GNSO Comments in Response to the ccNSO-GAC Issues Report on IDN Issues

Final Version – 20 February 2008

<u>Introduction</u>

Reference Documents:
1. ccNSO-GAC Issues Report on IDN Issues:
   http://www.icann.org/topics/idn/ccnso-gac-issues-report-on-idn-09jul07.pdf
2. Adopted Board Resolutions - San Juan, Puerto Rico, 29 June 2007 -
   Acknowledgement of Policy Progress on IDNs:
   http://www.icann.org/minutes/resolutions-29jun07.htm#m
3. Outcomes Report of the GNSO IDN Working Group:
   http://gnso.icann.org/drafts/idn-wg-fr-22mar07.htm
4. GNSO Reserved Names Working Group Final Report:
   http://gnso.icann.org/issues/new-gtlds/final-report-rn-wg-23may07.htm
5. GNSO Board Report Introduction of Top Level Domains 11 September 2007:
   http://gnso.icann.org/issues/new-gtlds/council-report-to-board-pdp-new-gtlds-
   11sep07.pdf

This document contains comments from the GNSO Council in response to the ccNSO-
GAC Issues Report on IDN Issues (reference 1 above) as requested by the ICANN Board
on 29 June 2007 (reference 2 above). It incorporates information from the Outcomes
Report of the GNSO IDN Working Group (reference 3), the GNSO Reserved Names
Working Group Final Report (reference 4 above) and the GNSO Board Report
Introduction of Top Level Domains (reference 5 above).

The comments are intended to provide the ICANN Board and the community as a whole
with input that will facilitate timely implementation of IDN TLDs[1].

<u>Executive Summary</u>

Section A of this document contains comments related to an interim and an overall
approach to IDN ccTLDs associated with the ISO 3166-1 two-letter codes in the context
of the introduction of IDN gTLDs. Section B provides input to the list of issues and
questions identified by the ccNSO and the GAC that need to be addressed in order to
move forward with IDN ccTLDs associated with the ISO 3166-1 two-letter codes in a
manner that ensures the continued security and stability of the Internet.

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[1] As used in this document, the term "IDN ccTLD" is defined as an IDN TLD representing a territory
designated in the ISO 3166-1 list. The GNSO makes this clarification in the definition to reflect the fact
that ccTLDs by definition are two-letter TLDs associated with the ISO 3166-1 list. Because there currently
is no corresponding list for IDN TLDs for countries or territories, and because it is unclear if or when such
a list may emerge, we think that the term should be redefined accordingly

Here are what we believe to be the most important points from the GNSO responses that are discussed in greater detail in Parts A and B below:

1. IDN-labeled TLDs (whether considered gTLDs or TLDs associated with countries or territories) should be introduced as soon as practicable after technical requirements and tests are successfully completed.
2. The classification of TLDs should be determined prior to allocation of any IDN TLDs and this should be done jointly by the GNSO and ccNSO with the involvement of other impacted stakeholders. If it is not possible to develop a complete approach for such classification by the time the technical and operational capabilities are set, then the GNSO and ccNSO, with the involvement of other impacted stakeholders, should develop an interim approach that provides sufficient guidance to allow new IDN gTLDs and fast track IDN ccTLDs to be introduced in a timely manner.
3. The introduction of IDN-labeled gTLDs or ccTLDs should not be delayed because of lack of readiness of one category, but if they are not introduced at the same time, steps should be taken so that neither category is advantaged or disadvantaged due to actions by either supporting organization. In other words: i) the introduction of IDN gTLDs should not be delayed because of delays in finalizing ccNSO policy or vice versa; and ii) the ability to fast track IDNs by either SO should be available.
4. If IDN-labeled TLDs associated with one SO are ready for introduction before IDN-labeled TLDs for the other SO, procedures should be developed to avoid possible conflicts.
5. We support efforts to determine the feasibility of an interim solution whereby a limited number of countries or territories designated in the ISO 3166-1 list that have special needs would be granted IDN labels in the near term provided that no IDN TLDs associated with countries or territories are introduced earlier than IDN gTLDs without prior community concurrence.
6. An IDN ccTLD string must represent an entry contained in the ISO 3166-1 list.
7. Any added IDN label for a country or territory designated in the ISO 3166-1 list should be for the sole purpose of benefiting the language community (or communities) and country or territory designated by the new label.
8. IDN ccTLD strings should be meaningful to the local community and should represent, in scripts of the corresponding country or territory's choice, a meaningful representation of the country or territory's name or abbreviation of the country or territory's name in the selected script.
9. There should be only one IDN ccTLD string per ISO 3166-1 entry per relevant script. Measures must be taken to limit confusion and collisions due to variants.
10. Confusingly similar strings should be avoided.[2]
11. Consideration must be given to the risks of spoofing using IDN homoglyphs.
12. We support the notion that variable string length is the appropriate approach for IDN labels representing territories designated in the ISO 3166-1 list but do not support extending ccTLDs to include variable length ASCII ccTLD labels.

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[2] There are two minority statements of relevance to this part of the summary and to the corresponding sections in the body text. These statements, from the NCUC and from Avri Doria, are attached to this document as Annex 1 and 2, respectively.

13. Where script mixing occurs or is necessary, registries must implement clear procedures to prevent spoofing and visual confusion for users.
14. Operators of top-level domain registries for IDN TLDs representing territories designated by the ISO 3166-1 list should be required to follow the ICANN IDN Guidelines in the same way as gTLD registries that offer IDNs.
15. ICANN should have a contract or some other form of agreement with the IDN ccTLD operator that includes appropriate technical, operational and financial requirements.

