



INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®

PROCEDURES FOR FINAL REVIEW OF PERCEIVED INCONSISTENT OR UNREASONABLE STRING CONFUSION OBJECTION EXPERT DETERMINATIONS ("Final Review Procedures")

Effective 15 March 2015

available online at
icdr.org

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Procedures for Final Review of Perceived Inconsistent or Unreasonable String Confusion Objection Expert Determinations

["Final Review Procedures"]



1. Definitions

In these Final Review Procedures:

"SCO Expert Determination" refers to the underlying SCO determination made by the dispute resolution panelist identified in Column A of separate Attachment 1 as "SCO Expert Determinations for Review".

"Final Determination" refers to the determination issued by the Final Review Panel.

"Final Determination Report" refers to a report provided by the Final Review Panel to ICANN setting forth the basis and rationale of the Final Determination.

"Final Review" refers to the review conducted by the Final Review Panel.

"Final Review Panel" refers to the three-member dispute resolution panel selected to review the SCO Expert Determinations.

"ICANN" refers to the Internet Corporation for Assigned Names and Numbers.

"ICDR®" refers to the International Centre for Dispute Resolution®.

"New gTLD Dispute Resolution Procedure" refers to the New gTLD Dispute Resolution included as an attachment to Module 3 of the New gTLD Program Applicant Guidebook, version 2012-06-04, available at <http://newgtlds.icann.org/en/applicants/agb/dispute-resolution-procedure-04jun12-en.pdf>.

"NGPC Resolutions" refers to the ICANN Board New gTLD Program Committee Resolutions 2014.10.12.NG02 – 2014.10.12.NG03, including its Rationale, adopted on 12 October 2014, which is available here: <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en - 2.b>

“SCO” refers to a String Confusion Objection in the ICANN New gTLD Program.

2. Scope

The ICDR will apply these Final Review Procedures in the evaluation of the SCO Expert Determinations submitted by ICANN to the ICDR for Final Review.

3. Jurisdiction

The Final Review Panel shall have the authority to evaluate and render a Final Determination on the SCO Expert Determination pursuant to the authority granted by the NGPC Resolutions.

4. Notice

All notices pursuant to these Final Review Procedures shall be provided as prescribed in Article 6 of the New gTLD Dispute Resolution Procedure as follows:

- a. *If to ICDR:* to ICDRManager@adr.org
- b. *If to the parties in the underlying SCO Expert Determination:* to the primary contact for each party on file with ICANN.
- c. *If to ICANN:* to drfiling@icann.org

5. Issues Subject to Review

The only matters subject to review by the Final Review Panel shall be each SCO Expert Determination.

6. Qualifications of the Final Review Panel Members

- a. The Final Review Panel shall include at least one panel member, and should include other members, if possible, who have familiarity with ICANN or the Domain Name System.
- b. No person shall serve on the Final Review Panel who served on the panel in the relevant underlying SCO Proceedings.
- c. No person shall serve on the Final Review Panel if that person is precluded from serving under the American Arbitration Association’s *“The Code of Ethics for Arbitrators in Commercial Disputes”* governing the appointment of arbitrators.
- d. Prior to accepting an appointment, the prospective panelist(s) shall disclose to the ICDR any circumstances likely to create a presumption of bias or prevent a prompt resolution of the Final Review. Upon receipt of such information, the ICDR shall replace the panelist. The ICDR has the authority to make the decision as to

whether the panelist(s) shall serve or whether another panelist(s) shall be appointed by the ICDR. The ICDR is authorized to appoint another panelist(s) if the appointed panelist(s) is unable to serve promptly.

7. Appointment of Panelists

The ICDR shall select and appoint each member of the Final Review Panel, as well as the Chair of the Final Review Panel.

If a member of the Final Review Panel shall become unwilling or unable to serve, the ICDR shall administratively appoint a substitute panelist and a new panel Chair, if applicable.

Once the Final Review Panel has been constituted, the ICDR shall notify ICANN and the parties to the underlying SCO Expert Determination proceeding within five (5) days.

8. Interpretation of Final Review Procedures

The Final Review Panel shall interpret and apply these Final Review Procedures consistent with the NGPC Resolutions. In the event that there is any inconsistency between these Final Review Procedures and the New gTLD Dispute Resolution Procedure, the Final Review Procedures shall govern.

