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| **Issue**  **Applicant Freedom of Expression – sorry I think this was Package 3 but it should not be controversial.** | **Applicable text (please quote directly)**  Implementation Guidance xx: As the ICANN organization and community incorporate human rights into ICANN’s processes in line with the recommendations of CCWG-Accountability Work Stream 2, they may want to consider the application of this work to elements of the New gTLD Program. | **Number and name of applicable report section**  **2.3.3** | **Cannot live with rationale**  **“may want to consider” does not reflect the fact that Accountabily Workstream 2 work is binding on the community and Sub Pro implementation will have to be consistent with that work.** | **Proposed changes (taking into account whether others would be able to live with them)**  **Change “may want to consider” to “should consider”.** | **RK comments** |
|  | Implementation Guidance xx (Rationale 4): ICANN should develop a mechanism or test to determine the name collision risk for any given string. The Working Group suggests putting them into three categories: high risk, aggravated risk, and low risk. High-risk strings should not be allowed to be applied for (if possible) or delegated, and aggravated risk strings should require the inclusion of a specific name collision mitigation framework. | 2.7.8 Name Collisions | This language omits the fact that the work of the Name Collision Analysis Project (NCAP) is active and ongoing with weekly conference calls designed to develop further methods of responding to questions posed by the ICANN Board when it passed a Resolution asking the SSAC to address name collision risk.  It also fails to acknowledge the fact that during public comment on the Initial Report, the ICANN Board noted the opportunity for the Working Group to work together with the NCAP to resolve issues relative to name collision risk. | “The Working Group acknowledges that the Name Collision Analysis Project work in relation to Board Resolutions \_\_\_\_\_\_\_\_\_\_\_\_\_ is ongoing and that the Board advised the Working Group in public comment on the Sub Pro Initial Report to work together with the NCAP on the topic of name collisions. Accordingly, Sub Pro Co-Chair Jeff Neuman and some Sub Pro Working Group members are actively participating in the weekly conference calls of the NCAP.” | NCAP is already acknowledged in the report.  There is no formal representation of the SubPro WG in NCAP, even though it happens to be the chair and some WG members. |
|  | Implementation Guidance (Rationale 5): To the extent possible, ICANN should seek to identify high-risk strings in advance of opening the Application Submission Period, which should constitute a “Do Not Apply” list. ICANN should also seek to identify aggravated risk strings in advance, which would be expected to require a specific name collision mitigation framework. However, all applied-for strings should be subject to a DNS Stability evaluation to determine whether they represent a high, aggravated, or low risk of name collision. | 2.7.8 Name Collisions | The meaning of “in advance” is unclear. Does this mean develop a standard for measuring collision risk (e.g. a numeric standard based on DITL stats) in advance of the application process or does it mean test each individual string prior to delegation? Name collision risk may not boil down to sheer numbers since the risk assessment includes factors related to whether collisions are more likely to occur at the institutional level or the consumer level, etc.  Aggravated risk strings ultimately may or may not be eligible to submit a name collision risk mitigation strategy depending on the upcoming recommendations from the SSAC and the NCAP. All proposed mitigation frameworks should be subject to public comment. | In the interest of predictability, ICANN should also seek to develop criteria for identifying aggravated risk strings in advance of the next application window opening and to publish such criteria in the Applicant Guidebook. ICANN should also develop criteria for determining when an applicant for a collision string may be offered the opportunity to propose a specific name collision mitigation framework. Any such proposed name collision mitigation framework must be subject to public comment.  Each applied-for string should be screened for name collision risk in advance of proceeding to further evaluation to determine whether the registration of names in the proposed TLD would pose a high, aggravated, or low risk of name collisions. | “in advance” is a time reference, not a reference on how the output would be: a number, a risk level etc.  The report already established strings being tested as part of the evaluation process.  The implementation guidance foresees mitigation frameworks even for aggravated risk strings; it’s up to the framework existing at the time to define it.  The report doesn’t establish sequencing of evaluations, but string-related evaluations like name collisions and string similarity are indeed good candidates to be done before the others. Whether we should specify this in the report or even in AGB is something that I am unsure about, but I don’t oppose provided we mention all string related evaluations, not just name collisions. |
|  | Rationale for Affirmation xx (Rationale 3): The Working Group notes that ICANN org, in cooperation with the NCAP Discussion Group, has since completed its Study 1, leveraging an outside consultant. The consultant who produced the Study 1 report made the following draft conclusions relating to Studies 2 and 3:  “Regarding Study 2 analyzing datasets is unlikely to identify significant root causes for name collisions that have not already been identified. New causes for name collisions are far more likely to be found by investigating TLD candidates for potential delegation on a case by case basis. Regarding Study 3, the review of prior work has not identified any new mitigation strategies for name collisions to be tested. Also, controlled interruption has already proven an effective mitigation strategy. Without a compelling new mitigation strategy to consider, Study 3 does not seem to be needed at this time.” | 2.7.8 Name Collisions | The text is incomplete in quoting Study 1 in that it excludes language stating that the author has NOT concluded that there should be no further study into name collision risk. It is also misleading in that it does not reflect the fact that the NCAP is moving forward with work designed to answer the Board’s specific questions re .HOME, .CORP, and .MAIL as well as the Board’s specific questions regarding possible mitigation strategies. | *Add this additional quote from the NCAP Study 1 Final Report to the original text in this section:*  “All of that being said, this does not mean further study should not be conducted into name collision risks and the feasibility of potentially delegating additional domains that are likely to cause name collisions. “  The Working Group has been advised by the Co-Chairs of the NCAP that some (presumably redesigned) versions of Studies 2 and 3 are necessary in order to properly address questions posed by the Board to the SSAC. | The WG report being silent on this is actually a feature, since it’s not up to a GNSO WG to determine a non-GNSO WG outcome.  .HOME, .CORP and .MAIL are not in SubPro charter. |

1. IDNS – 2.7.5

Recommendation xx (Rationale 4): IDN gTLDs identified as variants of already existing or applied for TLDs will be allowed provided they have the same registry operator and back-end registry service provider. This policy of cross-variant TLD bundling must be captured in relevant Registry Agreements.

Clarifying Question: Do we mean here that in the next round, no one can apply for “.casino” in Cyrillic script or   
.bible” in Hebrew script and that any TLD that exists now in the root bars all applications by a third parties for the spelling/translation of that string in a different script? In other words, that only the original applicant may activate the equivalent idn?

RK: I believe that to be the case. Note also Justine Chew can’t-live-with comment on this regarding application x activation of variant TLDs.