Responses to Issues Paper Questions

A. Interim and Overall Approach to IDN ccTLDs

ICANN has been criticized heavily for taking too long to implement IDN TLDs. Those of us familiar with ICANN understand that such criticism is directed at all of us because ICANN is not the legal corporation nor the staff that supports that corporation but rather those that are a part of the bottom-up processes upon which ICANN the corporation is based. Recognizing this, we all need to assume responsibility for the long delays in implementing IDN TLDs and do everything in our power to expedite the process going forward. Regardless of how much rationalizing we can do to explain why it has taken so long, we are near the point where reasons for further delays are nearly gone. Therefore, the GNSO Council recommends the following:

1. IDN TLDs (ccTLDs and gTLDs) should be introduced as soon as practicable after technical requirements and tests, such as insertion and resolution of IDN-labeled TLDs into the test root zone, have been successfully completed. The final IDN .test Evaluation Plan can be found at http://www.icann.org/topics/idn/idn-evaluation-plan-v2-9-2-14aug07.pdf. Other details about the IDN Program Plan can be found at http://www.icann.org/announcements/announcement-28oct07.htm [latest current version of the report], including the latest versions of the IETF IDNA Protocol Review documents**.**
2. The GNSO should be primarily responsible for IDN gTLD policies under the new gTLD policy framework and for developing any other needed policies and procedures including coordination with other ICANN supporting organizations and advisory committees as well as with any relevant language communities external to ICANN.
3. The ccNSO should be primarily responsible for IDN ccTLD policies including development of any needed policies and procedures and including coordination with other ICANN supporting organizations and advisory committees as well as with any relevant language communities external to ICANN.
4. The classification of TLDs should be determined prior to allocation of any IDN TLDs and this should be done jointly by the GNSO and ccNSO. This would not impede the effort to create a fast track mechanism, but could impede the deployment of that mechanism. If it is not possible to develop a complete

approach for such classification by the time the technical and operational capabilities are set, then an interim approach should be developed that provides sufficient guidance to allow new IDN gTLDs and fast track IDN ccTLDs to be introduced in a timely manner.

5. Assuming that concerns regarding security, stability and interoperability are sufficiently addressed, neither the introduction of IDN gTLDs or IDN ccTLDs should be delayed because of readiness specific to one category, but if they are not introduced at the same time, steps should be taken so that neither category is disadvantaged because of a delayed implementation. One mechanism for ensuring this is the GNSO objection process included in the GNSO Council approved recommendations for the introduction of New gTLDs (see reference 5 above); it should be noted that that process gives the GAC, ccNSO and others standing as objectors.

6. The situation of IDN ccTLDs becoming de facto "IDN gTLDs", as has happened with some ASCII ccTLDs historically, should be avoided. In those exceptional cases where this is not possible, any such IDN ccTLDs must be governed by a contract that contains similar conditions to those contained in gTLD contracts. That is, the selection/deployment criteria (e.g., technical, financial, operational, etc. for IDN gTLD policies) for an IDN ccTLD should be similar to those for an IDN gTLD so that there is no unfair advantage. It should be noted that, in the absence of a contractual requirement, there is no way to enforce the criteria.

The GNSO council supports efforts to determine the feasibility of a fast track process to enable the assignment of a few non controversial IDN ccTLDs in the interim. These should be limited to one IDN ccTLD per ISO 3166-1 country or territory, except in those cases where governmental policy makes selecting a single script impossible. The GNSO is committed to working with the ccNSO however possible to expedite the introduction of IDN TLDs for both ccTLDs and gTLDs. However, before any policy regarding new IDN ccTLDs can be finalized, criteria must be developed to determine how TLDs will be classified into the ccNSO and GNSO for policy development purposes. With the introduction of IDN TLDs, it is envisioned that both the ccNSO and GNSO develop policies and procedures for introducing new TLDs to the DNS. It therefore seems critical to develop community supported criteria for answering questions like the following:

- What are the criteria for classifying TLDs for which the ccNSO has policy management responsibility?
- What are the criteria for classifying TLDs for which the GNSO has policy management responsibility?
- Should any TLD not defined in the ISO 3166-1 list of 2-letter ASCII country codes be classified as a gTLD whether IDN or ASCII?
    - If not, what criteria would qualify an IDN TLD to fit into the ccNSO policy area?
- Should IDN TLDs associated with the ISO 3166-1 list of 2-letter ASCII country codes automatically become a matter of policy management responsibility for the ccNSO?

- If so, is it possible to develop a process for determining which IDN TLDs become a matter of policy management responsibility for the ccNSO?
- If not, what criteria would be applied to make this decision?

It is crucial to recognize that decisions like the above must be made by the full ICANN naming community. It would not be appropriate for either the GNSO or the ccNSO to primarily take the lead in this task but both supporting organizations should participate equally along with open participation by the impacted community members outside of the two supporting organizations.

B. Comments regarding issues and questions in the ccNSO/GAC report

For ease of correlating the GNSO comments with the ccNSO-GAC Issues Report, issues and questions contained in that report are presented in *italic font* followed by GNSO comments in normal font.

1. General issues regarding IDN ccTLDs

> *Which 'territories' are eligible for an IDN ccTLD?*

The existence of IDNs as ccTLDs assumes a direct relationship between an IDN TLD string and a 'territory' as in ASCII ccTLDs.

a) Should this relationship be maintained?

> GNSO response: Yes, mapping to the ISO 3166-1 list must be maintained.

b) If so, should the 'territories' which are potentially eligible for IDN ccTLDs be exactly the same as the 'territories' that are listed in the ISO-3166-1 list?

