APPLICATION AND EVALUATION PROCESS OF THE NEW gTLD PROGRAMME

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

The application and evaluation process for the New gTLD Program was described in the ICANN "gTLD Applicant Guidebook" of 4 June 2012, based on the policies developed by the community on the demand, benefits and risks of new gTLDs, the selection criteria that should be applied, how gTLDs should be allocated, and the contractual conditions that should be required for new gTLD registries.

After the close of the application submission deadline ICANN began assessing administrative completeness of each application and posted for public comment the public portions of complete applications in order to allow the community to submit observations to be considered during the Initial Evaluation review (also carried out by ICANN). Evaluation criteria for that initial review included "string reviews" to determine whether the security or stability problems might arise, including those that might be caused due to "similarity to existing TLDs or reserved names"[1]. These comments and the evaluation were distinct from formal objections that could be raised concerning issues going beyond the evaluation criteria.

During the same open comment period the ICANN Governmental Advisory Committee (GAC) could issue early warning notices that an application was potentially sensitive or problematic for government(s). These early warnings were not formal objections but their substance might be developed into a formal objection if not resolved. The review of GAC early warning is addressed with in a separate section.

In addition to the public comments, ~~official string~~ objections could be filed ~~raised~~ by third parties to protect specific rights and a dispute resolution[2] mechanism was established in order to resolve such cases that went beyond ICANN's evaluation of applications against the evaluation criteria~~on their merit~~.

Annex III includes a graphical overview of the processes (*the editor should cut and paste the graph from page1-4 of the Applicant Guidebook*).

The grounds for objection were developed to implement ~~support~~ the GNSO recommendations relating to string confusion, community objections, limited public interest or violation of legal rights and were explained in the Applicant Guidebook. Dispute

---

[1] ICANN (4 June 2012), *2012 gTLD Applicant Guidebook,* accessed 12 January 2017, https://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf, p. 1-9. Initial evaluation panels were established to review string similarity, DNS stability and geographic names. The initial review also included an assessment of the required technical, operational and financial capability of the applicant. As noted in the section on competition, the use of back-end providers means that technical capability of an applicant could be achieved by using third-party assistance.

[2] Ibid., 1-12,1-14, Sections 1.1.2.6 and 1.1.2.9

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. (this was a comment from before the current change of wording)

Commented [2]: For clarity's sake, I'd suggest changing the title to "Effectiveness of the Objection and Dispute Resolution Process"

Commented [3]: Applications were judged basic on the specified criteria in the AGB -- not individual merit.

Commented [4]: 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 [5]: Objections could be filed to an application – not based on string only

Commented [6]: Noting this for the designer. Table can be found here: https://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf

resolution proceedings were carried out by three different service providers selected by a public call for expressions of interest.[3]

In order to provide a rough assessment of the effectiveness of the process, the CCT review team analyzed both the number and nature of ~~string~~ objections that were filed ~~raised~~ after the initial assessment by ICANN staff[4] and the outcomes of those objections. In particular, we assessed the results of singular/plural string confusion objections, 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 (after initial ICANN assessment) were possible:
a) string confusion (also involving singular and plural versions of the same word)[5]
b) community objections (where there was substantial opposition from a significant portion of the community that the string targets)
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 recognized under principles of international law)
d) legal rights (of the objector were claimed to be violated)[6]

Our review of the outcome of the dispute resolutions relating to string confusion ~~formal~~ objections ~~on string similarity grounds~~ showed that there were 230 exact match 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 either in favour of the objector or in favour of the applicant for the string.[7] 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 applications ~~strings~~ had objections filed on ~~for~~ more than one ground (for example community plus limited public interest or confusability plus community).

---

[3] ICANN (29 January 2016), *Program Implementation Review,* accessed 13 January 2007, https://newgtlds.icann.org/en/reviews/implementation/program-review-29jan16-en.pdf, p. 104. 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.

[4] ICANN, *2012 gTLD Applicant Guidebook* (2012), Sections 2-2, 2-4. 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 2-2 and 2-4 of the Applicant Guidebook version 2012-06-04)~~

[5] Governmental Advisory Committee, *GAC Communiqué -- Beijing, People's Republic of China* (April 2013), accessed [17 January 2017], https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf. The Government Advisory Committee (GAC) ~~had~~ advised in its communique of 11 April ~~11,~~ 2013 that single and plural versions of the same word could create confusion for consumers and should be avoided.

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

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

String confusion objections were brought before the International Centre for Dispute Resolution (ICDR) (the international division of the American Arbitration Association (AAA)) From the cases reviewed by the CCT of the outcome of ICDR panels on objections to new gTLD applications regarding similarity between the singular and plural version of the same gTLD, it would appear there was not a clear consistent ruling in all cases. In some cases singular and plural versions 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).

It would appear that inconsistency in outcome on singular/plural cases arose because the DRSP process allowed for different expert panelists to examine individual cases although they were based on similar situations. This meant that different expert panelists could come 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 or by just determining in advance that strings would not be delegated for singular and plurals of 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.

Further, there was no appeal mechanism foreseen after the dispute resolution panel had taken its decision. This meant that some unsuccessful objectors then sought to have their cases considered either by the ICANN Board or the ICANN Ombudsman for resolution. In order to avoid different solutions to similar problems and consistency of outcome, possibility of a introducing a post dispute resolution panel review mechanism (as also proposed in the ICANN Program Implementation Review 2016) should be considered.

