

2-Sep-13

Dear ICANN and Economist Intelligence Unit (EIU),

Re: Community Priority Evaluation Guidelines

Big Room Inc. is the community priority applicant for the .eco gTLD¹ on behalf of the Global Environmental Community. We thank the EIU for this opportunity to provide feedback on initial draft guidelines for the community priority evaluation (CPE) contention resolution phase of the ICANN new gTLD application process as explained in the applicant guidebook (AGB).

Our application represents five years of dedicated international work. Over this period, community members have invested substantial time and resources in the collaborative community process that underpins our effort. Accordingly, we encourage the EIU to hold true to its tradition of integrity, rigour and precise communication in the evaluation of all community applications.

A key underlying question in considering the nature of communities in relation to the new gTLD programme is whether ICANN considers communities to be homogenous or heterogeneous. The draft guidelines appear to presume that the components and subjects of the communities are diverse but do not seem to allow for the fact that communities themselves are diverse and therefore do not always conform to a standard. This may be because this top-line question has not been fully answered and integrated.

In addition to this key point, we have a number of over-arching comments, followed by specific comments relating to sections of the EIU's draft guidance. We also have concerns about the proposed approach to verification of letters of support. In an effort to assist in a constructive manner, our comments are designed to provide alternative solutions and guidance wherever possible. Thank you for the opportunity to provide input. We look forward to Community Evaluation.

Best regards,



Jacob Malthouse
Co-founder and Director
Big Room Inc.

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1753>

Overarching Comments

Historical Resources

We call the EIU's attention to the following historical resources, which may be of value in constructing guidelines for panelists:

1. *Letter from Craig S. Schwartz to Christine Willett representing the views of the Community TLD Applicant Group, dated 1 August 2013*: This letter provides a useful historical overview and policy context for community-based gTLDs in this application round. <http://newgtlds.icann.org/en/program-status/correspondence/schwartz-to-willett-01aug13-en.pdf>
2. *Interview with Avri Doria on the History of Community gTLDs, dated 5 March 2013*: This interview provides additional context for the 1 August 2013 letter. http://www.circleid.com/posts/20130305_interview_with_avri_doria_on_the_history_of_community_gtlds/
3. *ICANN Public Comment Analyses from AGB drafts*: In developing the Applicant Guidebook, many Internet community members published comments and questions relating community-based applications when each version was published for public comment. ICANN responded to those questions and comments. The responses provide useful additional context as to staff reasoning during the AGB developmental process. A summary of those responses is provided here: http://icannwiki.com/index.php/Community_TLD#Requirements_for_Community_TLD_Applicants
4. *Community gTLD Change Request Handling Discussion Draft Explanatory Memorandum, 21 February 2011*: ICANN published a discussion draft in February 2011 that explores how a registry change request process would function for the community-based gTLD “.sugar”. This draft provides a useful insight into how ICANN has envisioned and approached the existence, development and evaluation of community-based gTLDs. <http://archive.icann.org/en/topics/new-gtlds/explanatory-memo-community-change-request-21feb11-en.pdf>

Consensus Government Advice

We advise the EIU to consider the most current consensus advice from the ICANN Governmental Advisory Committee. This advice was released on 18 July 2013 in Durban, South Africa². The relevant point is **IV. 7. b. Community Applications**:

² <http://www.icann.org/en/news/announcements/announcement-18jul13-en.htm>

The GAC reiterates its advice from the Beijing Communiqué regarding preferential treatment for all applications which have demonstrable community support, while noting community concerns over the high costs for pursuing a Community Objection process as well as over the high threshold for passing Community Priority Evaluation.

ii. Therefore the GAC advises the ICANN Board to:

a. Consider to take better account of community views, and improve outcomes for communities, within the existing framework, independent of whether those communities have utilized ICANN's formal community processes to date.