> GNSO response: Yes.

c*) If not, should another list be used or should another mechanism be developed?*

> GNSO response: The GNSO supports continued mapping to the ISO 3166-1 list.

d) Should anything be done about ccTLDs already being used as gTLDs?

> GNSO response: This seems to be an issue of primary concern for the communities associated with individual ccTLDs.

> *Should an IDN ccTLD string be "meaningful"?*

An ASCII ccTLD string 'represents' the name of a 'territory' based on its entry into the ISO 3166-1 list.

a) Is there an obligation to make the IDN ccTLD string 'meaningful' in its representation of the name of a 'territory'? For example, whereas .uk is 'meaningful' because it is a commonly used abbreviation for United Kingdom, .au is not 'meaningful' because the commonly used abbreviations for Australia are Oz or Aus.

> GNSO response: The string must be a meaningful representation of the name of the country or territory or an abbreviation of the name of the territory in the relevant script. It seems appropriate that any IDN ccTLDs added should be done for the sole purpose of benefiting the applicable ccTLD language community (or language communities as applicable). For example, for a fictitious ASCII ccTLD .xi serving a country or territory called Island X, an IDN ccTLD for .xi should only be added using a specific script that is used by an Island X language community and the purpose of that ccTLD should be to serve members of that particular language community of Island X including any that may be located elsewhere in the world; an IDN ccTLD for .xi should not be added to serve a generic global purpose, i.e., making it a de facto gTLD.

b) If so, how is "meaningful" determined and by whom?

> GNSO response: The IDN ccTLD string should be meaningful to the local community and should represent a meaningful representation of the territories' name in the selected script. Input is strongly encouraged from the local language community, local government and local Internet users and other communities. The IDN TLD string introduced should be for the sole purpose of benefiting the corresponding language community in the territory and not otherwise be perceived or interpreted by unmotivated users to represent a description of human activity beyond the representation of the name of the corresponding country or territory.

> ***How many IDN ccTLDs per script per 'territory'?***

Apart from some exceptions, there is one single ASCII ccTLD per listed 'territory'.

a) Should there similarly be only a single IDN ccTLD for a given script for each 'territory' or can there be multiple IDN ccTLD strings? For example, should there be only one equivalent of .cn in Chinese script for China or .ru in Cyrillic for Russia?

> GNSO response: Yes, the GNSO believes that there should be only one string per ISO 3166-1 entry per relevant script.

b) Could there be several IDN strings for a 'territory' in a script? If so, who would determine the number and what are the criteria?

> GNSO response: No, the GNSO believes that there should be one string per ISO 3166-1 entry per relevant script.

1
2 *c) If an IDN ccTLD string is not applied for, for whatever reason, should an IDN ccTLD*
3 *string that could be associated with a particular 'territory' be reserved or protected in*
4 *some way?*
5
6 GNSO response: The GNSO formed a special working group to deal with the
7 topic of reserved names and that group recommended that a reserved names
8 category for geographic names should not be created but rather that any disputes
9 regarding such names should be handled through a complaint procedure (see
10 recommendations 20 – 22 and associated supporting information in reference 4
11 above). One of the key reasons for this approach was that gTLDs are inherently
12 global in nature and laws regarding the use of geographic identifiers vary from
13 country to country so it is difficult to establish one rule that would apply across all
14 jurisdictions. But ccTLDs are distinctly different from gTLDs. One of the key
15 differences is that ccTLDs clearly come under the laws of one specific jurisdiction
16 so it might be much easier to establish reserved names categories or provide other
17 means of protection for given ccTLDs.
18
19 On a related note, protective measures would also be required to prevent
20 confusing similarity with existing TLDs. For example, quite a few two-character
21 strings in Cyrillic and Greek scripts would be visually confusingly similar to
22 existing ccTLD strings. While not proposing reservation of any particular IDN
23 string length, the GNSO has recommended prohibition of strings that would be
24 confusingly similar to existing TLD strings as an appropriate protective measure
25 for such purposes.
26
27 ***How many scripts per 'territory'?***
28
29 *a) Can a 'territory' apply for more than one IDN ccTLD string in different scripts if more*
30 *than one script is used to represent languages spoken in that location? For example in*
31 *Japan more than one script is used to represent the Japanese language. In other words,*
32 *should there be a limit on the number of scripts each territory can apply for?*
33
34 GNSO response: Using multiple scripts in the case of territories or communities
35 with special needs should be allowed. However, care must be taken not
36 to produce audibly confusing ccTLDs. While it may be reasonable to create
37 aliases in several scripts for the same name pronounced in essentially the same
38 way, it should not be possible to create separate TLDs in separate scripts that
39 sound alike or nearly alike. In all cases, care must be given to the stability and
40 security of the Internet as well as to the operational capabilities of IANA to
41 handle multiple variations of a country or territory name. Special attention must
42 be paid to avoid confusingly similar names. With this in mind, the GNSO IDN
43 Working Group (WG) agreed that "measures must be taken to limit confusion and
44 collisions due to variants" (4.1.5 in reference 3 above).
45

b) In what circumstances would it be appropriate to seek to introduce a limit on the number of scripts a 'territory' may choose to introduce for a ccTLD or any TLD with a national connection?

> GNSO response: The most obvious reasons for limiting the number of scripts would be technical to ensure security, stability and interoperability. Also, the number must not cause user confusion.

c) Can a 'territory' apply for an IDN ccTLD string even if the script is not used in a language with any 'official status' in that 'territory'? For example, if the Kanji script is accepted under the IDNA protocol, can Australia apply for a representation of Australia in that script even though neither the script nor any language deriving from it has any 'official' status in Australia?

