THIS NEEDS A CAREFUL EDITING.

APPLICATION AND EVALUATION PROCESS OF THE NEW gTLD PROGRAMME

Section 5: Effectiveness of the Dispute Resolution Process for Formal String Objections

One aspect of ~~T~~the New gTLD Program~~me~~ was to provide an official string objection process including dispute resolution (*I don't know how to add footnotes in Google documents so have added a new A below in the footnote section to describe as requested:* NEED TO DEFINE STRING CONTENTION PROCESS in order to ensure adequate consumer protection but also to protect existing owners of trademarks or other intellectual property and to respect potential public policy concerns. The grounds for objection TO ? were developed BY ? ~~to~~ support the GNSO recommendations relating to each of the grounds discussed below WHY NOT DESCRIBE THEM HERE? and were explained in the Applicant Guide~~b~~Book. Dispute resolution proceedings were carried out by three different service providers selected by a public call for expressions of interest.[1] THIS PARAGRAPH IS CONFUSINGLY WRITTEN.

In order to provide a ~~some~~ rough assessment of the effectiveness of the string contention process, the CCT review team analyzed both ~~looked at~~ the number and nature of string contention objections that were raised after the initial assessment by ICANN staff[2] and the outcomes of those objections ~~on 2 new gTLD applications and delegations~~. In particular, we assessed the results of singular/plural string contentions, whether objections were raised in a timely manner, and identified some improvements that might be made to the process of application and evaluation in any new launch of gTLDs.

Four types of objections ~~string contentions~~ (after initial ICANN assessment) were possible:
a) string confusion (also involving singular and plural versions of the same word)[3]
b) community objections (where there was substantial opposition from a significant portion of the community that the string targets)

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[1] International Center for Dispute Resolution (ICDR) for string confusion, Arbitration and Mediation Center of the World Intellectual Property Organisation for legal rights objections, and International Center for Expertise of the International Chamber of Commerce for community objections and limited public interest objections. See ICANN, *Program Implementation Review,* January 2016, https://newgtlds.icann.org/en/reviews/implementation/program-review-29jan16-en.pdf, p. 104.

[2] An initial evaluation was carried out by ICANN staff which looked at "String similarity, Reserved names, DNS stability and Geographic names.." and in particular "Whether the applied-for gTLD string is so similar to other strings that it would create a probability of user confusion; Whether the applied-for gTLD string might adversely affect DNS security or stability; and Whether evidence of requisite government approval is provided in the case of certain geographic names" (see sections ~~pagsees~~ 2-2 and 2-4 of the Applicant Guidebook version 2012-06-04)

[3] The Government Advisory Committee (GAC) had advised in its communique of April 11, 2013 that single and plural versions of the same word could create confusion for consumers and should be avoided.

Commented [1]: This section is really confusing. It's discussing both string contention and objections. Each topic stems from different policy recommendations and has a different purpose and process. This section seems to be conflating the two topics. For example, the section header talks about the String Contention Process, but in fact does not discuss at all the 2 string contention resolution mechanisms: CPE and auction.

Commented [2]: Are we trying to tie the objective of the string contention process back to the GNSO policy? There is GNSO policy on string contention, but it was not framed as consumer protection. The trademarks and IP reference seem to correspond to GNSO policy, but the implementation of this policy was the objection process.

Commented [3]: Were these the data sets: the results of the string similarity review process, string confusion objections filed, and the final determination from the DRSP on string confusion objections.

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c) limited public interest objection (these were objections on the grounds that the gTLD applied for contradicted generally accepted legal norms of morality and public order recogniszed under principles of international law)
d) legal rights (of the objector were claimed to be violated)[4]
Footnote A to be added (copy page 12 of the 2012 Applicant Guidebook - section 1.1.2.6)

Our review of the outcome of the dispute resolutions relating to formal objections on string similarity grounds these different types of string contention showed that there were 230 exact match contention sets (i.e. multiple applicants for the same gTLD and in some cases up to 10-13 applicants for the same gTLD such as .app, .book, .blog etc.), the majority of which were resolved HOW? - *either in favour of the objector or in favour of the applicant for the string.*[5] However a few are still on hold at the time of writing, including for example .gay/.home/.cpa/.llp/.hotel/.llc/.mail/.llc/.inc/.corp. It should be noted that many strings had objections for more than one ground issue (for example community plus limited public interest or confusability plus community).

String confusion objections were brought before the International Centre for Dispute Resolution (ICDR) (the international division of the American Arbitration Association (AAA)) While an overview of all such ICDR cases does not appear to be available*(does ICANN staff have this or David?*) it is clear that in a number of the cases reviewed by ICDR panels, the plural and singular of a new gTLD application were not considered to be confusingly similar (for example .car/.cars) whereas in other cases the plural was considered to be confusingly similar (for example .pet/.pets; .web/.webs; .game/.games). *In order to review this in more detail a full listing of all the ICDR cases would be necessary (ICANN staff ?)*

The International Chamber of Commerce (ICC) dispute resolution centrer addressed applications for 62 gTLDs that raised community objections. Of those community objections, the ICC found in favour of the community in 12 gTLDs, the objectors failed for 31 gTLDs, and objections were dropped for 19 gTLDs. FOOTNOTE [The number of total cases is greater because single gTLDs sometimes had multiple cases raised (for example .music/.health/.realestate etc.).]

The International Chamber of Commerce (ICC) dispute resolution centrer addressed objections against applications for 10 gTLDs that were raised on the basis of limited public interest. Of those limited public interest objections, the ICC found in favour of the objector in only one gTLD, the objectors failed for 5 gTLDs, and objections were dropped for 4 gTLDs.