Comments on EIU Guidelines

1-A Delineation

“Community” definition – We recommend using a consistent reference to “entity and/or entities” throughout the document that allows for both singular and plural per the AGB. References in the draft guidelines variously refer to both singular (e.g., “entity” in Evaluation Guidelines for “Community” definition in EIU Criterion #1) and plural (e.g., “institution(s)” or “member organizations”, in 4-A Support).

In Criterion 1-A Guidelines, ICANN asserts that a logical alliance of communities is viable provided that there is requisite awareness and recognition. Furthermore, the guidelines for 4-A Support implicitly recognise the possibility of multiple entities, providing for “institution(s)” or “member organization(s)” in both singular and plural.

“Delineation” definition – Under EIU evaluation guidelines for the “Delineation” definition there is a non-exhaustive list of straightforward member definitions. We note that in some communities both clear and straightforward and unbound and dispersed community memberships co-exist and may indicate robustness and diversity in that it enables varying degrees of participation and engagement.

Therefore, the existence of unbound and dispersed memberships should not in and of itself negatively impact the delineation assessment. For example, one may self- identify as “conservative”, but not be a member of the Conservative Party. Similarly, in the AGB ICANN uses the example of .TENNIS. While many people may be tennis fans and supporters, the unbound and dispersed nature of participation in a sport should not count against the existence of a professionally governed tennis sporting community that is engaged in policy and rule making, governance, participation, etc.



The Generic Names Supporting Organization Final Report on the Introduction of Generic New Top-Level Domains³ offers further clarification on delineation, noting:

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.

– Implementation Guideline P

Additionally, clear and straightforward definitions based solely on fees, requirements and/or privileges may ignore community membership indicators such as taking individual or collective action(s) on behalf of the community.

The paying of a fee, the compliance with requirements, or the receipt of privileges are examples that fall within this action framework. Other examples could be:

- declaring support for a cause that seeks to achieve the aims of the community,
- making a donation to the community,
- the existence of certifications and standards aligned with community goals,
- the existence of coordinated lobbying for policy change that better aligns the broader regulatory environment with the goals of the community, and
- protest (either active or via petitions or other civil action) that aims to enact broader public change or to convince the public to adopt community views, or to raise public awareness about the community's goals.

“Organized” definition – again, ‘entity’ here should not be only singular. The existence of multiple entities responsible for achieving community goals, each specialised in achieving those goals through different broad means, for example, on the street, through public policy, through the courts, through partnerships with non-community members or related communities, in different geographies and sectors, etc., points to a robust and established community.

Along these same lines, we encourage the EIU to take note of and consider as evidence of “requisite awareness” the existence of coalitions and alliances that respond to emerging issues, events and gatherings of community member organizations, the collection and disbursement of funds and/or equipment in support of community goals, and other joint actions that evidence on-going collaboration and “organization” beyond a simple mission statement of one organization, or the existence of a singular administrative process.

³ <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

1-B Extension

Community of Considerable Size and Longevity – Per our previous point, we recommend that in seeking to understand the meaning of “considerable size” and “longevity” that evidence of complexity and specialization in coordinating action is a key indicator.

2-A Nexus

We note that “**well known short form**” of the community’s name is not defined in either the ICANN or EIU guidance. We also note that the name does not need to be the name of an organization dedicated to the community.

Because the applied for string can be a well known short form and/or abbreviation of the community’s name it does not need to match the name of the community. Therefore, in establishing what is “**commonly known**” by others, it is thus necessary to distinguish between evaluating first the name of the community and then whether the applied for string is a well-known short form of that name, where these two are different. This is as opposed to evaluating the string as if it was the exact name of the community.

For example, in the case of our application, instead of asking someone, “Is there an eco community?”, the appropriate test would be to first ask, “Is there an environmental community”, and then, “Is ‘eco’ a well known short form of ‘environment’”.

In addition to using “knowledgeable individuals” and “quasi-official institutions and peer groups”, consider additional independent, statistical public opinion research to explore both “well known short form” and “commonly known community name” questions. Such testing should include both those that identify as being part of the community and those that do not (i.e. those inside and outside the community). It should take into account the fact that some that are outside the community may either be unaware of the community’s existence or may be hostile to or against that community and may seek to undermine it by trying to negate its existence.