> GNSO response: Generally, ccTLDs should be restricted to scripts and languages that have formal or de-facto official status within a country or territory. In some cases, however, a script or language that has a large user base within the country or territory may not have official status. This can happen in territories that have no official language or script and can occur in cases of minority or indigenous populations. There should be some process by which IDN ccTLDs can be obtained in these exceptional cases. In all cases, care must be given to the stability and security of the Internet as well as to the operational capabilities of IANA to handle multiple variations of a country or territory name. Special attention must be paid to avoiding confusingly similar names.

d) If 'official status' is required who will define it and who will determine it in each case?

> GNSO response: This question should be answered by the ccNSO and the GAC and the related communities that currently are involved in the ccTLDs.

> **Number of characters in the string?**

Currently, ccTLD strings are limited to 2 US-ASCII characters and gTLDs to 3 or more. It is understood that abbreviations can be problematic for internationalized TLDs as abbreviations used in US-ASCII are not used on a global basis in all scripts. The underlying nature of IDN makes the actual string inserted in the DNS always longer than two characters when expressed in Unicode (due to the IDNA requirement to prefix internationalized labels with 'xn—'). However, it is how the string appears in its non US-ASCII character set that is important. In this context:

a) Should all IDN ccTLD strings be of a fixed length, for example by retaining the two-character limitation that applies to ASCII ccTLD labels, or can they be of variable length? If a variable string length is introduced for IDN ccTLDs, should it also be introduced for ASCII ccTLDs?

GNSO response: IDN ccTLDs should not be restricted to 2 characters, but there should not be an equivalent introduction of variable length ASCII ccTLDs. The restriction of ASCII ccTLDs to the ISO 3166-1 2-character codes should be maintained and should not be considered as part of the IDN issue. The GNSO Reserved Names Working Group (RN-WG) did considerable work related to single and two-character IDN names and recommended the following: "Single and two-character U-labels on the top level . . . should not be restricted in general. At the top level, requested strings should be analyzed on a case by case basis in the new gTLD process depending on the script and language used in order to determine whether the string should be granted for allocation in the DNS. . . " (See recommendation 5 and supporting information in reference 4 above.) One of the lessons learned in talking with IDN experts was that defining characters in ASCII is much easier than defining characters in IDNs. It was also learned that reserving single and two-character IDN strings would eliminate large quantities of meaningful names in some scripts. While recognizing that the GNSO RN-WG was focusing specifically on one and two-character IDN names, the lessons learned still seem to apply to any efforts to attempt to fix string length for IDN ccTLDs. Therefore, variable string length would seem like the right approach for IDN ccTLDs. The GNSO is not aware of any technical reason not to use variable string length for IDN ccTLDs. Nor is the GNSO aware of policy issues that would argue against the use of any length of string for IDN ccTLDs. Finally, the GNSO understands that a single character IDN string will be represented by more than one character in the DNS itself.

As stated earlier, if a variable string length is introduced for IDN ccTLDs, it should not be introduced for ASCII ccTLDs under the IDN ccTLD policy.

b) Does moving outside the current 2 symbol limitation create any security, stability or integrity issues?

GNSO response: This question seems best answered by IDN technical experts.

c) Who determines the appropriate label used to represent a new IDN ccTLD string, and how are the set of characters used to represent this label selected?

GNSO response: The GNSO IDN WG reached agreement in the following areas that might be useful for ccTLDs (see reference 3 above):

4.1.3. Language Community Input for Evaluation of new IDN gTLD strings: Agreement that a suitable process for consultation, including with relevant language communities, is needed when considering new IDN gTLD strings.
4.1.5. Limit Variant Confusion and Collision: Agreement that measures must be taken to limit confusion and collisions due to variants (i.e. substitutable characters/symbols within a script/language) while reviewing and awarding new IDN gTLDs.
4.1.6. Limit Confusingly Similar Strings: Agreement that measures be taken to ensure that an IDN gTLD string with variants (see 4.1.4 and 4.1.5 above) be

treated in analogy with current practice for IDN SLD labels, i.e. strings that only differ from an IDN gTLD string by variants (see above) are not available for registration by others.

4.1.9. Single Script Adherence:

4.1.9a. Agreement to not require single script adherence across all levels in an IDN gTLD. Single script adherence across all levels in an IDN gTLD is not a technical requirement, only a potential policy requirement, especially since it would be difficult to enforce uniformly beyond the second level. Note: Single script adherence across levels is not a requirement in existing gTLDs. Second-level IDNs have been introduced in those gTLDs in accordance with ICANN Guidelines.

4.1.9b. Agreement that there should be single script adherence within a label at the levels where registries maintain control. Where script mixing occurs or is necessary across multiple levels, registries must implement clear procedures to prevent spoofing and visual confusion for users. New gTLD registries must conform to the ICANN IDN Guidelines, and must publish their language tables in the IANA Registry. Registries should be required to limit the number of scripts across labels.

4.1.9c. Agreement that new gTLDs should observe the following guidelines:

1. Mix-in of ASCII characters in other scripts should be allowed as a special case, when justified.
2. Where the accepted orthographic practice for a language requires script mixing, such mixing must be allowed.

Note: Only scripts that have Unicode support are available for gTLDs.

