## New gTLD Program
## Community Priority Evaluation Report
Report Date: 21 May 2015

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| Application ID: | 1-1830-1672 |
| Applied-for String: | SHOP |
| Applicant Name: | Commercial Connect LLC |

### Overall Community Priority Evaluation Summary

| Community Priority Evaluation Result | Did Not Prevail |
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Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation.

Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.

### Panel Summary

| Overall Scoring | | 5 Point(s) |
|---|---|---|
| Criteria | Earned | Achievable |
| #1: Community Establishment | 0 | 4 |
| #2: Nexus between Proposed String and Community | 0 | 4 |
| #3: Registration Policies | 3 | 4 |
| #4: Community Endorsement | 2 | 4 |
| Total | 5 | 16 |

**Minimum Required Total Score to Pass 14**

| Criterion #1: Community Establishment | 0/4 Point(s) |
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| 1-A Delineation | *0/2 Point(s)* |

The Community Priority Evaluation panel determined that the community as defined by the application did not meet the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook (AGB), as the community defined in the application does not demonstrate sufficient delineation, organization, or pre-existence. The application received a score of 0 out of 2 points under criterion 1-A: Delineation.

<u>Delineation</u>
Two conditions must be met to fulfill the requirements for delineation: there must be a clear, straightforward membership definition[1] and there must be awareness and recognition of a community (as defined by the application) among its members.

The applicant defines its community as follows:

> The community for the .SHOP will be for eCommerce Operators - For the purpose of this application we are defining our community as eCommerce operators that directly sell to the general public on the internet. This community is basically a B2C site that utilizes credit card processing requiring them to abide by PCI DSS (Payment Card Industry Data Security Standards) to operate.

The application further delineates its users from the general public with the following:

> This community is easily identified as websites that have shopping cart programs that utilize SSL (Secured Socket Layer) certificates (required under PCI DSS) to process their transactions. Studies have been performed to help identify these website operators and we have a 95% confidence that we have a clear and defined subset of the internet.

According to the AGB, "Delineation relates to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low." Given the applicant's restriction of its proposed community to online businesses that require use of SSL certificates, the Panel has determined that the application provides a clear and straight-forward membership definition and thus meets the first of the AGB's two criteria for Delineation.

According to the AGB's second Delineation criterion, "community" implies "more of cohesion than a mere commonality of interest" and there should be "an awareness and recognition of a community among its members." The application materials and further research provide no substantive evidence of what the AGB calls "cohesion" – that is, that the various members of the community as defined by the application are "united or form a whole" (Oxford Dictionaries). The proposed community encompasses a very large and growing field of diverse and geographically dispersed online retailers. While the application's reliance on SSL certificates delineates a subset of retailers, SSL is simply one of several necessary tools for conducting online business. Use of SSL, however, is not sufficient to ensure that all entities using it are aware of one another as a community, and that the proposed community coheres as per the AGB. Furthermore, based on the Panel's research, various entities in the proposed community do not show an awareness or recognition of other segments of the applicant's proposed community, whether by way of interaction or an explicit statement of cohesion.[2]

The Panel determined that the community as defined in the application satisfies only one of the two conditions to fulfill the requirements for delineation.

<u>Organization</u>
Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

According to the AGB, "organized" implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities." Based on information provided in the application materials and the Panel's research, there is no entity that is mainly dedicated to the community defined in the application.

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[1] According to the AGB, "an unclear, dispersed, or unbound definition scores low" (ICANN Applicant Guidebook 4.2.3)

[2] The Panel acknowledges that an exhaustive review of all proposed community member entities is not possible and has reviewed a number of representative examples to determine awareness and recognition among proposed community members.

The community as defined in the application is dispersed geographically and across a wide array of business types and activities, including all business entities or organizations that sell to consumers using websites that have shopping cart programs that utilize SSL certificates to process their transactions. According to the application:

> Initially, since there was no clear community representation, we worked on establishing some form of a member trade association. The result was the creation of ECWR.net (eCommerce World Retailers). This was formed in March, 2004 and clearly predates the 2007 requirement in the Applicant Guidebook.