EIU may also consider engaging linguistics experts in multiple languages, potentially as a pool of panelists; to assess the semantic strength of “well known short form” arguments based on commonly accepted and established definitions and the history of various languages. As in the case of delineation, the existence of alternate meanings should not necessarily result in a poor score, unless a “substantial over-reach” is implied.

In seeking to understand this Criterion, a community’s own views on the matter should be taken into account. In other words, a community’s wishes, as demonstrated by support, could also be considered as a key indicator of “Identification”.

Furthermore, the EIU should consider the context and existence of the gTLD programme itself, including how these criteria may require the applying community to explain itself in a



way that is understandable to the Internet community. This may or may not be the exact way in which the community describes itself to those within the community, to others outside the community.

2-B Uniqueness

“Significant Meaning” definition – In evaluating whether the general public will immediately think of the applying community on presentation of the applied for string, we note the earlier explained distinction between “well known short form” and “community name” and that ICANN itself states that the community name does not need to be the name of the string. As with Nexus, public opinion research may provide additional insight.

We noted on page four, above, the notion of ‘activity’ being implied by the string. This notion of ‘activity’ is directly relevant to the question of defining guidelines around delineation. To ensure consistency, the concept of activity being a valid indicator of delineation should be consistently integrated throughout the guidelines and evaluation.

As described earlier, the geographic context (i.e., scale) of the string relative to meaning(s) should also be taken into account in considering the establishment of uniqueness and evaluation of significant over-reach.

3-A Eligibility

“Eligibility” definition – In considering this definition, we welcome understanding that eligibility rules can and should be established in accordance with the structure and orientation of the community (also reference our comments regarding 1-A).

The context of the domain name system and the uses of a gTLD should also be considered in relation to the vision and goals of the community itself. A gTLD is not merely a reflection of a community – it is a useful tool that can be designed and built in innovative ways to achieve various community goals. The EIU and ICANN should take care not to restrict communities from imagining innovative applications for community-based TLDs that could enhance competition and choice within the domain name system as a whole, or unintentionally restrict communities from using gTLDs in ways that are useful to their members. Through understanding a community’s vision and goals and the process by which they have applied those goals in designing their gTLD application, the EIU is more likely to understand the community. Therefore, a simple inconsistency between the community’s “offline” eligibility rules and the “online” eligibility rules for the applied for gTLD should be considered within this context before leading to negative scoring.

“Name Selection” definition – A singular “the entity” is used again here, inconsistently with ICANN guidelines around how communities can articulate themselves in 1-A and elsewhere. Per the previous note, name selection rules need to consider the process by which a community may have come to a common understanding on how best to use the

gTLD to meet their goals within the constraints imposed by the technology itself and the ICANN policy environment as well as other aspects of the application and the manner in which the community has chosen to articulate itself to ICANN.

4-A Support

“Is the community a recognized community institution(s) or member organization(s)?” – The EIU here again uses the singular and/or plural approach to describing community institutions. This should be consistently applied throughout the guidelines.

Support is in our view the most critical indicator of the strength of a community application. This is because it is an indicator both of a community’s existence and of the validity of other aspects of the evaluation, including establishment, nexus and policies described in the application itself. It is also the only aspect of the process that the applicant cannot write himself or herself, apart from opposition. Therefore, the depth and character of support should be considered as an overall indicator of the strength of an application to avoid the risk of ‘false negatives’ as described in the AGB. Because of the important nature of this criterion, assessment of support also needs to be the most carefully developed and evaluated aspect of CPE.