4.1.9d. Agreement that other considerations in limiting scripts are:

1. Official/significant languages in a country exist.
2. An IDN gTLD registry should limit the degree of script mixing and have a limit for the number of scripts allowed for its domain names. Such limits, with justifications, should be proposed by the IDN gTLD applicant and be evaluated for reasonableness.
3. In all IDN gTLD applications, the applicant should adequately document its consultations with local language authorities and/or communities. See also 4.1.3.
4. The way to define language communities is not in the purview of the IDN-WG, but CNDC and INFITT (representing Chinese and Tamil language communities, respectively) are some models to consider.
5. ICANN should consult with the relevant language communities if in doubt whether an IDN gTLD string is in compliance with relevant tables.

Are there any 'rights' attached to a given script?

1　*In purely technical terms, a script is a collection of symbols. However, each of those*
2　*collections of symbols when put together in particular ways produce the 'languages' of*
3　*groups of people sometimes defined by borders, although very often not. These groups*
4　*are often referred to as language communities.*
5
6　*a) Should such groups (or their governments) have special rights regarding those*
7　*scripts? For example, should the Korean language community be entitled to restrict the*
8　*use of the Hangul script? If special rights exist what is the procedure to exert these rights*
9　*and resolve conflicts?*
10
11　　　GNSO response: No, no special rights should be attached to a script unless these
12　　　special rights are clearly affirmed and enforced in International law. It should be
13　　　noted that the cultural community that uses any particular script extends beyond
14　　　territorial borders and the rights of these cultural communities should not be
15　　　restricted by ICANN actions. The GNSO Introduction of New gTLDs Policy
16　　　Development Process Committee (see reference 5 above) developed
17　　　recommendations that are intended to accommodate both ASCII and IDN gTLDs.
18　　　The recommendations made by the committee attempt to rely on principles of
19　　　international law for making decisions regarding what strings are allowed. A
20　　　fundamental purpose for this approach was to ensure that the string selection
21　　　process and any dispute procedures associated with that process are as objective
22　　　as possible by basing them on recognized laws. ICANN should not grant such
23　　　special rights.
24
25　*b) Can anyone get acceptance of a script under the IDNA protocol or are there*
26　*restrictions? For example, can a gTLD registry get the Kanji script accepted under the*
27　*IDNA protocol? Should that use be vetted/approved by Japan? If yes, would the same*
28　*requirement apply if a script is used in more then one 'territory'?*
29
30　　　GNSO response: No. Unless required by international law, no territorial
31　　　approval should be required for gTLDs. ICANN should not become an
32　　　enforcement point for national interests, though, in the case of gTLDs, it is
33　　　anticipated that the gTLD objection process will be available to any territorial
34　　　authority that needs to use it.
35
36　　　And since there is nothing that can be done to prevent a country from unilaterally
37　　　stopping by legal or other means the use of any script or TLD in that script within
38　　　its jurisdiction, it would seem prudent and sensible for ICANN and a prospective
39　　　IDN TLD registry wishing to deploy their TLD in a given script to approach that
40　　　country and/or the local language community in question to vet their intent,
41　　　particularly from the point of view of viability and market acceptability. In the
42　　　case of the cited example Kanji script, it should be noted that under the Unicode
43　　　unified CJK script, Kanji is shared with Chinese (simplified and traditional) and
44　　　Korean (Hanja). The same could be said of other scripts that are widely used by
45　　　more than one language community (e.g., Arabic, Cyrillic, etc.).
46

c) Should it be possible to adopt two or more 'versions' of a script with only minor differences for use under the IDNA protocol and are there issues or concerns should this occur?

> GNSO response: If we understand this question correctly, we think that the following recommendations from the GNSO IDN WG apply (see reference 3 above):

> **4.1.5. Limit Variant Confusion and Collision: Agreement** that measures must be taken to limit confusion and collisions due to variants (i.e. substitutable characters/symbols within a script/language) while reviewing and awarding new IDN gTLDs.
> **4.1.6. Limit Confusingly Similar Strings: Agreement** that measures be taken to ensure that an IDN gTLD string with variants (see 4.1.4 and 4.1.5 above) be treated in analogy with current practice for IDN SLD labels, i.e. strings that only differ from an IDN gTLD string by variants (see above) are not available for registration by others.

2. Introduction of IDN ccTLDs

Should a list of IDN ccTLD strings be mandated?

In the US-ASCII case, ccTLD strings are currently primarily based on the ISO 3166-1 Alpha 2 list. If a similar mechanism were adopted for IDN ccTLDs, this could mean that every ISO 3166 entry would have an equivalent IDN ccTLD string(s) to represent it.

a) Is such a list necessary?

> GNSO response: Necessary no, but if such a list did exist, it might be a useful reference.

b) Who would develop such a list?

> GNSO response: Such a list, if required, could be mandated and maintained by some outside authority with the same or similar stature to ISO, e.g., UNESCO might produce such a list. If however, the GAC and the ccNSO wished to create such a list themselves, that should be within their prerogative with input from the full ICANN community.

c) Should such a list be mandated?

> GNSO response: If such an authoritative list can found or created, then yes.

d) If yes, by whom?

GNSO response: The ICANN Board, based on the recommendation of the
ICANN community, through a bottom-up policy development process.

e) Who would develop the criteria and relevant policies for identifying IDN ccTLDs?

GNSO response: Rules for IDN ccTLD classification must be determined by the
ICANN Board, upon the recommendation of the full ICANN naming
community. Once classification rules are established, the ccNSO would be
responsible for identifying specific IDN ccTLDs.

f) Under what policy or authority would the list be created?

GNSO response: Once IDN ccTLDs have been apportioned by the Board based
on the recommendation of the ICANN naming community, the ccNSO Policy
Development Process should be used.