The applicant acknowledges that the proposed community was not organized, and that it has sought to organize the proposed community members through ECWR.net, which provides information and resources to the e-commerce community. The application states that the ECWR has "in excess of 1,000 members representing a substantial amount of eCommerce," though evidence of these retailers' participation or of the group's activity generally is not significant. Additionally, recent estimates put the number of US-based e-commerce retailers at over 102,000[3]; this figure does not include e-commerce retailers from other major global markets that the applicant also includes in its proposed community. Therefore, the ECWR is only dedicated to a subset of the community defined by the application. The applicant states that its members "represent an equilivant [*sic*] in excess of $866 trillion in annual sales." However, estimates of the total retail market (both online and in-store) for 2014 show total sales of around US$22.5 trillion.[4] Another entity to which the application makes reference, the National Retail Federation[5], and a subsidiary organization, Shop.org, are committed to the retail (including e-commerce) community defined by the applicant, but its advocacy and policy activities are largely limited to US policy issues.[6] Therefore, the Panel has determined that there is no entity mainly dedicated to the community in all the breadth and geographic range defined in the application.

The Panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for organization.

Pre-existence
To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed) and must display an awareness and recognition of a community among its members.

The community as defined in the application was not active prior to September 2007. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, the CPE process is conceived to identify qualified community-based applications, while preventing both "false positives" (awarding undue priority to an application that refers to a "community" construed merely to a obtain a sought-after generic word as a gTLD string) and "false negatives" (not awarding priority to a qualified community application). The Panel determined that this application refers to a "community" construed to obtain a sought-after generic word as a gTLD string, and that the application is attempting to organize the entities described in the application materials through a gTLD. The proposed community therefore could not have been active prior to the above date (although many of its constituent parts were active).

The application refers to several organizations that existed prior to 2007, including organizations that have endorsed its application and others that represent parts of the defined community. However, the fact that

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[3] See http://www.forbes.com/sites/mikalbelicove/2013/09/18/how-many-u-s-based-online-retail-stores-are-on-the-internet/

[4] See "Retail Sales Worldwide Will Top $22 Trillion This Year," http://www.emarketer.com/Article/Retail-Sales-Worldwide-Will-Top-22-Trillion-This-Year/1011765

[5] According to its website, the National Retail Federation "is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and Internet retailers from the United States and more than 45 countries."

[6] See https://nrf.com/advocacy/policy-agenda; also see https://nrf.com/membership/committees/shoporg-policy-advisory-group;

these organizations were active prior to 2007 does not mean that these organizations were active as part of the larger community as defined in the application prior to 2007, as required by the AGB.

The Panel determined that the community as defined in the application does not fulfill the requirements for pre-existence.

| 1-B Extension | *0/2 Point(s)* |
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The Panel determined that the community as identified in the application did not meet the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the AGB, as the application did not fulfill the requirements for size, nor demonstrate the longevity of the community. The application received a score of 0 out of 2 points under criterion 1-B: Extension.

Size
Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.

The community as defined in the application is of considerable size. According to the application, "We currently have in excess of 1,000 members representing a substantial amount of eCommerce (these members represent an equilivant [*sic*] in excess of $866 trillion in annual sales)."[7] The community for .SHOP as defined in the application, therefore, is large both in terms of geographical reach and number of members globally. However, as previously noted, the community as defined in the application does not show evidence of "cohesion" among its members, as required by the AGB.[8] Therefore, it fails the second criterion for Size. The Panel determined that the community as defined in the application meets only one of the two criteria required.