4-B Opposition

In considering opposition, the context of this application round is important. We note in particular that communities are obliged to apply for protection in this application round. Unlike the 2004 Sponsored TLD (sTLD) round, the presumption and default in this round is that no strings are community-based. To achieve community status for a given string a community must explain itself to ICANN in a way that they and/or the evaluator will understand. Failure to do so means that the community in question will be denied any role in how that gTLD is launched and used over the long term. In contrast, a community gTLD has a built-in accountability mechanism through the Registry Restrictions Dispute Resolution Procedure (RRDRP). According to ICANN:

The RRDRP is one of the proposed mechanisms to address post delegation concerns. The purpose of the RRDRP is to handle complaints from a harmed organization or individual alleging that a community-based restricted gTLD registry operator was not meeting its obligations to police the registration and use of domains within the restrictions stated in the terms of the gTLD registry agreement.⁴

Such a mechanism does not exist for non-community gTLDs. This means that if EIU decides to pass a community application even through some in the community – or indeed others – have concerns, the community or others can avail themselves of the RRDRP. If EIU has

⁴ <http://www.icann.org/en/news/public-comment/rrdrp-15feb10-en.htm>



concerns and decides not to pass the community evaluation, it is in essence rendering a final decision on the matter by removing the possibility of an RRDRP.

We further note that community priority applications have been the subject of what is by far the longest public comment period in ICANN history. Each community application has been open for public comment for over a year. One would expect that truly concerned organizations would have voiced their opinions about these applications months ago, even over a year ago when they were published. This would have represented a “good faith” concern because community applicants could have undertaken to deliberate with the concerned party and/or to establish or make changes in their applications to accommodate that party – if the broader community agreed – through an application change request process.⁵

Since this has not occurred for the majority of applications, one could easily consider that to be evidence of broader public non-opposition to community designation for these applied for community gTLDs. For example, no community gTLD has been subject to the kind of ground swell of opposition that arose with respect to the closed gTLD applications for .amazon and .patagonia⁶.

Letters of opposition received at the eleventh hour should therefore be taken in this context. By any measure, ample time has passed for valid concerns to be raised by any party about all community applications.

Verification of Letters of Support

We wish to express our concern about the suggested verification process for letters of support. We urge ICANN and the EIU to work collaboratively to establish an appropriate verification procedure for letters of support. It has been in most cases over 18 months since letters of support were submitted to ICANN as part of the substantially delayed application development and processing application process.

It previously appeared that letters of support needed to be submitted at time of application. In fact, ICANN did not clarify until September 2012 – three months after the close of the application window – that additional letters of support could be submitted.

This lengthy period between application submission and community evaluation causes undeniable issues in the authentication and verification of letters of support that is reliant solely on – as the guidelines currently state – an individual emailing the EIU. Such issues include but are not limited to: death of the individual, extended leave for any reason, change

⁵ <http://newgtlds.icann.org/en/applicants/customer-service/change-requests>

⁶ <http://www.theguardian.com/environment/2013/apr/25/amazon-domain-name-battle-brazil>



of position, leaving the organization, work travel, etc. Furthermore, throughout the application ICANN references the 'entity' and not the 'individual'.

In practice, it may be difficult to have senior officers such as Executive Directors and CEOs respond directly as protocols often mean limited external access. If anything, their signature is evidence of the strong, senior and broad organizational support for an application. As an example of this challenge, would the EIU require a personal email from US President Barack Obama if the White House applied for .whitehouse and included a letter from the President?

Instead, we suggest that the EIU consider allowing for an authorized representative of the entity to validate such a letter of support, including that that the individual did in fact endorse as the contact, by declaring as such.

We propose a verification flow that presumes a letter is valid as by submitting their applications to ICANN, applicants have agreed to a terms and conditions that asserts such⁷:

Applicant warrants that the statements and representations contained in the application (including any documents submitted and oral statements made and confirmed in writing in connection with the application) are true and accurate and complete in all material respects, and that ICANN may rely on those statements and representations fully in evaluating this application.

This presumption of validity should be evident in the verification process. This is an exception to every other aspect of the application process to date. Despite this, no rationale is given. Therefore, as explained on the next page, we propose an alternative validation process that is consistent with the application terms and conditions.

⁷ <http://newgtlds.icann.org/en/applicants/agb/terms-04jun12-en.pdf>

