

# Community Priority Evaluation (CPE) Guidelines: Request for Comment

## Executive Summary:

The announcement that: “the CPE panel firm has developed a set of guidelines that are based on the criteria in the Applicant Guidebook.” We thank ICANN and the Economist Intelligence Unit (EIU), its CPE provider, for preparing a proposed set of guidelines (the “Guidelines”) for public comment. Review of the proposal, however, raises a number of concerns. Donuts describes here those concerns and recommends mitigation steps ICANN and the EIU should take to address them.

Most importantly, the EIU Guidelines must not result in changes to the Applicant Guidebook (Guidebook or AGB) and to the CPE standards described in Module 4. ICANN should affirmatively state that such CPE standards in the final AGB will not be amended. With regard to this, the proposed EIU Guidelines raise three areas of concern:

1. The proposed EIU guidelines *alter* and *weaken* the existing Guidebook criteria. Examples are cited below. Guidelines omit significant portions of the AGB definitions and replace them with general questions to be answered by panels.
2. The Guidelines are *vague* in certain parts and may lead to inconsistent results. The effect will be to loosen the existing Guidebook CPE criteria. Instead, the Guidelines should take the AGB criteria verbatim—as agreed upon by the ICANN Board through the multi-stakeholder process—and provide additional specificity where necessary.

Rather than providing amended and weakened criteria and vague guidelines, the EIU should rely on objective criteria and guidance already provided by ICANN in the AGB and supporting documentation. In the appendix, we offer a compilation of this authoritative material for each of the four CPE criteria.

3. This comment period on the Guidelines will be unproductive if it reignites the old public discussion and the well-settled decision on the CPE criteria. This public comment period is valuable but ICANN should make it clear that comment should be about the details of the CPE *process* and not the longstanding criteria.

Second, the Guidelines require more information on process. Some of the details that do appear in the document lead to questions regarding the remainder of the process that is omitted. Missing elements are listed in the main body of our document below, but their absence leads to the following issues:

1. The missing process points are needed;

2. Lack of a fully designed, detailed and well-controlled process will lead to inconsistent results;
3. The possibility of inconsistency requires the establishments of an appeal or secondary review process in order to ensure fairness; and

Public participation in the CPE process must be specifically defined and described. There must be public participation *after* the CPE elections are made. At the same time, the community applicant should *not* be allowed to amend its application without extensive scrutiny. Through the CPE process community applicants seek to “knock-out” other applicants for the same TLD instead of having to compete with them for the TLD. ICANN deliberately set a very high bar for this process to ensure that it isn’t gamed in an anti-competitive manner. This bar may not be changed or lowered at this point in the gTLD program.

### **The Guidebook CPE criteria are well settled and should not be amended as a result of this comment process**

### **Many of the EIU Guidelines would result in both changing and weakening the Applicant Guidebook standard**

The EIU document omits significant portions of the Guidebook definitions and replaces them with general questions to be answered by panels. It begs the question of whether the EIU is trying to use as a standard different than the published standard?

Here is a non-exhaustive list of examples:

With regard to Extension, and in particular requirement for Longevity, the AGB states that “Longevity’ means that the pursuits of a community are of a lasting, non-transient nature.”

However, the EIU Guidelines merely ask:

“Is the community a relatively short- lived congregation (e.g. a group that forms to represent a one-off event)?” and

“Is the community forward-looking (i.e. will it continue to exist in the future)?”

This would lead to a substantial weakening of the test. Instead of looking for a “lasting and non-transient nature,” the EIU guidance may lead evaluators to award a point for any organization existing longer than one event. Real communities are organized for the long term, but this is not indicated in the Guidelines.

With regard to Nexus of the community applicant to the TLD, the Guidebook states:

“Name” of the community means the established name by which the community is commonly known by others.

The EIU Guidelines say, however:

“Others” refers to individuals outside of the community itself, as well as the most knowledgeable individuals in the wider geographic and language environment of direct relevance. It also refers to recognition from other organizations, such as quasi-official, publicly recognized institutions, or other peer groups.

Here, “others” should refer to the general public. Is the proposed community known to the public at-large by that “name”? The Guidelines should not rely on knowledgeable individuals in that group or peer groups. The issue relates to that of the general Internet public.

With regard to eligibility, and in particular registration restrictions, the EIU Guideline asks evaluators:

Is eligibility for being allowed as a registrant restricted?