9. Record for Final Review

- a. Pursuant to the NGPC Resolutions, the record for the Final Review shall be limited to the following: (i) the materials submitted by the parties during the pendency of the underlying proceeding giving rise to the SCO Expert Determination, including any expert reports, documentary evidence admitted into evidence, or other evidence relevant to the review that was presented to the panel(s) at the underlying proceeding; and (ii) the transcript of the underlying proceeding giving rise to the SCO Expert Determination, if any. No additional documents, briefs or other evidence may be submitted for consideration, except that it is recommended that the Final Review Panel consider the identified "Related SCO Expert Determinations" in Column B of Attachment 1.
- b. No party to any of the relevant proceedings in Columns A and B of Attachment 1, or any third party, shall be entitled to submit any additional materials for consideration during the Final Review.
- c. Within five (5) days from the date the Final Review Panel has been constituted, the ICDR shall:
 - 1) Compile the record to be considered for the Final Review;

- 2) Notify the primary contact of the parties to the underlying SCO Expert Determination proceeding that the record has been compiled for submission to the Final Review Panel; and
 - 3) Provide a copy of the same compiled record to the primary contact of the parties to the underlying SCO Expert Determination proceeding.
- d. The parties to the underlying SCO Expert Determination proceeding shall have five (5) days from the date of notice that the record has been compiled in which to raise any objections to the record. Any disputes concerning the record for Final Review shall be raised to the ICDR, and the Final Review Panel shall resolve and finalize the record within five (5) days.

10. Standard of Review

Pursuant to the NGPC Resolutions, the standard of review to be applied by the Final Review Panel is: whether the original Expert Panel could 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 the ICDR Supplementary Procedures for ICANN's New gTLD Program.

11. Final Determination

- a. Within thirty (30) days of finalization of the record for Final Review, the Final Review Panel shall issue a draft of the Final Determination to the ICDR in a report setting forth the basis and rationale of the Final Review Panel's determination. The initial 30-day time frame may be extended for a short period of time in the ICDR's discretion, but in no case shall the extension be more than seven (7) days, and only under extraordinary circumstances.
- b. The ICDR shall conduct an administrative review of the draft Final Determination for the purpose of verifying compliance the Final Review Procedures within five (5) days. If the ICDR finds that the draft Final Determination does not comply with the Final Review Procedures, the ICDR shall have the discretion to request that any administrative deficiencies in the Final Determination be corrected within five (5) days. Upon completion of the administrative review, the ICDR shall publish the Final Determination on ICDR's website and provide a copy of the Final Determination to ICANN.
- c. Pursuant to the NGPC Resolutions, the possible outcomes of the Final Determination are:
 - 1) Adopt the underlying SCO Expert Determination as the Final Determination; or,
 - 2) Reverse the underlying SCO Expert Determination and draft a new Final Determination that shall replace and supersede the underlying SCO Expert Determination.

The Final Review Panel may not order a new SCO proceeding or send the matter back to the original panelist(s) for corrections or further review.

Attachment 1 – String Confusion Expert Determinations Subject to Final Review

COLUMN A		COLUMN B
SCO Expert Determinations for Review	String	Related SCO Expert Determinations
VeriSign Inc. (Objector) v. United TLD Holdco Ltd. (Applicant)	.CAM	• <u>Dot Agency Limited</u> (.CAM) • <u>AC Webconnecting Holding B.V.</u> (.CAM)
Commercial Connect LLC (Objector) v. Amazon EU S.à r.l. (Applicant)	.通販 ¹	<u>Top Level Domain Holdings Limited</u> (.购物)

Attachment 2 – Fees and Cost

ICANN shall be responsible for the ICDR’s administrative fees and the fees and reasonable expenses of all members of the Final Review Panel (collectively “the Final Review Fees”), arising from the Final Review. Within seven days after the appointment of the Final Review Panel and receipt of notice from the ICDR of the anticipated Final Review Fees, ICANN shall pay a deposit to cover those anticipated Final Review Fees. The ICDR may request one or more additional deposits if the initial deposit has proved insufficient to cover the anticipated Final Review Fees. When the Final Review has concluded, the ICDR shall provide a final invoice/statement and return any unexpended balances and excess deposits, if any, paid by ICANN.

¹ Japanese translation of “online shopping”

