

WHEREAS:

- The Draft Applicant Guidebook, Version 4 does not include an Extended Review option for strings that fail the initial evaluation for confusing similarity and likelihood to confuse;
- The GNSO Council recognizes that time is of the essence in sending feedback to ICANN staff on the Draft Applicant Guidebook;
- The IDNG Drafting Team established by the GNSO Council has discussed various circumstances where applicants for strings that may be designated as confusingly similar in the initial evaluation may be able to present a case showing that the string is not detrimentally similar to another string;
- The GNSO Council in Recommendation #2 of the GNSO Final Report on the Introduction of New gTLDs in September 2007 intended to prevent confusing and detrimental similarity and not similarity that could serve the users of the Internet;

RESOLVED:

- A 21-day public comment period be opened not later than 11 June 2010 regarding a proposal to send the following letter to Kurt Pritz (with copy to the ICANN Board), requesting that Module 2 in the next version of the Draft Applicant Guidebook regarding "Outcomes of the String Similarity Review" be amended to allow applicants to request an Extended Review under applicable terms similar to those provided for other issues such as "DNS Stability: String Review Procedure".
- ICANN Staff prepare a summary and analysis of the public comments not later than 6 July 2010.
- The GNSO Council takes action in its meeting of 15 July 2010 regarding whether or not to send the letter.

FURTHER RESOLVED, that this motion shall not serve as a precedent requiring the GNSO Council to adhere to a public comment period requirement for any future GNSO Council letters.

PROPOSED LETTER:

To: Kurt Pritz and members of the ICANN New GTLD Implementation Team,

CC: ICANN Board

The GNSO Council requests a change to Module 2 of the Draft Applicant Guidebook. Specifically, we request that the section on "Outcomes of the String Similarity Review" be amended to allow applicants to request an Extended Review under applicable terms similar to those provided for other issues such as "DNS Stability: String Review Procedure". We further request that a section be added on "String Similarity - Extended Review" that parallels other such sections in Module 2.

This request is seen as urgent because there are conditions under which it may be appropriate for applicants to request Extended Review for a string which has been denied further processing based on a finding of confusing similarity in the Initial Evaluation. This Extended Review would evaluate extenuating circumstances in the application that may result in a finding of no detrimental confusion notwithstanding the Initial Evaluation. This may occur, *inter alia*, in cases such as:

- The same Registry Operator (for an existing gTLD or a proposed new gTLD) could apply for a string that, although similar to an existing or applied for string, is not detrimentally similar from a user point of view. For example, it is possible that an applicant could apply for both a gTLD with a conventional ASCII label and a corresponding internationalized gTLD (IDN gTLD) that could be

found confusingly similar in the Initial Evaluation, but not result in the detrimental user confusion that the GNSO recommendation was trying to avoid.

. A situation where there is an agreement between a new applicant Registry Operator and the Registry Operator of an existing gTLD that allows for better service for the users in the geographical area where the new gTLD will be offered. For example, MuseDoma, the Registry Operator for .museum could enter into an agreement with a new gTLD applicant to offer an IDN version of .museum for a specific language community. The two strings might be found confusingly similar in the Initial Evaluation even though the delegation of both would not cause detrimental confusion.

We thank you for your prompt attention to this GNSO Council request.