This is a relaxation of original intent. In order to qualify for a point, the AGB states the restrictions must be real and the universe of potential registrants must be significantly limited. EIU guidelines would give a point to community applications that restrict registrations initially, only to open for general registrations later. The EIU also might give a point to others that have “limitations” that essentially make registrations open to most of the world’s population. The EIU must require that restrictions be significant, permanent, and clearly limited.

Regarding the requirement for a “coherent set” of “enforcement measures” the AGB requires, “Policies [that] include specific enforcement measures.”

However, the EIU Guidelines state:

“Coherent set” refers to enforcement measures that ensure continued accountability to the named community, and *can* include investigation practices, penalties, and takedown procedures with appropriate appeal mechanisms. This includes screening procedures for registrants, and provisions to prevent and remedy any breaches of its terms by registrants.

Consider the following:

Do the enforcement measures include:

- Investigation practices
- Penalties
- Takedown procedures (e.g., removing the string)
- Whether such measures are aligned with the community- based purpose of the TLD
- Whether such measures demonstrate continuing accountability to the community named in the application.

The Guidelines must do more than ask evaluator to “consider” examples of enforcement measures, they must “require” certain enforcement measures. Enforcement commitments must include indications that staffing, budgeting and other planning is in place.

With regard to Name Selection, the AGB requires limitations (i.e., “conditions that *must* be fulfilled for any second-level domain name to be deemed acceptable by the registry”). However, the Guidelines state:

The following questions must be scored when evaluating the application:

Do the applicant’s policies include name selection rules?

Are name selection rules consistent with the articulated community-based purpose of the applied-for gTLD?

This is also a relaxation of intent. The AGB requires that the name selection rules must limit the universe of available names significantly beyond the restrictions already imposed by the contract. Some community applications adopt name restrictions that merely mirror the AGB restrictions that are applied to standard TLDs. There must be a review of applied-for names for eligibility before the names are entered into the TLD zone. There must be procedures for changing these rules.

There are other examples. In the Appendix, we recommend language for the EIU to adopt that is taken from the AGB and other reference materials published by ICANN such as explanatory memoranda and comment analyses. That language is sufficient for evaluators to do their work and avoids the risk of diluting the community-agreed standards.

### **Vagueness in the EIU Guidelines would likely to result in a relaxation of the agreed upon Guidebook Standards**

The Guidelines provide additional information for evaluators. However, the information is vague, and may lead to inconsistent results. Some examples of where direction takes the specific AGB criteria and creates uncertainty are:

“Delineation” also refers to the extent to which a community has the requisite awareness and recognition from its members.

*[How should the evaluator gauge whether there is “requisite awareness and recognition”?]*

The following non-exhaustive list denotes elements of straight-forward member definitions: fees, skill and/or accreditation requirements, privileges or benefits entitled to members, etc.

*[Providing direction including the words “non-exhaustive” and “etc.’ provide too much discretion to ensure consistent results.]*

“Mainly” [as in “Organized’ implies that there is at least one entity mainly

dedicated to the community”] could imply that the entity administering the community may have additional roles/functions beyond administering the community, but one of the key or primary purposes/functions of the entity is to administer a community or a community organization.

*[Words such as “could imply” could lead to varying results.]*

We also are concerned the EIU will use Internet searches and refer to other external materials. This is inadequate. Evaluations should be based on the four corners of applications, the public comments, and evaluators should not go beyond them to look for support of the applicant during the evaluation process. The evaluators may do research to *verify* existing applicant claims. It is important to limit the evaluators’ discretion in this area.

We provide sample guidelines in the appendix of sufficient levels of specificity for the evaluators that do not violate the level of criteria in the AGB.

**This comment period should be limited to a discussion of CPE process only; instead, we will now have attempts to re-discuss longstanding tenets of the Applicant Guidebook CPE criteria**

Some comments on the Guidelines undoubtedly will call for re-examination of AGB criteria. The ICANN community, in broad-based, bottom-up policy and implementation discussions decided on a very high standard in the evaluation for a reason. The AGB *cannot* be changed, especially one in a way that will change the rights of the applicants and how they compete.

We are concerned that the comment period on the guidelines were requested at the instigation of certain community applicants – including closed meetings between community applicants (members of the CTAG) and ICANN – as a way of re-opening the well-settled AGB and seeking to loosen the CPE criteria. Published materials seem to have no other apparent purpose. In CTAG’s recent letter to ICANN, CTAG lobbies for changes to the carefully crafted CPE standards.<sup>1</sup>

In that letter, CTAG relies on an 2008 Implementation *Guideline* from the GNSO that states (GNSO Guideline):

Where an applicant lays any claim that the TLD is intended to support a particular community such as a sponsored TLD, or any other TLD intended for a specified community, that claim will be taken on trust with the following exceptions:

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<sup>1</sup> <http://www.icann.org/en/news/correspondence/schwartz-to-willett-01aug13-en.pdf>

- (i) the claim relates to a string that is also subject to another application and the claim to support a community is being used to gain priority for the application; **and**
  - (ii) a formal objection process is initiated. Under these exceptions, Staff Evaluators will devise criteria and procedures to investigate the claim.
- Under exception (ii), an expert panel will apply the process, guidelines, and definitions set forth in IG P.

