ccNSO Working Group on the EPSRP review
23 June 2016

Draft observations and recommendations

ICANN's Board of Directors in a resolution of 25 June 2015, asked the EPSRP working group to "…*provide further guidance on and refinement of the methodology of second string similarity review process, including the interpretation of its split recommendations, to be applied to the relevant current and subsequent cases in the IDN ccTLD Fast Track process as well as to inform the proposed policy for the selection of the IDN ccTLD strings.*"

The Working Group's scope
The Working Group Charter defines the scope to the 'review of the [EPSRP] process as defined in the Implementation Plan and Guidelines… and as part of the overall proposed policy for the selection of IDN ccTLD strings, including the definition of confusing similarity.'

Agreed outcome so far
The WG has agreed on revisions to the Guidelines, a copy of which is submitted with this note. The revised Guidelines include guidance for the EPSRP in applying the criteria for confusing similarity set out in 5.5 of the Implementation Plan. The guidance includes that where there is a split recommendation (between upper case and lower case), the finding relating to the lower case shall prevail and the application shall go forward.

Issues highlighted by the working group
High level points
- (IDN) ccTLD policy including consumer protection is a local matter to be dealt with by the local significant interested parties, explicitly including the government
- All requested IDN ccTLD strings represent the legitimate and free choice of a specific linguistic community related to a country or territory that has every right to use its language and script in the DNS space. It is essential that the IDN ccTLD evaluation process should do everything possible to facilitate such legitimate requests from the significant interested parties, which includes government.
- The outcome of the current confusing similarity evaluation, either from the first evaluation or from both the first and second extended evaluation, determines the pass or fail of the requested IDN ccTLD string for the overall process. This binary and deterministic approach of the evaluation has proven to be disproportionate and arbitrary for the following reasons:
    - It is the understanding of the WG that the purpose of the confusingly similarity evaluation is to minimise a theoretical risk of user confusion.
    - The WG notes that confusing similarity is not limited to IDN ccTLD strings. It can also be observed between ASCII only strings, in particular between some ccTLDs, for example li,il and lu,lv (LI, IL and LU,LV). This is accepted and the risk is considered to be acceptable as new ccTLD strings have been delegated without any consideration of

the confusing similarity issue after the issue was identified initially. The ICANN process should not apply a higher standard with regard to confusing similarity than the ISO list applies to itself.

- o Current practice around confusingly similar (ASCII) ccTLD strings strongly suggest that the risk of string confusion should not simply be assessed and addressed at the level of a TLD in isolation, but take into account other circumstances as well, for example how confusingly similar is the requested IDN ccTLD when contextualised by second level domains.
- o The result of the confusing similarity evaluation of IDN ccTLDs, i.e denying the use of a legitimate IDN ccTLD, is in some cases solely to avoid the highly speculative risk of user confusion with a two-letter code that is not yet in use and, which may or may not be assigned at some point in the future.
- o It is the understanding of the WG that the potential risk of user confusion is partly due to issue around the implementation of relevant RFCs and/or other industry standards by software and application providers. This is in particular the case where the confusing similarity risk is only due to confusing similarity of the string in UPPER CASE. Rather than seeking to address the issue of upper case usage of domain names through the IDN ccTLD process, it is more appropriate to do so through ICANN's universal acceptance support group, which can, for example, encourage software providers to follow relevant standards with regard to upper and lower case domain names.
- o It is a general accepted principle that user and consumer protection, which includes avoiding user confusion, with respect to ccTLDs is first and foremost a local matter, embedded in applicable law and relevant related public policies. For example the protection of privacy and related WHOIS policies for the (IDN)ccTLD are and have always considered to be a local matter. The use of (IDN) ccTLDs including rules around consumer protection are defined by the local significant interested parties for the (IDN) ccTLD), which by definition includes the relevant government. In the view of the WG the current practice that has evolved around the confusing similarity of IDN ccTLDs strings is a major anomaly, which undermines the principle of local determination. Should there be a realistic risk of user confusion caused by confusing similarity of the IDN ccTLD string itself, it should be addressed locally, through the IDN ccTLD policy and policy development.

