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29 August 2013

Ms. Christine Willett
Vice President, New gTLD Program
ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

Dear Christine,

The Community TLD Applicant Group (CTAG) has written numerous letters to ICANN regarding its impressions and recommendations about the Community Priority Evaluation (CPE) component of the New gTLD Program.

We would like to take this opportunity to make additional remarks on the CPE process as well as to comment on the Guidance published on August 16, 2013.

During the August 8, 2013 new gTLD applicant webinar, it was stated that ICANN will not commence CPE reviews on applications subject to Category 1 GAC Advice until such Advice has been resolved. We understand the rationale for the delay and urge ICANN to publish a timeline to achieve resolution of the Advice as expeditiously as possible. GAC Advice was issued more than four months ago and continued delays place an unnecessary hardship on both community and standard applicants that ultimately will affect their ability to resolve contention and reach the market in a timeline similar to their competitors.

As stated in our August 1, 2013 letter to you, we were encouraged by our exchange with you during the ICANN meeting in Durban and hopeful that progress on operational readiness for CPE would demonstrate that a timely, fair and transparent CPE process was forthcoming. We had, based upon that conversation in Durban, anticipated much more information about CPE would be published than what we saw on August 16th. For example, we anticipated that:

- The fee for CPE would be available. While the AGB includes an estimate of $10,000 for the evaluation, we heard in Durban (as have others elsewhere) that the fee could be closer to $22,000. When will the fee information be published?
- The published Guidance would include an iterative process between applicants and evaluators to enable clarification of information provided in the application. This interactive process would be similar to the Clarifying Questions that were issued during initial evaluation. Is this what the following statement is referring to? (As written in the Guidelines): "The EIU will work closely with ICANN when questions arise and when additional information may be required to evaluate an application?" If so, please elaborate how the flow of additional information will occur.
- The process by which applicants could submit additional letters of endorsements would be provided. ICANN expressed concern about potential delays in the program if applicants use the Change Request process to provide additional letters of support. When, then, or how will we be informed of the preferred method for the submission of such letters?

- Also, the clear Advice issued by the GAC to take their position on community applications into respect, is missing the following: " i. The GAC reiterates its advice from the Beijing Communiqué regarding preferential treatment for all applications which have demonstrable community support…:".

Of all the Guidance published, we were pleased to hear about testing of evaluators (page 19 of the report). We request the data sets and results are calibrated to ensure consistency with the GNSO recommendations and the AGB, to date.

In general, it is unclear to us whether ICANN and or the EIU have come to agreement on whether 'communities' in relation to this process, are homogenous entities or heterogeneous ones? There seems to be a presumption throughout the guidelines that the components and subjects of the communities are diverse, yet we do not see evidence that allows for the fact that the communities themselves may be diverse and therefore do not always conform to a particular standard. Understanding and allowing for this cohesion and nuance throughout the evaluation may be the key to avoiding 'false negatives' as a result of an overly brittle evaluation procedure that does not flexibly consider this inherent diversity.

We would also urge ICANN to consider the following items with regard to the Guidance on the criterion:

Criterion #1: Community Establishment
- The guidance should consider that there may be more than one entity, hence entities, that are "mainly dedicated to the community." For example, there may be an entity that's focused on standards development, one focused on policy coordination, etc. Consider the ICANN community and the various roles the IAB, ICANN, IETF, W3C play in the global Internet community.
- There seems to be a general misunderstanding within the EIU of the relationship between the community and the applicant. In some cases the applicant is not a community member or community representative itself for very good reasons. Indeed, the applicant has typically been, a) close to the ICANN new gTLD process, and b) close to the relevant community, without being itself the representative of the community, but has applied with the *support of* the community. For instance, it does not make any sense and is not in the scope/bylaws that a single hotel or hotel association is the operator for a .hotel gTLD. The same applies for .bank, where one particular bank is not the applicant, but an organization that will operate the .bank gTLD with support of the bank community. We recommend the EIU panelists familiarize themselves with the concepts of sponsored applicants who participated in the 2000 and 2004 rounds of new gTLDs when a variety of types of communities applied for their strings.
- What does "administer" the community mean? A more appropriate choice of words would be to "coordinate activities" of the community. It seems that the use of the word "administer" refers to the anticipated (false) concept that the applicant itself represents (ie is the representative of) the community.
- The Guidance seems to imply there must be a membership requirement (e.g., fees, skill and/or accreditation, privileges or benefits) for there to be a community. Again, consider the ICANN community and that it's free (e.g., ICANN doesn't charge admission to its public meetings) and open (e.g., anyone can participate in working groups associated with policy development). The