In their letter, the community applicants note the “and” (emphasized above) and claim that the “and” means that community applications that have not been formally objected to must be taken on trust and need not be subjected to CPE – that community applicants in contention should be awarded the gTLD on trust.

This change would dramatically affect the rights of many applicants, obviating the need for many community applicants to enter into CPE and eliminating many contending applications outright.

However, the CTAG logic fails. The letter urging this change ignores:

- English language usage. The GNSO Guideline states that the “claim will be taken on trust with the following **exceptions**.” The “s” at the end of “exceptions” means there are *two* exceptions, not one exception with two elements. Either of the two exceptions triggers an evaluation of the community claim.
- more English language usage. The GNSO Guideline goes on to state: “under exception (ii), an expert panel will employ the [CPE].” This clearly identifies that the CPE is required even if an objection has not been filed against a community application.
- that the GNSO labeled this advice as a “Guideline” and not a requirement. The actual criteria were hammered out in nearly four years of community discussion after the GNSO Guideline where the community considered the GNSO policy recommendations and implementation guidelines as input for the final implementation model that is in the AGB.

Changing the AGB at this stage would significantly change the rights of applicants, the value of their investments, and the material harm caused to them. Applicants relied on the AGB to their potential detriment,<sup>2</sup> and would have made different decisions if the CPE criteria were different.

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<sup>2</sup> ICANN is required to mitigate any negative consequences Applicants may suffer due to any post-application changes in the Guidebook. See Applicant Guidebook Module 6, §14. (<http://newgtlds.icann.org/en/applicants/agb/terms-04jun12-en.pdf>).

## CPE is Anti-Competitive

The CPE is essentially an anti-competitive process. While the community agreed (and we support) that true community applicants should be given the exclusive right to a TLD, a net effect of the CPE is to bar other applicants from the process. That is why the current set of CPE criteria were developed through community discussion and why the high standards must be maintained.

The CPE was built on a foundation of guiding principles that the CTAG and community applicants now seek to upset. A qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application. These requirements do not “make their applications more costly, difficult or perilous” as the CTAG claims: the current requirements address the needs of real communities seeking to protect their unique label. Failure in the CPE process for community applicants merely means that they must compete fairly for the TLD. Failure in the CPE process for competing applicants means that they lose their total investment in the TLD, as well as their years of work and commitment to such applications.

## **The EIU Guidelines provide little detail regarding the CPE process; full process details are required to ensure consistent, predictable results**

Correspondence between the community applicants and ICANN reflect a request for process detail and a promise to deliver it. The EIU document does not deliver on that promise.

## **The process as published lacks requisite details and needs clarification**

The CPE process as defined in this EIU document is (in its entirety):

- All applications will be evaluated and scored, in the first instance by two evaluators, working independently.
- All applications subsequently will be reviewed by members of the core project team to verify accuracy and compliance with the AGB, and to ensure consistency of approach across all applications.
- The EIU will work closely with ICANN when questions arise and when additional information may be required to evaluate an application.

This lack of detail leaves many questions open. Without settling these process points, the EIU will be inventing procedures as evaluations are conducted, with risk of unpredictable and inconsistent results. The final process, when published, should address the following questions:

- What happens if the two evaluators agree? Will there still be a core team review



- that can overturn the original findings?
- What if the core team disagrees with the first two evaluators?
  - If the two evaluators disagree, will the determination of the core team be dispositive?
  - What documentation must accompany each evaluation result? What reports and scoring will be issued?
  - What is the timing for each of these steps, and what is the day-by-day timeline for the process?
  - Can community applicants provide more information? What interaction can occur between panelists and applicants?
  - Other interested parties must be able to provide input (i.e. other applicants) -- How should that be accomplished?
  - What transparency will there be between the community applicants and their interactions with the evaluators? Same with other applicants and the evaluators?
  - How will evaluators be assigned?

The CTAG members request the ability to provide additional information to evaluators without going through the formal application change request process. What is the standard for determining whether additional information provided constitutes a change to the application?