As argued above denial of the use of a requested IDN ccTLD string that is only considered confusingly similar in UPPER CASE, without looking at alternative less intrusive risk mitigating measures is imbalanced, arbitrary and disproportionate. It is the view of the WG that if a requested IDN ccTLD string is found to be only confusingly similar in UPPER CASE, the requester/envisioned IDN ccTLD manager should be allowed to propose and implement risk mitigating measures.

Suggested way forward

- A clear, consistent set of rules for 'confusing similarity' should be in place and applied to both ccTLDs and gTLDs.

  In the immediate term, the IDN ccTLD Fast Track process should be amended to take into account the following guiding principles:

  - o ccTLD policy is a matter for the local internet communities to determine.

  - o A given IDN ccTLD application represents the free choice of a specific linguistic community that has every right to use its language and script in the DNS space. It is essential that the IDN ccTLD evaluation process should do everything possible to facilitate such requests from local communities.

  - o Where a finding of potential confusability has been made, rather than rejecting the application, the process should allow the applicant to propose mitigation measures.

  - o A pragmatic approach should be adopted to the issue of potential user confusion. It may not be possible to eliminate confusion entirely, and much user confusion takes place in context (phishing, URL clicking), rather than because of a TLD.

  - o Where there is a split recommendation (between upper case and lower case), the finding relating to the lower case shall prevail and the application shall go forward.

It is highly advisable that these principles are considered to review and, if necessary, suggest adjustments to the overall IDN ccTLD policy recommendations.

Annex A

The ISO procedure for determining which entities should be and should not be on the ISO 3166 list.

ISO 3166 provides universally applicable coded representations of names of countries (current and non-current), dependencies, and other areas of particular geopolitical interest and their subdivisions. The codes is used for a wide variety of purposes, such as other code systems like ISO 4127 "Codes for the representation of currencies", travel documents, postal sorting systems etc. and as ccTLDs.

The ISO body responsible for the standard 3166 is the Technical Committee 46, "Information and documentation" Working Group 2 "Coding of country names and related entities"[1] (ISO/TC 46/WG2). Minor changes to the standard and updates to the code tables in the standard to reflect changes in country names and subdivisions are the responsibility of a dedicated Maintenance Agency (ISO3166/MA)[1]. The 3166/MA consists currently of 10 voting members and around 25 non-voting members which have an advisory role. The ISO Secretary-General defines terms of reference, working procedures and guidelines for the ISO 3166/MA.

The major role of the 3166/MA is to assign letter codes to countries, their subdivisions and keep this and other information about the codes up to date. The standard itself describes the eligibility for inclusion of countries, their sub-divisions etc. New members of the UN are routinely added to the standard. Names changes for countries appearing in the UNTERM database or the UN Statistical Division list M49 are followed.

Other areas of particular geopolitical interest, autonomous regions and sometimes physically separated areas from parent countries can be eligible under special circumstances i.e. when an interchange requirement[1] exists. A request for such an inclusion shall originate from the competent office of the national government or from an ISO Member Body in the country holding sovereignty over the area.

The 3166 MA also maintains codes reserved for special use such as (UN) travel documents, financial securities etc., not directly related to geographic areas.

In addition the following rules apply for specific codes:

Note: text in *Italics* is directly quoted from the standard

> *7.5 Reservation of code elements*
>
> *7.5.1 Introduction*
>
> *Some code elements are reserved*
>
> *− for a limited period when their reservation is the result of the deletion (7.3) or the alteration (7.4) of a country name,*
>
> *− for an indeterminate period when the reservation is the*

result of the application of international law (7.5.3) or
of exceptional requests (7.5.4).

The above is considered to be the basic principle. Additional considerations are:

7.5.4 Exceptional reserved code elements

Code elements may be reserved, in exceptional cases, for country names which the ISO 3166/MA has decided not to include in this part of ISO 3166, but for which an interchange requirement exists. Before such code elements are reserved, advice from the relevant authority must be sought.

7.5.5 Reallocation

Before reallocating a former code element or a formerly reserved code element, the ISO 3166/MA shall consult, as appropriate, the authority or agency on whose behalf the code element was reserved, and consideration shall be given to difficulties which might arise from the reallocation.

So, although the codes, which are reserved or exceptionally reserved, should be dealt with carefully, ultimately the ISO 3166 MA may decide to re-allocate the codes and hence it is not ensured they will remain reserved or exceptionally reserved (in other words although initially not assigned to a country or territory in due course they could).