*g) If additional criteria and or policies are required, who is responsible for formulating
that policy?*

GNSO response: Once IDN ccTLDs have been apportioned by the Board based
on the recommendation of the ICANN naming community, the ccNSO Policy
Development Process should be used.

What precedence should be given to ccTLDs in the IDN implementation process?

GNSO response: There should be no formal precedence given to IDN ccTLDs
over IDN gTLDs or vice versa. In the event that IDN gTLDs are ready before
IDN ccTLDs, the interests of the IDN community should be protected by liberal
use of the objection mechanism proposed in the new gTLD process (see reference
5 above). Likewise if IDN ccTLDs are ready for deployment before IDN gTLDs
there should be an equivalent objection mechanism available for the rest of the
community. The GNSO worked diligently and openly for over a year and a half
to develop procedures for the introduction of new gTLDs including IDN gTLDs.
The IDN gTLD process should not be put on hold unless there are technical
reasons for doing so (i.e., the IDNA protocol revision is not yet finished).

The GNSO IDN WG made the following recommendation that has some
application here (see reference 3 above):

4.1.1 Avoidance of ASCII-Squatting:

Agreement to avoid "ASCII-squatting" situations where applications for new non-
IDN gTLD strings, if accepted for insertion in the root at an earlier stage than
IDN gTLDs, could pre-empt later applications for IDN gTLDs. For example, a
new non-IDN gTLD ".caxap", if accepted, would prohibit the acceptance of a

later application for an IDN gTLD ".caxap" (in Cyrillic script and meaning "sugar" in Russian).

If there are technical reasons for delaying the introduction of IDN gTLDs when new ASCII gTLDs are introduced, steps could be taken to avoid ASCII-squatting as suggested by the IDN WG. Similarly, if ccTLDs are not ready to offer IDN ccTLDs as early as the GNSO is ready to offer IDN gTLDs, procedures could be developed to avoid possible conflicts. For example, IDN country names could be reserved until such time that ccTLD IDN names corresponding to countries are determined.

Both ccTLD and gTLD users have needs for IDN TLDs and meeting those needs as quickly as possible for both groups should be a priority. Members from both the ccTLD community and the gTLD community have contributed many hours and financial resources to achieve this objective. In the case of the GNSO, gTLD registrants fund well over 90% of ICANN's budget. It would be very unfair if the gTLD registrants funded activities that worked against their own needs. In the same vein of fairness, technical, operational and financial criteria for the selection and operation of IDN ccTLDs should be consistent with a level playing field appropriate to the context of the deployment (i.e., such criteria should not be set so high that it excludes certain minority communities who have desperate need of IDN ccTLDs but do not have the wherewithal to meet and sustain performance criteria more appropriate for wealthy corporations and incumbents).

Who selects the IDN ccTLD string in the absence of a mandated list?

If IDN ccTLD strings are not going to come from a mandated list then, how does an IDN ccTLD string become designated as the string for a particular 'territory'?

a) What are the criteria and policies to determine who can submit a request for the designation of an IDN ccTLD?

GNSO response: In the absence of a mandated list, or a rule by which an intrinsic list is determined, the ccNSO, the ccTLDs and the GAC, in cooperation with the relevant country or territory authorities, should be able to make the selections subject to prior rules approved by the Board based on the recommendations of the ICANN community.

b) Who will develop the criteria and policies for determining the designation of an IDN ccTLD?

GNSO response: The technical protocol criteria will be determined by the IETF in the revised IDNA protocol. In terms of policies related to the designation of new IDN ccTLDs, the ccNSO should be able to make the selections subject to prior rules approved by the ICANN Board based on the recommendations of the

ICANN community. Currently, the process for delegating a ccTLD is coordinated by IANA in its role as staff support to the ICANN Board of Directors.

c) How will such issues as competing requests (both domestic and international) be dealt with?

GNSO response: The GNSO New gTLD Committee recommended procedures for string contention (see reference 5 above) which may be of relevance here. Implementation Guideline F from those recommendations reads like this: "If there is contention for strings, applicants may: i) resolve contention between them within a pre-established timeframe; ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim and no mutual agreement, a process will be put in place to enable efficient resolution of contention and; iii) the ICANN Board may be used make a final decision, using advice from staff and expert panels." Such a process should allow for formal input from territorial authorities, the local business/user community and language communities.

d) What will happen if 2 'territories' are eligible for the same or confusingly similar strings for IDN ccTLD?

GNSO response: See the previous response as one possible approach for consideration.

What coordination should exist between the different actors?

The deployment of IDN ccTLDs will require coordination among various actors, within territories and ICANN constituencies. Irrespective of the methodology employed, some coordination questions must be addressed, such as:

a) Who are the appropriate actors?

GNSO response: ccNSO, GNSO, SSAC, GAC, ALAC, RSSAC, IANA, ccTLD managers, registrants and potential registrants, IETF, ISO, territorial authorities, the community most directly served, and organised language communities.

b) What are their roles?

GNSO response: We believe that all of the following should be involved in the process to determine the classification of IDN TLDs into policy development name space and that each listed entity should also be involved as described:

- ccNSO – policy making body for IDN ccTLDs subject to prior rules approved by the Board based on the recommendations of the ICANN community;

- GNSO – policy making body for IDN gTLDs that are not within the remit of the ccNSO;
- SSAC, GAC, ALAC and RSSAC – advisory committees as providers of ongoing input and comment to the SO's in their policy making function;
- IANA - providing experience of ccTLD delegation processing;
- ccTLD managers - providing advice based on their direct experience as managers of domain names;
- Registrants and potential registrants – the users of IDNs;
- IETF – the standards development body for the domain name system;
- ISO – the body whose standards have been used thus far for ASCII ccTLDs;
- Territorial authorities – governmental body where deployment is desired;
- Local Internet Community – the community most directly served; and
- Organised language communities – the cultural/linguistic "gatekeepers" of the language to be deployed.

c) Do the GAC ccTLD principles need to be revised in the light of the introduction of IDN ccTLDs?