From the initial information available the conclusions are:

Recommendation: A thorough review of the results of dispute resolutions on all string confusion objections should be carried out at the next CCT review or in the context of the next phase of the ICANN Programme Implementation Review. In particular it would be useful to compare cases where confusion was not determined to exist and two similar gTLDs exist in the market and to assess whether any consumer confusion has arisen as a result. To that end, the possibility of a mechanism to review of dispute resolution panel decisions should be considered in any expansion of the gTLDs.

Rationale/Related findings: There appear to be inconsistencies in the outcomes of different dispute resolution panels regarding singular and plurals of the same word, which *a priori* (and according to the GAC advice of 2013) should be avoided in order to avoid confusion of consumers.

To: ICANN for next CCT review, Programme Implementation Review and for consideration by the Subsequent Procedures Working Group.

Must be completed prior to subsequent rounds: Not essential but would be useful in order to ensure that improvements or adjustments to the Applicant Guidebook can be introduced

Commented [10]: It also gave those panelists wider latitude to consider the facts of each application.

Commented [11]: Note that this would require a GNSO policy recommendation.

Commented [12]: 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 [13]: The above comment came from a previous version of the document. With regard to the revised language here, it should be made clear if the RT is recommending one or the other action and to whom the recmmendation is being made. Determining that singular and plurals will not be allowed would require a policy recommendation. Restructuring the evaluation panels and evaluation criteria is an implementation recommendation.

Commented [14]: I'd also add that there are not necessarily consistent rules regarding singular/plural in all languages. i.e. person vs. people. Are those considered confusingly similar?

Commented [15]: via reconsideration requests?

Commented [16]: Is this a specific recommendation that requires implementation prior to the opening of a next round?

Commented [17]: How would "similar" gTLDs be judged?

Commented [18]: This is composed of multiple recommendations -- 1. review of the results of dispute resolution procedures on all string confusion objections to be carried out by the next CCT Review. Further, there is no next phase planned for the Program Implementation Review. 2. Study the impact on consumer confusion in the cases of "similar" strings. 3. Implement a mechanism to review DRP decisions. Does the same rationale apple to all 3 recommendations?

as soon as possible to avoid confusion and misunderstanding of applicants and, in order to ensure consistency of approach, if any adjustments to the dispute resolution guides or panels is necessary.

Consensus within team: Yes (to be discussed)

Details: (see above)

Success Measures: No string confusion cases involving single or plurals of the same word or full consistency in outcome of any objections on grounds of single/plural.

> **Commented [19]:** Objections? Also, this is a bit unclear. Does this mean success is defined as evaluation panel finds no singular or plural strings to be confusingly similar? Or if the objection panel has a rule they must follow, what would be the need to file objection in the first place?

The International Chamber of Commerce (ICC) dispute resolution center addressed community objections filed on applications for 62 gTLDs that raised community objections. Of those community objections, the ICC found in favor of the objector community in 12 gTLDs, in favor of the applicant the objectors failed for 31 casesgTLDs, and objections were dropped for 19 casesgTLDs. [8].

The International Chamber of Commerce (ICC) dispute resolution center addressed limited public interest objections against 10 gTLD applications for 10 gTLDs that were raised on the basis of limited public interest. Of those limited public interest objections, the ICC found in favor of the objector in only one casegTLD, the objectors failed for 5 casesgTLDs, and objections were dropped for 4 casesgTLDs. [9]

The legal rights objection cases involved claims of infringements primarily of trademarks and other intellectual property rights. Of the 69 legal rights cases brought before the panel of the WIPO Arbitration and Mediation Center, it found in favour of the applicant in 59 cases and for the objector in only 4 cases. Six were dropped before being assessed by the panel.

A summary of all other string objection cases) can be found in Section 3.2 of the ICANN Program Implementation Review report of 29 January 2016 (add hyperlink).

> **Commented [20]:** Can we summarize this in a table?

> **Commented [21]:** Suggest deleting as you've already covered them in the above. Also, do we need to include this in the report, if you are not going to discuss the nature of the other objections? And the effectiveness of those processes?

Annex I

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

.tour/.tours
.web/.webs

---

[8] The number of total cases is greater because single gTLDs sometimes had multiple cases raised (for example .music/.health/.realestate etc.)

[9] Again the number of total cases is greater because single gTLDs sometimes had multiple cases raised (for example .health/.mutualfunds).The overview of objections treated by the ICC dispute resolution panel on community and limited public interest grounds is in Annex II.

.sport /.sports
.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	.hotels (2)	.hotel (2)
.bank	.lgbt	.hoteles (2)

.charity[10]
.med (2)[11]
.medical
.ski
.insurance (2)[12]
.polo
.mobile (2)[13]
.sport
.rugby (2)
.sports

.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[15]

.hoteis (2)
.patagonia (2)
.indians
.hospital (2)
.med (2)
.guangzhou
.insure(2)
.game
.bio
.weather
.careers
.mail (2)[14]
.realestate (3)
.realty (2)
.phone
.cruises
.app
.autoinsurance
.carinsurance
.kid
.insurance

Limited public interest objections treated by ICC

---

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

[11] Successful objection twice, withdrawn twice

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

[13] Successful objection twice, once not

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

[15] Withdrawn in two cases and unsuccessful in one

Objection successful	failed	dropped
.hospital	.broker[16]	.ira (2)
	.healthcare	.mutualfunds (3)
	.health (3)[17]	*.health*
	.med (3)	.retirement
	.medical	.insurance
		.broker

---

[16] 1 failed, 1 withdrawn
[17] 1 failed, 1 withdrawn