrect assumptions

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[2] https://www.icann.org/en/system/files/files/idn-cctld-implementation-plan-05nov13-en.pdf
[3] https://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions
[4] Article 19 http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

The SSAC Comment contains a number of errors of fact and incorrect assumptions:

- There appears to be **confusion** between new proposals and parts of the EPSRP Guidelines which are unchanged. For example, the SSAC Comment seems to indicate that the 'guiding principles' (from which the SSAC Comment quotes extensively) have had an impact on previous EPSRP outcomes. This is impossible – those 'guiding principles' are proposed for inclusion in the current review, and cannot have affected historic decisions.
- The following statement: 'Tight deadlines and turnaround times for various steps of the process disregard the complexities involved in the evaluation of labels in scripts that may require extensive study and analysis prior to any conclusions being reached'. This is a difficult argument to sustain given that some applications in the IDN ccTLD 'Fast Track' have been live for more than 6 years and that the entire process has been subject to annual reviews.
- The statement that the ccNSO has initiated a Policy Development Process in reaction to the rejections of the IDN applications from Bulgaria and Greece. No such PDP exists.
- The EPSRP documents currently in force were approved by the Board in November 2013, not 2014 as stated in the SSAC Comment.

The SSAC Comment's objections to the guiding principles – see page 6 of the SSAC Comment – are misplaced for the following reasons:

- There can be no objection to the principle that '**ccTLD policy is a matter for the local internet communities to determine**.' That is a statement of fact, and reflects the wording of RFC 1591 'These designated authorities are trustees for the delegated domain, and have a duty to serve the community'. RFC 1591 is also authority for the concept that ccTLD managers are trustees for 'the nation', i.e., the local internet communities.
- The principle that 'a given IDN ccTLD application represents **the free choice of a specific linguistic community** that has every right to use its language and script in the DNS space' aligns with RFC 6912's observation that 'To restrict users of those languages … would be extremely limiting' and 'invites political controversy.' This principle is also consistent with ICANN's human rights obligations, and its core value to work for '**the benefit of the internet community as a whole**' (Bylaws 1.2(b)(ii))
- The principle of allowing an applicant to propose mitigation measures for potential confusability is consistent with previous iterations of the Implementation Plan, e.g., at 5.6.3, which notes that the manager 'shall agree to specific and pre-arranged conditions with the goal to mitigate the risk of user confusion' (an amendment to the Implementation Plan on which the **SSAC made no objection**).
- The principle of taking a pragmatic approach to the issue of confusion and to consider context is entirely consistent with section 6 of RFC 6912. The RFC states that 'a focus on characters alone could lead to the prohibition of very large numbers of labels, including many that present little risk.'
- The principle to resolve split recommendations in favour of lower case strings is consistent with RFC 6912 (para 2) permitting only lower case letters (along with Lo and Lm), not upper case. This is also consistent with the IDNA 2008 standard.

Therefore, **it is incorrect to state** that principles which are consistent both with RFC 6912, ICANN Bylaws and RFC 1591 could possibly undermine DNS security and stability – especially as a test for DNS security and stability remains a part of the process.

Inconsistency between DNS Security Panel reports and SSAC comments

Members of the ccNSO Working Group have reviewed two historical DNS Security Panel reports relating to applications for IDN ccTLD strings. Both evaluations – despite being failed on the grounds of string confusability – make a finding that the applied for string 'presents none of the threats to the stability or security of the DNS identified in Module 4 of the FTIPbis'.

Therefore, the alarmist conclusions of the SSAC Comment on risk posed to stability and security should be viewed with skepticism. As far as the Working Group knows, SSAC has not provided any evidence that previous IDN strings, or even applications where a finding of confusing similarity has been made, create a security or stability threat to the DNS. All future IDN ccTLD Fast Track applications will be evaluated by the DNS Security Panel – this remains an integral part of the process as it remains the EPSRP appeal process because of its scientific nature.

SSAC non-participation in the ccNSO EPSRP Working Group

At its meeting on 25 June 2015 the ICANN board of Directors requested "*the ccNSO, in consultation with other stakeholders, **including GAC and SSAC**, to provide further guidance on and refinement of the methodology of second string similarity review process, including the interpretation of its split recommendations, to be applied to the relevant current and subsequent cases in the IDN ccTLD Fast Track process as well as to inform the proposed policy for the selection of the IDN ccTLD strings*" (emphasis added).

Mindful that the ICANN Board had particularly highlighted the need to consult with the GAC and SSAC, on 24 November 2015, at the request of the Working Group Chair, ICANN staff sent out an invitation to the GAC and SSAC chairmen to invite them "to participate in a manner deemed to be most appropriate by GAC and SSAC, for example as observer, liaison or member".

In response to the invitation:

- Two GAC representatives, Manal Ismail of Egypt and Panagiotis Papaspiliopoulos of Greece joined the Working Group and participated fully in its work.

- On 3 December 2015, the SSAC Chairman, responded "The way SSAC operates requires material to be reviewed by SSAC as a whole at which time SSAC decide whether to express any view and if so what. This makes it hard for SSAC to participate in groups like this."

The Working Group noted that SSAC members have participated in other fora and WGs, including in the development of the IDN ccTLD Fast Track Methodology, and in non-security and stability related work such as the CCWG-Accountability.

Following the establishment of the WG, the ccNSO reached out to the different communities, in particular the GAC and SSAC as envisioned in the Board resolution of June 2015, to participate in the process and to provide feed-back and input during the process, and has provided regular updates during the ccNSO meetings. SSAC has not participated in the Working Group or public comment.

The Working Group is concerned to note that, rather than submitting comments in response to the call for public comment or even participating as an invited member of the Working Group, the SSAC has chosen to submit a paper directly to the ICANN Board. This is **discourteous to members** of the Working Group and **shows disrespect** for consensus recommendations developed through the ICANN multi-stakeholder, bottom up process. It

gives the impression that SSAC sees itself as separate from (or even, as sitting above) the ICANN community, and that it is **seeking to veto community-developed consensus policies**. It should be noted that the Working Group proposals were strongly endorsed both by ALAC and by GAC. Verisign expressed its support in the recent public comment noting the need to ensure RFC 6912 and equal treatment of IDN in the ccTLDs and gTLDs environments.