> GNSO response: This is a decision for the GAC. Clearly, as new lessons are learned via the deployment of IDN ccTLDs, the GAC principles may be revised several times in the future to reflect the new knowledge that all stakeholders acquire.

3. Delegation of IDN ccTLDs

Do existing ccTLD delegation policies apply to the delegation of IDN ccTLDs?

> GNSO response: No.

If not:

a) Who can apply to have the IDN ccTLD delegated or to be the delegate for that ccTLD?

> GNSO response: After classification of IDN TLDs and the establishment of principles for such delegation by the Board based on the recommendation of the ICANN community, this is a decision for ICANN and the ccNSO with other supporting organizations and advisory committees as applicable. Nevertheless, the approved applicant should at least be from or be supported by the local territorial authority, local Internet business and user community and the organized language community.

b) Who decides on the delegation and in particular:

- *Are there specific reasons for deviating from the standard practice/guidelines that a zone should only be delegated with the support of the local internet community, which includes the government?*

GNSO response: Yes, for example, in cases of a significant Diaspora, there should be consideration to including that community in the decision process.

- *Is consent/involvement/knowledge of government required?*

GNSO response: While government advice should be considered, it may not be necessary to obtain government consent. It may be useful to support legitimacy of an IDN ccTLD by encouraging government involvement and knowledge.

- *Is consent/involvement/knowledge of incumbent ccTLD manager required?*

GNSO response: It would seem desirable to allow involvement by the incumbent ccTLD manager along with other stakeholders because of the experience they can bring to the table.

- *Is there any presumptive right of the ASCII ccTLD manager over a corresponding IDN ccTLD?*

GNSO response: In answering this question, it is suggested that the issues of local legitimacy and a good experience for those who will directly benefit from the script(s) used for IDN ccTLDs be considered.

c) Who will formulate the policy for these processes?

GNSO response: After classification of IDN TLDs, ccNSO with input from the abovementioned non-ICANN entities such as local territorial authorities, local Internet business and user community and the language community.

d) Do existing US-ASCII ccTLD delegation policies for dealing with multiple applications, objections to applications or disputes apply to the same issues in the delegation of IDN ccTLDs? If not who will formulate the policies for these issues?

GNSO response: Please see the response for a) above.

e) Taking into account all experiences ICANN has acquired - should there be an agreement between ICANN and the IDN ccTLD operator on the operation of the IDN ccTLD string?

GNSO response: ICANN should have a contract or some other form of agreement that includes appropriate technical, operational and financial requirements. At a minimum, IDN ccTLD operators must be required to follow the ICANN IDN Guidelines just like gTLD registries that offer IDNs.

4. Operation of IDN ccTLDs

1 *Is the operation and management of an IDN ccTLD different to that of an existing US-*
2 *ASCII ccTLD such that there are specific global technical requirements, in addition to*
3 *the general IDN standards, needed for the operation of an IDN ccTLD? If so, how are*
4 *those requirements developed and who would develop them?*
5
6   GNSO response: From a purely DNS perspective, there is no difference. From an
7   administrative perspective, IDNs require implementation of special registration
8   processes, use of variant tables where applicable, implementation of the ICANN
9   IDN Guidelines, adherence to the IDNA protocol, publishing an IDN table, etc.
10   There are also emerging issues that may deserve attention when IDNs are
11   introduced, such as phishing.
12

1   Annex 1

2   **STATEMENT OF THE**

3   **NON-COMMERCIAL USERS CONSTITUENCY (NCUC)**
4   **20 FEBRUARY 2008**

5

6   **ALTERNATIVE OPINION AND STATEMENT ON ITEM 10 OF THE EXECUTIVE**
7   **SUMMARY OF THE GNSO COMMENTS IN RESPONSE TO THE CCNSO-GAC**
8   **ISSUES REPORT ON IDN ISSUES:**
9   **"CONFUSINGLY SIMILAR STRINGS MUST BE AVOIDED."**

10

11   This statement address the wording of item 10 of the Executive Summary of the GNSO
12   Comments in Response to the ccNSO-GAC Issues Report on IDN Issues (the "GNSO
13   Comments")[3], as it presently states that "confusingly similar strings must be avoided."

14

15   This wording was previously used by the GNSO Council at its "Policy recommendations
16   and implementation guidelines for the introduction of new top-level domains".[4] At the
17   final draft report, Recommendation no. 02 states that: "Strings must not be confusingly
18   similar to an existing top-level domain." For reference purposes, a footnote relates the
19   "confusingly similar" expression with item 4(a) of the UDRP.[5]

20

21   We object to the adoption of the misleading wording "confusingly similar" in the GNSO
22   Comments, grounded in the following arguments:

23

24   **1. Expansion of trademark rights to a broader field of elements**

25

26   In adopting the "confusingly similar" expression, as it is used by item 4(a) of the UDRP,
27   the GNSO Comments expand the trademark logic of protection to a wider range of
28   elements, especially in what concerns with domain names and the way countries can refer
29   to themselves through domain names.

30

31   In adopting this kind of wording, the GNSO Comments would be equating domain names
32   with trademarks as properties that could be legally protectable. Such expansion of
33   trademark logics to other elements, such as domain names, not only broader the scope of
34   ICANN authority, as addressed bellow, but also is incorrect in legal terms.

