



## COMMENTS OF THE INTELLECTUAL PROPERTY CONSTITUENCY (IPC)

### SSAC NAME COLLISION ANALYSIS PROJECT

April 18, 2018

The Intellectual Property Constituency (IPC) of the Generic Names Supporting Organization (GNSO) appreciates the opportunity to comment on the Name Collision Analysis Project (“NCAP”) Proposal published on behalf of the SSAC. We understand that the NCAP will be run as Security and Stability Advisory Committee study according to its established procedures. The Security and Stability of the DNS is of utmost concern to the IPC and its members welcome the opportunity to assist the SSAC wherever possible.

The IPC appreciates the SSAC’s opening of the Name Collision study to technology experts within the entire ICANN community and the proposed transparency of this process. IPC believes the proposal and expanded conflict of interest measures strike the right balance, ensuring multi-stakeholder participation in the process and ensuring the appropriate amount of technical expertise needed to understand and address name collision issues in the DNS.

The IPC notes, however, that studies contracted for using ICANN funds should be performed by independent technical experts who are free of conflicts of interest to the greatest extent possible. This addition to the NCAP Proposal would not prevent any party from submitting data or results from their own studies, but would ensure that additional unbiased expertise is obtained in the process. In addition, the IPC believes that in cases where data or studies are submitted with a request for confidential treatment as provided in the study submission form, members of the Working Group who will be looked upon to determine level of consensus on recommendations should be able to “know the source” of the data/studies on which they are relying and should be under a written obligation to keep those studies confidential.

Three areas of concern for IPC members relating to the Name Collision Framework adopted in the 2012 round are highlighted below:

1. **Trademarks Contained in Risky Strings at the Second Level.** In connection with the 2012 Name Collision Framework, registries identified name collision risk at the second level on their own and many of those Alternate Path to Delegation (“apd”) names consisted of registered trademarks which were not available to trademark holders in the initial Sunrise period. We understand that the “apd” metric will not be used going forward to the next round so that this situation of concern to our members will not occur, but would like to underline its importance.

2. **High Risk Strings at the Top Level - Early Disclosure.** Regarding the NCAP, however, the IPC believes it is imperative that if there is a recommendation that certain strings represent a substantial collision risk such that they need to be unavailable during the next and/or any subsequent round of applications, this must be disclosed prior to opening of the applicable round. Some IPC members worked with applicants for .corp, .home and .mail and know firsthand the costs incurred by the applicants for these strings as a result of the delays and ultimate decision to not move forward with the delegation of these strings. The IPC is in no way blaming the SSAC for the delays, but to the extent that such costs can be avoided, we merely wish to underline the importance of this principle to our members.
  
3. **The GNSO Policy Process in Relation to Name Collision Framework.** The Name Collision Framework that applied to the 2012 round was not developed through the typical GNSO bottom up policy-making process. As the SSAC knows, there is currently a Subsequent Procedures policy development process within the GNSO that includes, among a number of other elements, a review of the Name Collision issues in the 2012 round as well as the mitigation measures employed during that round. This process has been underway for nearly two years. IPC believes that in conducting the NCAP studies, the NCAP Working Group should coordinate with the GNSO community. To the extent that there is a belief that the projected time lines for completion of the NCAP may have an impact on the next round(s) of new gTLDs, the IPC recommends the following:
  - a. The SSAC should prioritize developing a testing mechanism to be deployed during the evaluation of applications for new gTLDs (if one is to be developed) for determining whether such newly proposed strings present a material name collision risk
  
  - b. The SSAC should advise the ICANN Board that applicants should receive notice in the next version of the Applicant Guide Book that, if and when these studies are complete, changes to name collision mitigation measures may need to be made by ICANN in consultation with the community. Such changes may impact the delegation, operations and/or administration of the TLD Registry even after the execution of a contract or delegation of the TLD.
  
  - c. Until the results of the NCAP are released and proposed implementation mechanisms developed by the community (if any are needed), Top Level strings which do not present a substantial name collision risk should be allowed to move forward so that timely opening of the next round of gTLD applications is not impeded.

Thank you for the opportunity to comment on the SSAC NCAP.

Respectfully submitted,

**Intellectual Property Constituency**