### How will ICANN and the EIU ensure consistency in CPE results?

#### *Training*

The next set of documents from EIU should describe training and scenario testing to ensure that panels arrive at similar conclusions given identical data sets. Training should ensure the consistency in practice runs is maintained through the full process.

Training should include exposure to documents describing development of the CPE that include these foundations:

- The Applicant Guidebook notes in §4.2.3, “a qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application.”
- “Community-based applications are intended to be a narrow category, for applications where there are unambiguous associations among the applicant, the community served, and the applied-for gTLD string.” (Guidebook §1.2.3.2)
- The scoring process is conceived to identify qualified community-based applications, while preventing “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).

- “The threshold for winning is intentionally set with a view to prevent gaming attempts and identifying true Community applications. The risk for “false negatives” in the scoring can be moderated by a lowering of the threshold, but this has to be balanced against an increased risk for “false positives”. In cases of generic words submitted as Community based strings, test runs by [ICANN] staff have also shown that the threshold is difficult to attain...” (See, <http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf>.)

ICANN staff involved in the development should brief EIU panelists to describe the rationale for the current standards.

### *Process*

The evaluation process itself should include collaboration among panelists or evaluation of all applications by the same evaluation panel (with several members) so that results are consistent. QA and other reviews should review the evaluators’ reasoning as well as their scores to ensure the right scores were made for the right reasons. Rationale must be required for each score that relates back to specific criteria and definitions in the AGB.

Special rules should be in place where there are contending CPE applicants. Results should be consistent for the cases where two CPE applicants have applied for the same string. One can envision a scenario where “community” aspects of one application clearly exceed the other, yet less worthy, application passes the CPE.

### **An appeal process will ensure fairness and consistency**

Inconsistent results in the other processes to date indicate that an appeal or rehearing process is necessary. Such an appeal process would allow parties affected by inconsistent results to furnish additional information that the panel did not have or understand.

Despite the best intentions and efforts, any process can yield inconsistent results. This was demonstrated in the string similarity objection process where the same two strings were found to be both confusingly similar and not by different panelists. An appeal process, allowed under certain circumstances only, will help ensure consistent results and avoid the need to invent additional process after the fact.

## The CPE must provide the opportunity for outside comment *after* the CPE elections are made and carefully restrict CPE applicants making changes to their own applications

The public should be able to provide comments on CPE applications after the CPE elections are made because:

- The CPE process is really a process involving more than one applicant;
- Some CPE applicants are abusing the process to gain an unfair advantage;
- Providing well-thought out public comment is a serious undertaking requiring substantial time; and
- Public comment can provide information not otherwise available to CPE evaluators.

In addition, the ability of a CPE applicant to amend its application in preparation for CPE should be restricted. Allowing changes could lead to abuses and unfairness.

On its face the CPE is the evaluation of a single application against AGB criteria. In reality, however, the CPE is a way of resolving string contention against other applications. The CPE is a method of stating that one application should be accepted against all other contending applications. Given that, it is important that the CPE process allow for community input, and that of the other applicants.

Many applicants, understanding the high standards set out in the AGB, decided to apply as a *standard* TLD rather than a *community* TLD even though the TLD had community aspects to it. Other applicants decided to apply as a community TLD, taking a low cost / high payoff risk that it would pass CPE. While there are some *bona fide* community applicants, others are looking to game the system and gain an unfair anti-competitive advantage.

For that reason, CPE applicants must not be allowed to amend their applications to bolster their CPE arguments. The AGB provides that the CPE evaluator might request additional information from applicants. If there is an obvious deficiency in an application regarding the CPE criteria, the applicant should not be able to correct it after the fact. The applicants have made decisions on the operation of their TLD at the time they applied. They should not be allowed, after initial evaluation is complete, to change their applications in order to pass the CPE stage of the evaluation.

Changing important aspects of an application such as registration and use restrictions or compliance regimes in order to pass CPE suggests unfairness. Other applicants have made decisions on withdrawal or the timing of their startup based on the content of contending community applications.

On the other hand, the general public and other applicants should be allowed to

comment *after* the CPE elections are made, but before decisions are rendered. There are many potential CPEs and providing thoughtful comment requires effort and time. Energizing community groups to speak up either in support or against a community application is difficult. Given scarce resources, community groups do not wish to expend effort unless necessary. Therefore, the closing date of comments should be at least thirty (30) days after the elections are made so time is spent on only those applications actually entering CPE.

Finally, public comment is a source of information otherwise unavailable to evaluators. Community groups outside the gTLD process possess an understanding of how the applicant fits within their community. Other applicants, who have worked with community groups as part of the evaluation process also can shed light on community structures.