35

36   In her "Legal Briefing Paper on GNSO Recommendations for Domain Name Policy",
37   American University Law Professor Christine Haight Farley stated that "trademarks are
38   legally protected intellectual property because it is believed that the commercial use of a
39   mark by another that is likely to cause confusion would injure consumers. Trademarks
40   are legally protectable intellectual property also because their owners have developed

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[3] http://gnso.icann.org/drafts/ccnso-gac-issues-report-idn-cctlds-31jan08.pdf
[4] http://gnso.icann.org/drafts/pdp-dec05-draft-fr.htm.
[5] http://gnso.icann.org/drafts/pdp-dec05-draft-fr.htm#_ftn15.

1 valuable goodwill in the marks. Neither of these conditions of legal protection apply in
2 the case of domain names."[6]
3
4 Non-commercial users of domain names will be unfairly discouraged from using
5 trademarks. Even though a trademark law analysis would permit a broad range of
6 confusingly similar domain names that are used for non-commercial purposes, the
7 GNSO's recommendation would not.
8
9 Perhaps a better policy choice might be to look to the private sector and open source
10 software developers to create new software that can better prevent confusion caused by
11 similar words, such as new fonts.
12
13 **2. Only technical issues within scope of ICANN authority**
14
15 In maintaining the "confusingly similar" expression at item 10 of its Executive Report,
16 the GNSO Comments do not narrow the scope of ICANN authority to deal with cases
17 related to technical confusion. On the contrary, it empowers ICANN to act in fields that it
18 does not have adequate authority to decide upon, as the adequate ways through which a
19 country or community can designate themselves.
20
21 As the GNSO Comments address domain names, it is important to highlight that a
22 domain name, by itself, does not cause confusion, but only with relation to how the
23 domain is used. In maintaining the general confusion wording the GNSO Comments
24 surpass the concept of technical stability and seems to end up regulating other fields of
25 expression and consumer protection that are outside ICANN´s authority.
26
27 **3. "Confusion similarity" and "likelihood of confusion"**
28
29 There is also another issue of concern regarding the definition of what could be
30 considered as "confusingly similar" strings. In her "Legal Briefing Paper on GNSO
31 Recommendations for Domain Name Policy", Law Professor Christine Haight Farley has
32 addressed this topic, stating that "confusing similarity" and "likelihood of confusion" are
33 two different concepts.[7] As mentioned in her Legal Briefing:
34
35 "A determination about whether use of a mark by another is "confusingly
36 similar" is simply a first step in the analysis of infringement. As the
37 committee correctly notes, account will be taken of visual, phonetic and
38 conceptual similarity. But this determination does not end the analysis.
39 Delta Dental and Delta Airlines are confusingly similar, but are not likely to
40 cause confusion, and therefore do not infringe. As U.S. trademark law
41 clearly sets out, the standard for infringement is where the use of a mark is
42 such "as to be likely, when used on or in connection with the goods of such
43 other person, to cause confusion, or to cause mistake, or to deceive…"
44 While it may be that most cases of confusing similarity are likely to cause

[6] http://ipjustice.org/wp/2007/06/06/farley-legal-briefing/.
[7] http://ipjustice.org/wp/2007/06/06/farley-legal-briefing/.

confusion, because the infringement standard takes account of how the mark is used, some cases of confusing similarity will not likely cause confusion."

(…) "In trademark law, where there is confusing similarity and the mark is used on similar goods or services, a likelihood of confusion will usually be found. European trademark law recognizes this point perhaps more readily than U.S. trademark law. As a result, sometimes "confusingly similar" is used as shorthand for "likelihood of confusion." However, these concepts must remain distinct in domain name policy where there is no opportunity to consider how the mark is being used. As applied to domain names, the only level of analysis is the first level of analysis: confusing similarity."

For the above reasons, we are unsupportive of the current wording of item 10 of the Executive Summary of the GNSO Comments in Response to the ccNSO-GAC Issues Report on IDN Issues. This concern also relates to the wording used in GNSO's new gTLD policy recommendations (ASCI) regarding the introduction of new domain names for "confusingly similar".

The terminology "confusingly similar" lends itself to the expansion of trademark rights to domain names by commercial uses and governments to the disadvantage of non-commercial users. ICANN should refrain from taking on consumer protection type roles (such as preventing "confusion" in people) and only regulate issues related to the technical coordination of the Domain Name System.

Annex 2

Individual Statement of Concern by Avri Doria, Nomcom appointee to the GNSO council

I would like to append a reiteration of my arguments against the requirement relating to confusingly similarity in the original gTLD recommendations:

"My concern involves using definitions that rely on legal terminology established for trademarks for what I believe should be a policy based on technical criteria.
● In the first instance I believe that this is essentially a technical issue that should have been resolved with reference to typography, homologues, orthographic neighbourhood, transliteration and other technically defined attributes of a name that would make it unacceptable. There is a large body of scientific and technical knowledge and description in this field that we could have drawn on.

● By using terms that rely on the legal language of trademark law, I
believe we have created an implicit redundancy between recommendations 2 and 3. I.e., I believe both 2 and 3 can be used to protect trademarks and other intellectual property rights, and while 3 has specific limitations, 2 remains open to full and varied interpretation.

● As we begin to consider IDNs, I am concerned that the interpretations of confusingly similar may be used to eliminate many potential TLDs based on translation. That is, when a translation may have the same or similar meaning to an existing TLD, that the new name may be eliminated because it is considered confusing to users who know both languages."