[On behalf of Linda Corugedo Steneberg]

Dear Heather, Olof,

Thank you for providing the opportunity to share comments in relation to the work of the ccNSO, their policy recommendations and their implementation.

With these comments we intend to highlight some inconsistencies in the handling of string confusability in the newly revised IDN ccTLD Fast Track process and a number of divergences between the new Fast Track Process and its implementation through the Extended Process Similarity Review Panel (EPSRP) Guidelines.

In November 2013, ICANN published the Final Implementation Plan for IDN ccTLD Fast Track Process (the "Implementation Plan") and the and Guidelines for the Extended Process Similarity Review Panel (EPSRP) for the IDN ccTLD Fast Track Process (the "EPSRP Guidelines"), which revise the handling of string confusion in IDN ccTLD applications and introduces a *de facto* appeal process against prior findings of string confusion by the former DNS Stability Panel. On 4 December 2013, ICANN announced the appointment of the panelists of the EPSRP.

At the implementation stage, the drafting of the EPSRP Guidelines has introduced substantive policy changes which were not consulted on at the ccNSO IDN PDP working group 1 or through any public comment period. The EPSRP guidelines were not published for community comment and input provided on an informal basis to ICANN has not been taken into account.

As the rules stand now they raise public policy concerns and potential discriminatory effects arising from a divergence of criteria and methodologies between new gTLD and ccTLD string confusion evaluations. In this regard, ICANN IDN ccTLD policies, as well as being internally inconsistent, move the focus of confusion away from its original objective – consumer protection – and into a quasi-scientific

basis.

The test for string confusion adopted in the new gTLD environment sets the bar for confusion much higher than in the ccTLD one. New gTLDs restrict the consideration of confusing similarity to visual similarity only and requires the "probability" of confusion and not "the mere possibility" of confusion. More objective criteria are needed in order to avoid inconsistent and contradictory results.

A study from experts in the field of neuro-linguistics which was shared with ICANN during the process of amendment of the IDN ccTLD Fast Track, points out that cognitive perception of words is based on multiple factors, including context, meaning of the words, knowledge of the language / script, and phonetics. These are all artificially excluded in the current ICANN test that considers only "visual" confusion.

The Extended Process Similarity Review Panel reviews string confusion on the basis of certain criteria that are likely to be causes for failure:

(1) It is a paradox that a different methodology is used for the evaluation of ccTLD IDNs and for new gTLD applications, meaning that the same gateway issue (string confusion) will be evaluated by different panels using different methodologies and potentially different criteria, making the analysis of string confusion inconsistent across DNS environments. This is highly likely to yield different and incompatible results as well as distort competition. The inconsistency element is particularly relevant, as the end users are the same for ccTLDs and gTLDs.

(2) While it is clear from the outcome of string similarity reviews in the new gTLD context that an extremely permissive view of the criteria was taken (leading to the approval of both ".pet" and "pets" and numerous other singular/plural examples), the implementation plan for ccTLDs states "a conservative approach for potential IDN ccTLD strings has been adopted". In this regard the Implementation plan and accompanying Guidance set out conflicting criteria to be applied, and

a more rigid process is to be followed by the EPSRP.

A key concern is that as a result, IDN ccTLD applications will be placed in a worse position, simply because of their non-ASCII nature, and the fact that they are not gTLDs. The fact that ICANN IDN ccTLD rules adopt such a conservative implies that a very low threshold for confusion is foreseen: while considering the visual similarity of the strings it seems that the mere "possibility" and not the "probability" of confusion with any other TLDs (and apparently, also ISO codes) is sufficient reason to reject an application.

(3) According to the EPSRP guidelines the evaluation is based on "a reasonable Internet user who is unfamiliar with the script perceives the strings to be the same or confuses one for the other". This is opposite to the conclusions of the aforementioned study that underline the importance of performing any letter/script evaluation in its language context. The fact that the EPSRP Guidelines define the reasonable internet user as being "unfamiliar with the script" introduces a new policy concept, which is absent from the standard set out in the Implementation Plan. The parameters used in selecting participants for behavioral tests of the EPSRP are not known. Therefore, it is more than likely that the group of testers will be totally unfamiliar with the script under evaluation.

(4) The standard for string confusion set out in section 5.5 of the Implementation Plan appears to be excluded from the EPSRP's consideration, as the instruction at section 4.3 refers exclusively to the EPSRP Guidelines: the "EPSRP shall review the requested string(s) on the basis of the framework described in the 'Guidelines for the Extended Process Similarity Review Panel". This gives the impression that the EPSRP Guidelines take precedence over the Implementation Plan.

(5) Last not least, in October 2011 the ccNSO Council passed a resolution to the effect that where an IDN string was confusingly similar to another string but both would be operated by the same Registry with sufficient safeguards to avoid user confusion, that string

should pass the evaluation. This measure was adopted by the ICANN Board and included in the Implementation Plan. Surprisingly, this recommendation has not been taken into account by the EPSRP.

In line with the deficiencies expressed above, we would be grateful if the ccNSO could present its views/considerations at the forthcoming 49th ICANN Singapore session with the Governmental Advisory Committee and provide advice so as to:

a)   how to best address the inconsistencies of the Process;
b)   how to best monitor and evaluate the implementation of its recommendations, which led to the development of this new Process and;
c)   whether rationales behind string confusion evaluations should be made publicly available (including supporting documentation).

Kindly yours,

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