WT3: String Confusion Objections

21 February 2017

String Confusion Objections

- One of four objections grounds in New gTLD Program

- Standing to File
  - **Existing TLD Operator** – string confusion between an applied-for TLD and TLD that it currently operates
  - Outcome if successful: Application is rejected

  - Any gTLD Applicant - string confusion between an applied-for TLD and gTLD for which it has applied
  - Outcome if successful: Both applications are placed in a contention set

  - Not available to Independent Objector

- Executed by International Centre for Dispute Resolution (ICDR)

String Confusion Objections, cont.

- Applicant Guidebook language:

  A DRSP panel hearing a string confusion objection will consider whether the applied-for gTLD string is likely to result in string confusion. String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion/ For a likelihood of confusion to exist, it must be probably, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

- Statistics: 67 total SCOs. 46 Applicant Prevailed, 12 Objector Prevailed (2 reversed), 6 Withdrawn, 3 Terminated (i.e., Applicant did not respond)

Perceived Inconsistent SCO Expert Determinations

- Many have perceived that String Confusion Objection outcomes have been inconsistent

- On 11 Feb 2014, published Proposed Review Mechanism to Address Perceived Inconsistent Expert Determinations on SCOs.
  - Inconsistency defined as: Objections raised by the SAME objector against different applications for the SAME string resulted in differing outcomes. Limited in this case to two sets: .CAR/.CARS and .CAM/.COM
- Discussion of Principles:
  - 1. The Reconsideration Processes are not an avenue to address substantive SCO challenges and are not to be modified at this time (e.g., the 2012 round).
  - 2. Definition is as above. ICDR constitute "Panel of Last Resort" for two sets, following…*continued on next page.*

Perceived Inconsistent SCO Expert Determinations, cont.

- *…continued from previous page.* Standard of Review: "Could the Expert Panel have reasonably come to the decision reached on the underlying SCO through an appropriate application of the standard of review as set forth in the Applicant Guidebook and procedural rules?"
  - Two possible outcomes:
    - Expert Determination involving Losing Applicant is upheld
    - Expert Determination involving Losing Applicant not supported, reversed.
- 3. Review is limited to identified objections and not applicable to other determinations.

Public Comment

- Do not adopt the Proposed Review Mechanism (8)
  - Changing process after the fact
  - Policy outside of GNSO processes
  - Calls into question other objections/contention sets
- Adopt (2)
- Adopt with expanded scope (5)
  - Expand beyond scope of just the two sets (e.g., shop/shopping, Community and LPI)
- Do not adopt or expand scope (3)
- All should be reviewed or do not adopt mechanism
- Recommended modifications if adopted

Board Resolution

- NGPC Resolution: Resolved, the NGPC has identified the following String Confusion Objection Expert Determinations as not being in the best interest of the New gTLD Program and the Internet community - https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b…sent to panels
  - CAM/COM Reversed - https://newgtlds.icann.org/sites/default/files/drsp/02sep15/determination-2-1-1255-75865-en.pdf
  - Commercial Connect/Amazon Reversed - https://newgtlds.icann.org/sites/default/files/drsp/21aug15/determination-2-1-1318-15593-en.pdf
  - Car/Cars self-resolved

Singular/Plurals

- NGPC Resolution: Resolved, the NGPC has determined that no changes are needed to the existing mechanisms in the Applicant Guidebook to address potential consumer confusion resulting from allowing singular and plural versions of the same string. - https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-06-25-en#2.d

Questions/Issues for Consideration

- ⊙ As there is evidence of inconsistent SCO determinations:
    - ⊙ Do the policy recommendations need to be revised?
    - ⊙ Does the standard for String Confusion in the AGB need to be revised?
    - ⊙ Does there need to be a method to challenge/appeal decisions?

- ⊙ Although the NGPC determined that singular/plurals did not meet the definition of inconsistent expert determinations, should guidance be developed?