Longevity
Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application does not demonstrate longevity. According to section 4.2.3 (Community Priority Evaluation Criteria) of the AGB, the CPE process is conceived to identify qualified community-based applications, while preventing both "false positives" (awarding undue priority to an application that refers to a "community" construed merely to get a sought-after generic word as a gTLD string) and "false negatives" (not awarding priority to a qualified community application).

The Panel determined that this application refers to a proposed community construed to obtain a sought-after generic word as a gTLD. As previously stated, the community as defined in the application does not have awareness and recognition among its members. Failing this kind of "cohesion," the community defined by the application does not meet the AGB's standards for a community. Therefore, as a construed community, the proposed community cannot meet the AGB's requirements for longevity.

The Panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for longevity.

| **Criterion #2: Nexus between Proposed String and Community** | **0/4 Point(s)** |
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| 2-A Nexus | *0/3 Point(s)* |

The Panel determined that the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the AGB. The string does not identify or match the name of the community as defined in the application, nor is it a well-known short-form or abbreviation of the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.

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[7] See footnote 4, regarding the implicit errors here; nevertheless, the size of the community as defined is substantial.
[8] As stated previously, according to the AGB, "community" implies "more of cohesion than a mere commonality of interest…There should be: (a) an awareness and recognition of a community among its members…" Failing such qualities, the AGB's requirements for community establishment are not met.

To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus (of 2 out of 3 points; 1 point is not possible), the applied-for string must identify the community. "Identify means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community."

The application for .SHOP defines the community as "eCommerce operators that directly sell to the general public on the internet." According to the application documentation, ".SHOP matches the name of the community and is well known in many languages" and ".SHOP has no other significant meaning than eCommerce." Elsewhere in its application, however, the applicant states a more commonly understood definition for the string: ".Shop is globally recognized and exists in excess of twenty different languages all with the same meaning: a building or room stocked with merchandise for sale: a store."

The applied-for string does not *match* the name of the community as defined in the application. According to the AGB, a string is a "match" if it is "the established name by which the community is commonly known by others" – i.e., that the applied-for string is the same as the one name that is most commonly understood to refer to the community. However, in addition to making reference to the "SHOP" community in its application, the applicant also refers to its commitment to the "e-commerce community" in its mission statement and uses "e-commerce" throughout its application to refer to the community defined in the application. It is evident, therefore, that "SHOP" is not the *established* name as required for a string to be considered a match and that it does not meet the AGB requirements for a full score.

The applied-for string does not *identify* the defined community, as the AGB requires for a partial score. The string .SHOP over-reaches substantially beyond the applicant's proposed community. This is because the string .SHOP identifies both online (i.e. e-commerce) as well as brick-and-mortar entities[9] that sell goods and services. The latter represent a significant portion of overall global retail[10] sales, but are not included in the applicant's proposed community, which is "eCommerce operators that directly sell to the general public on the internet" only and not brick-and-mortar stores. Indeed, in 2014 an estimated 94.1% of global retail sales were accounted for by brick-and-mortar establishments.[11] Thus the string significantly overreaches beyond the proposed community.

The Panel determined that the applied-for string does not match or identify the community or the community members as defined in the application. It therefore does not meet the requirements for Nexus.

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| 2-B Uniqueness | *0/1 Point(s)* |

The Panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the AGB as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1 point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application does not demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus and is therefore ineligible for a score of 1 for Uniqueness. This is based on the Panel's determination that the applied-for string ".SHOP" does not identify the community defined by the application according to AGB standards. Therefore, since the string does not identify the community, it cannot be said to "have no other significant meaning *beyond identifying the community*" (emphasis added, AGB). The Panel determined that the applied-for string does not satisfy the condition to fulfill the requirements for Uniqueness.

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[9] The applicant itself notes that ".Shop is globally recognized and exists in excess of twenty different languages all with the same meaning:  a building or room stocked with merchandise for sale…"

[10] The Panel acknowledges that the word "shop" may also identify establishments outside of the retail industry.