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Guidance appears to be stating a community is, for example, analogous to a golf club, or any club for that matter, and this is far too narrow an approach for demonstrating community. To the contrary, the GNSO recommendations from which the Guidebook definitions are derived, clearly state that "community should be interpreted broadly and will include, for example, an economic sector, a cultural community, or a linguistic community. It may be a closely related community which believes it is impacted."

- Criteria states "Additional research may need to be performed to establish that there is documented evidence of community activities. Research may include reviewing the entity's web site, including mission statements, charters, etc.," followed by: "Delineation also refers to the extent to which a community has the requisite awareness and recognition from its members." How will the EIU measure "requisite awareness and recognition from its members?"

- Communities can be composed of at least three levels of association/membership: a first level composed of a national, multi-national or global organization; a second level composed of organizations of one lower geographical level; and a third (or subsequent) level of final individual members (either physical or corporate). Ultimately, 'Extension' is determined relative to the community itself: a community of 2 individuals/corporations/associations can nonetheless be deemed a community. Mention of 'millions of members' as a possible required threshold for 'Extension' defeats the purpose of ICANN's community reach to those communities seeking particular representation within the DNS. Case in point, how would "large in terms of membership" be defined?

Criterion #2: Nexus between Proposed String and Community
- Re: "An Internet search should be utilized to help understand whether the string identifies the community and is known by others." What does this mean, how would it be accomplished, and how can there be integrity of the information when Internet search results vary from location to location? Similarly, how can the results of non-English denominated strings be well rendered?
- Re: "Will the public in general immediately think of the applying community when thinking of the applied-for string?" How will "the public", in general, and what it thinks be identified - yet alone quantified?

Criterion #3: Registration Policies
- Re: Eligibility, rather than stating, "Is eligibility for being allowed as a registrant restricted" consider "Are the eligibility restrictions consistent with the articulated community-based purpose of the applied-for gTLD?"
- The two extremes of scoring on Question 3a Eligibility (1 and 0) are so separate as to require more specific inclusion of criteria for a score of 1. We recommend that Guidance for a score of 1 point include 'Eligibility restricted to community members ***or sufficiently restrictive for the appropriate protection of the community.***'

Criterion #4: Community Endorsement
- Support:
  - AGB states, "Applicant is, **or** has documented support from, the recognized community institution(s)/member organization(s), **or** has otherwise documented authority to