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[4] See ICANN, *Program Implementation Review,* January 2016, https://newgtlds.icann.org/en/reviews/implementation/program-review-29jan16-en.pdf, p. 104.
[5] See ICANN, Program Implementation Review, January 2016, https://newgtlds.icann.org/en/reviews/implementation/program-review-29jan16-en.pdf, p. 64.

Commented [5]: ICDR did not prepare an overview of these cases.

Commented [6]: All objection cases and their results are available here: https://newgtlds.icann.org/en/program-status/odr/determination

Commented [7]: Summarizing all the objection results here confuses the issue as it seems thsi section is focused on string confusion and singular/plural determinations. It's unclear how this is connected. We can summarize the other objection determinations in a table, if necessary.

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FOOTNOTE [Again the number of total cases is greater because single gTLDs sometimes had multiple cases raised (for example .health/.mutualfunds).[6]]

The legal rights cases were not reviewed in detail for this report. WHY? (they are not so relevant to our study and are limited in number) However a summary of those cases (as with all other string objection cases) can be found in Section 3.2 of the ICANN Program Implementation Review report of 29 January 20165 (hyperlink).

The outcomes of the string confusion objections specific to plural versus singular strings contention whereas not particularly consistent. as iln some instances, plurals were considered to not be confusingly similar to the single variant of the same word and both strings were permitted. It could not be said that the GAC advice (of 2013-04-11 that singular and plural versions of a string should be avoided as this would lead to consumer confusion) was followed by the contention panels.

It would appear that the inconsistency in outcome arose because the DRSP process allowed for different expert panelists were created to examine individual cases aleven though they were based on similar situations. This meant that different expert panelists could come came to different conclusions in cases that otherwise might have been considered to have similar characteristics. **This could be avoided in future by ensuring that all similar cases of plural versus singular strings were examined by _the same expert panelist_ one panel with the same members or by just determining in advance that strings would not be delegated for singular and plurals or the same gTLD. All such similar applications would be resolved either by negotiation between the parties (private auction) or by ICANN auction. Whatever the option chosen, it should be made clear in the application and evaluation guidebook in advance.**

Future gTLD launches should ensure that this aspect is adequately planned in advance, clear rules are established and consistently followed and that a review of the outcome of the process is taken into consideration in an ex post evaluation (future CCT review). In addition the possibility of a review mechanism (as proposed in the Program Implementation Review) should be considered.

Annex I

List of single/plural strings applied for and delegated (in yellow highlight)

.tour/.tours
.web/.webs
.sport /.sports

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[6] The overview of objections treated by the ICC dispute resolution panel on community and limited public interest grounds is in Annex II.

Commented [8]: May be worth noting: AGB provided standards for the string similarity panel. The standards of review for the string confusion objections did not require the same standards that the string similarity panel had to use. leading to differing results.

Commented [9]: I'd note p. 65 of PIR and NGPC resolution: https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-06-25-en#2.d

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Commented [10]: Note that this would require a GNSO policy recommendation.

Commented [11]: This recommendation speaks only to the possibility of differing string confusion objection outcomes because of the differences in opinions of expert panelists. The recommendation does not address another issue, which is that string similarity review is based on visual similarity. String confusion objection is not bound to visual similarity.

Commented [12]: Is this a specific recommendation that requires implementation prior to the opening of a next round?

.kid/.kids
.gift/.gifts
.game/.games
.deal/.deals
.coupon/.coupons
.car/.cars
.fan/.fans
.home/.homes
.hotel/.hotels
.hotel/.hoteles
.loan/.loans
.market/.markets
.watch/.watches
.pet/.pets
.photo/.photos
.property/.properties
.review/.reviews
.supply/.supplies
.work/.works
.auto/.autos
.cruise/.cruises
.career/.careers
.accountant/.accountants

ANNE X II: Community objections treated by ICC

Objection successful   failed   dropped

.architect
.bank
.charity[7]
.med (2)[8]
.medical
.ski
.insurance (2)[9]
.polo
.mobile (2)[10]
.sport
.rugby (2)
.sports

.hotels (2)
.lgbt
.gay (4)
.amazon (En,Ch,Ja)
.charity (En,Ch)
.healthcare
.merck
.lotto
.persiangulf
.kosher
.halal
.merkmsd
.reisen
.islam
.gold
.game
.basketball (2)
.shop
.search
.book
.band (2)
.music (7)
.song
.tunes
.republican
.cloud (3)
.search
.map
.fly
.mail (5)
.mobile
.health (3)
.insurance(2)
.insure[12]

.hotel (2)
.hoteles (2)
.hoteis (2)
.patagonia (2)
.indians
.hospital (2)
.med (2)
.guangzhou
.insure(2)
.game
.bio
.weather
.careers
.mail (2)[11]
.realestate (3)
.realty (2)
.phone
.cruises
.app
.autoinsurance
.carinsurance
.kid
.insurance

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[7] Successful objection once, unsuccessful in two other cases

[8] Successful objection twice, withdrawn twice

[9] Successful objection twice, unsuccessful twice, withdrawn in one

[10] Successful objection twice, once not

[11] Cases withdrawn in two objections and unsuccessful in 5

[12] Withdrawn in two cases and unsuccessful in one

Limited public interest objections treated by ICC

Objection successful	failed	dropped
.hospital	.broker[13]	.ira (2)
	.healthcare	.mutualfunds (3)
	.health (3)[14]	*.health*
	.med (3)	.retirement
	.medical	.insurance
		.broker

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[13] 1 failed, 1 withdrawn

[14] 1 failed, 1 withdrawn