[11] http://www.emarketer.com/Article/Retail-Sales-Worldwide-Will-Top-22-Trillion-This-Year/1011765

| Criterion #3: Registration Policies | 3/4 Point(s) |
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| 3-A Eligibility | *1/1 Point(s)* |
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The Panel determined that the application meets the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the AGB, as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.

To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. According to the application:

> The .SHOP domain name is intended for eCommerce purposes. This means that a website using .SHOP must have eCommerce-enabled ability to provide a direct conduit to making transaction on the web. In other words, it is expected that a .SHOP website will have items or services available for sale on that site and that there is an easy path to purchasing these items. These transaction [*sic*] must also use secure communications when processing said transactions.

The application therefore demonstrates adherence to the AGB's requirement by restricting domain registration to individuals who are members of the community defined by the application. The Panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.

| 3-B Name Selection | *0/1 Point(s)* |
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The Panel determined that the application did not meet the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as name selection rules are not consistent with the articulated community-based purpose of the applied-for TLD. The application received a score of 0 out of 1 point under criterion 3-B: Name Selection.

According to the application:

> In order for an applicant to be considered "qualified" to purchase a .SHOP top-level domain name, they must go through a strict verification process where Commercial Connect researches the identity of that applicant and his business using semi-automated process patent pending processes. Once the registrant is "verified," they are assigned a contact ID which will, then, allow them to register a .SHOP domain name. …

> The minimum character length for a domain name is one character, excluding the .SHOP extension. The maximum character length for a domain name is 63 characters excluding the extension. A domain name must not begin with a dash ″-″ or dot "." and must not begin with the following sequence: "alphanumeric_alphanumeric_dash ("-")_dash ("-")".

> Each character in the domain name, excluding the dots (".")s must be a letter, digit, or dash ("-"). The last character must be a digit or letter. It cannot be a dash ("-").

The application does not directly refer to its community-based purpose in discussion of name selection rules, nor are they implicitly based on the community-based purpose of the applied for TLD, which is to "aid in the the [*sic*] development of a safer, cheaper, and more secure platform for eCommerce, providing for a better online shopping experience." Furthermore, the above mentioned technical requirements are the same as the minimum requirements for any second level domain in a gTLD, Therefore, the Panel determined that the application did not satisfy the condition to fulfill the requirements for Name Selection.

| 3-C Content and Use | *1/1 Point(s)* |
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The Panel determined that the application meets the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria). The application provides evidence that the content and use rules included are consistent with the articulated community-based purpose of the applied-for TLD. The application therefore received a score of 1 point under criterion 3-C: Content and Use.

To fulfill the requirements for Content and Use, the registration policies for content and use must be consistent with the articulated community-based purpose of the applied-for gTLD. According to the application:

Requirements for the applicant initially will be an agreement that the website will be offering goods and/or services under a secured socket layer (SSL) trusted connection. [...] There may be additional circumstances whereby it will not be required for the registrant of a .SHOP domain name have a functioning eCommerce site. [...] Generic .SHOP domain names should be eCommerce site-enabled and not forwarded to other sites. [...] property.

The application therefore demonstrates adherence to the AGB's requirement of content and use rules that are consistent with the application's community-based purpose, which is to "aid in the the [sic] development of a safer, cheaper, and more secure platform for eCommerce, providing for a better online shopping experience."

| 3-D Enforcement | *1/1 Point(s)* |
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The Panel determined that the application meets the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the AGB. The application provides specific enforcement measures and outlines a coherent and appropriate appeals mechanisms. The application received a score of 1 point under criterion 3-D: Enforcement.

Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. According to the application:

> Commercial Connect, LLC may, in its sole discretion, suspend or terminate a user's service for violation of any of the requirements or provisions of the United States government on receipt of a complaint if Commercial Connect LLC believes suspension or termination is necessary to comply with the law, protect the public interest, prevent unlawful activity or protect the health, safety, or privacy of an individual.