represent the community
- ○ Guidance asks:
    - ■ **"Is** the applicant **the** recognized community institution(s) or member organization(s)?
    - ■ "Does the applicant have documented support from the recognized community institution(s)/member organization(s) to represent the community?
- ○ The Guidance is overreaching and creating a new standard compared to the AGB. Whereas it had been adequate in the AGB for the applicant to have documented support from the community to score a 2, the Guidance appears to make it mandatory for the applicant to have documented support to represent the community. This new wording would be a fundamental change of the entire community concept. In comparison, please imagine the (very unlikely) case where a Geographic Community applicant must have a letter from the Government that entitles the applicant to represent that city or region.
- ○ The Guidance is also inconsistent in regards to with respect to "Support." For a score of 2 the Guidance clearly states that there must be documented support from institutions/organizations representing "a" (emphasis added) majority of the overall community addressed which is consistent with the AGB and the Guidance Evaluation Guidelines referring to "documented support from institutions/organizations representing "a" (emphasis added) majority of the overall community." However the Evaluation Guidelines change this criterion in the following sentence which refers to the question "Does the applicant have support from "the" (emphasis added) majority of the recognized community institution/member organizations? This inconsistency is also repeated in the Criteria section of Support: "However for a score of 1 the Guidance states that applicant does not have the support from "the" (emphasis added) majority of the recognized community." The AGB refers to "a" majority of support and "a" significant portion of the community (emphasis added). It is an impossibility to prove that any community applicant has over 50% support in any community so asking for "the" majority supporting the community application is not applicable and should be changed to "a" majority or "a" significant portion of the community.
- Re: "The institution(s)/organization(s) could be deemed relevant when not identified in the application, but has an association to the applied-for string." Please provide an example for this guideline.
- The new wording "Is the applicant the recognized community institution(s) or member organization(s)?" introduces the new dominant concept that the applicant itself should be a community institution/organization. Again, this creates a new and misleading presumption that the applicant ideally is a community institution/organization and applicants that are not a community institution/organization would not rank as high.
- Verification of support letters
    - ○ The verification process as proposed places an unnecessary and undue burden on the endorser/endorsing entity. EIU panelists are being compensated to conduct the CPE and thus should be responsible for verifying the authenticity of support letters as well as opposition, as noted in the next bullet.
    - ○ To the extent there is any verification of letters of support, it is fair and reasonable that this same level of due diligence be required for letters of opposition.
    - ○ In the case of support letters for Geographic gTLDs, the evaluators contacted the

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recognized contact person if they were in doubt of the authenticity of the support letter. This successful proceeding may also apply for the proof of community endorsements if in doubt. Additionally, the applicant may also be notified about the authenticity request in order to double-check the answer of the endorsee to the evaluators. Evaluators should also notify the applicant if an authenticity request was not successful; which could be possible for various unintended reasons.

- ○ In any case, how can "In cases where the letter was signed or sealed by an individual who is not currently holding that office or a position of authority, the letter is valid only if the individual was the appropriate authority at the time that the letter was signed or sealed" be verified that the individual was legitimized at the time of writing?
- ○ Re: Opposition: Please provide examples for "some other reputable organization, such as a quasi-official, publicly recognized organization or a peer organization."

For the selection of evaluators and members of the core project team, they should both be of native tongue and country of that of the applied-for string, or, if the string has significant meaning in more than one language, of one of the main languages and countries where the string has the strongest meaning.

CPE is a critical evaluation process for many applicants and thus, ICANN must give the community adequate time to respond to the CPE Guidance. Community applications are specialized, and with their creation comes the expectation that awarded applicants will protect their respective communities. As such, it is important that the issues listed above be addressed and that the voice of these applicants, stakeholders, and community members be heard.

We look forward to hearing from you and working with ICANN and the Internet community to achieve a timely, fair and transparent CPE process.

Sincerely,

Members of the CTAG

cc: Mr. Fadi Chehadé, President and CEO, ICANN
        Mr. Akram Atallah, COO, ICANN
        Mr. Cherine Chalaby, Board Chair, New gTLD Program, ICANN
        NGPC members
        Heather Dryden, Chair, GAC

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CTAG Membership as of August 2013

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2. ARCHI, IMMO, SKI - STARTING DOT
3. BANK, INSURANCE - fTLD Registry Services LLC
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9. GAL - Asociacion puntoGAL
10. GAY - dotgay llc
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12. GREE - GREE, Inc.
13. HAMBURG - Hamburg Top-Level-Domain GmbH
14. HOTEL - HOTEL Top-Level-Domain S.a.r.l
15. KIDS - DotKids Foundation Limited
16. MED - HEXAP SAS
17. MUSIC - DotMusic / CGR E-Commerce Ltd
18. MUSIC – .music LLC / Far Further
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20. OSAKA - Interlink Co., Ltd.
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22. RADIO - European Broadcasting Union (EBU)
23. SCOT - Dot Scot Registry Limited
24. SHOP - Commercial Connect LLC
25. SPORT - SportAccord
26. TATAR - Coordination Center of Regional Domain of Tatarstan Republic LLC
27. TENNIS - TENNIS AUSTRALIA LTD
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29. TIROL - Punkt Tirol GmbH
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