> If immediate action is not required, Commercial Connect, LLC will work with registrants and a complainant to remedy violations. [...] Disputes arising under or in connection with this Agreement, including requests for specific performance shall be resolved through binding arbitration conducted as provided in this Section pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce (″ICC″). [...] Mechanisms will be in place for the notificaton [*sic*] and eventual suspension of domain regsitrants [*sic*] that either do not qualify to operate a .SHOP TLD or are operating it inconsistently with its intended use. Two Warning [*sic*] will be sent and an appeal process will be available before action is taken to suspend a .SHOP TLD.

The applicant outlined policies that include specific enforcement measures constituting a coherent set. The applicant outlines a comprehensive list of investigation procedures, and circumstances in which the registry is entitled to suspend domain names and refers to an appeals process available to registrants. The Panel determined that the application satisfies both of the two conditions to fulfill the requirements for Enforcement and therefore scores 1 point.

| Criterion #4: Community Endorsement | 2/4 Point(s) |
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Support for or opposition to a CPE gTLD application may come by way of an application comment on ICANN's website, attachment to the application, or by correspondence with ICANN. The Panel reviews these comments and documents and as applicable attempts to verify them as per the guidelines published on the ICANN CPE website. Further details and procedures regarding the review and verification process may be found at http://newgtlds.icann.org/en/applicants/cpe. The table below summarizes the review and verification of all support for and opposition to the Commercial Connect LLC application for the string .SHOP.

**Summary of Review & Verification of Support/Opposition Materials**

|  | Total Received and Reviewed | Total Valid for Verification | Verification Attempted | Successfully Verified |
|---|---|---|---|---|
| **Application Comments** | 7 | 2 | 2 | 1 |
| **Attachments to 20(f)** | 17 | 3 | 3 | 2 |
| **Correspondence** | 6[12] | 3 | 3 | 2 |
| **Grand Total** | 30 | 8 | 8 | 5 |

| 4-A Support | *1/2 Point(s)* |
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The Panel determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the AGB, as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.

To receive the maximum score for Support, the applicant is, or must have documented support from the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. "Recognized" means that the institution(s)/organization(s), through membership or otherwise, are clearly recognized by the community members as representative of the community as a whole. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. "Relevance" refers to the communities explicitly and implicitly addressed by the application.

The Panel determined that the applicant was not the recognized community institution(s)/member organization(s), nor did it have documented authority to represent the community, or documented support from the recognized community institution(s)/member organization(s). A recognized community institution or member organization is one which not only (1) represents the entirety of the community as defined by the application (in all its breadth of categories as described in Delineation), but is also (2) recognized by the same community as its representative. No such organization among the applicant's supporters demonstrates the kind of structure required to be a "recognized" organization, as per AGB guidelines, and the Panel has determined that no such organization exists. However, the applicant possesses documented support from at least one group with relevance and this documentation contained a description of the process and rationale used in arriving at the expression of support, as required by the AGB. The Community Priority Evaluation Panel determined that the applicant partially satisfies the requirements for Support.

| 4-B Opposition | *1/2 Point(s)* |
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The Community Priority Evaluation panel has determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received relevant opposition from one source. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one relevant group of non-negligible size.

The Community Priority Evaluation panel has determined that there is relevant opposition to the application from a group of non-negligible size, from an entity within the community explicitly addressed by the

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[12] Five pieces of correspondence were received by 4/17/15, one of which included two letters.

application. The entity is a multinational company. The grounds for the objection do not fall under any of those excluded by the AGB (such as spurious or unsubstantiated claims), but rather relate to the applicant's right to regulate a namespace in which the opponent has a place. Therefore, the Panel has determined that the applicant partially satisfied the requirements for Opposition.

**Disclaimer:** Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the AGB or the Registry Agreement. For updated application status and complete details on the program, please refer to the AGB and the ICANN New gTLDs microsite at <newgtlds.icann.org>.