## **Conclusion**

Care must be taken to ensure that the AGB intent is realized in the Community Priority Evaluations. Otherwise, the reliance made by applicants upon the AGB processes and standards would have been misplaced. Those processes and standards were developed after long, intensive community discussion. Now that applications are public and known, the interests of many parties are leading to requests for changes. Individual interests should not be allowed to change the agreed-upon implementation of the new gTLD policy at this late date.

## **Appendix: Examples of authoritative objective criteria to help panels conduct reviews.**

The goal of the EIU Guidelines should be to take specific rules and provide direction for panelists/evaluators. Instead, the Guideline take the fairly specific and objective AGB standards, criteria and definitions and covert them into vague questions for the evaluators. It appears that instead of providing clarity, the Guidelines sew uncertainty.

In many cases, the Guidelines, taken as written, seem to weaken the AGB criteria, either through vagueness or an apparent change to the intent. The Guidelines must retain the existing AGB criteria and provide additional clarity in a way to realize the public policy intent.

The material below is offered as a sample of the additional material the EIU could provide to its panelists. In many cases, the Guidebook standards suffice. In others, materials previously posted by ICANN (such as Explanatory Memoranda or Comment Analyses) are helpful.

For the case of community establishment, we offer a table similar to the one constructed by the EIU, but limited to ICANN guidance. We do this to contrast the EIU Guidelines with criteria that are more specific and keeping to the Guidebook. For the other three CPE criteria, we list Guidebook and other ICANN created materials to be considered by the evaluators.

**Criteria 1: Community Establishment**

Addressing the first concern with an example, contrast the EIU Guidelines with the existing advice published by ICANN.

The EIU documents states:

<b>AGB Criteria</b>	<b>Evaluation Guidelines</b>
<b>Scoring</b>	
<p>2= Clearly delineated, organized, and pre-existing community.</p> <p>1= Clearly delineated and pre-existing community, but not fulfilling the requirements for a score of 2.</p> <p>0= Insufficient delineation and pre-existence for a score of 1.</p>	<p>The following questions must be scored when evaluating the application:</p> <p><i>Is the community clearly delineated?</i></p> <p><i>Is there at least one entity mainly dedicated to the community?</i></p> <p><i>Does the entity (referred to above) have documented evidence of community activities?</i></p> <p><i>Has the community been active since at least September 2007?</i></p>

Instead, it would be more helpful to CPE evaluators to have this material or something like it:

AGB Criteria	Evaluation Guidelines
<b>Scoring</b>	
<p>2= Clearly delineated, organized, and pre-existing community.</p> <p>1= Clearly delineated and pre-existing community, but not fulfilling the requirements for a score of 2.</p> <p>0= Insufficient delineation and pre-existence for a score of 1.</p>	<p>To earn points for Community, the application must exhibit evidence of the following:</p> <ul style="list-style-type: none"> <li>• <u>Organization implying more of cohesion than a mere commonality of interest.</u></li> <li>• Evidence of <u>delineation</u>, meeting many of the following: <ul style="list-style-type: none"> <li>○ clear and straight-forward membership definition such as: fees, skill, accreditation requirements, and privileges or benefits entitled to members</li> <li>○ public recognition of the group as a community</li> <li>○ formal boundaries around the community and</li> <li>○ bright line defining what persons or entities are considered to form the community</li> <li>○ definite population</li> <li>○ definite start date</li> <li>○ some equivalent criteria defining a separable community in the same way as those above</li> </ul> </li> <li>• <u>Extension</u>, where receiving points requires: <ul style="list-style-type: none"> <li>○ evidence of substantial size given the size of the universe, a size that material affects the policies of the communities (ex. There are 300,000 members of the Navajo nation and 8 million New York residents, so the meaning of substantial size with respect to each community is different).</li> <li>○ Longevity: there is the simple requirement that the community has been in place since 2007, the organization should also be in place for the foreseeable future.</li> </ul> </li> <li>• <u>Organization</u>: there must be at least one substantial organization dedicated to the mission and purpose of the community that administers to community membership.</li> <li>• Two points requires meeting all three criteria: delineation, extension and organization plus a finding that there is more of cohesion than a mere commonality of interest.</li> <li>• One point can be awarded if organization is absent.</li> </ul>

I.e., the document should provide specificity and direction for evaluators.

It would make more sense for the EIU to tabulate the criteria and definitions in the Guidebook, explanatory memoranda and comment analyses that have been published

through the development of the CPE to provide an evaluation tool for panelists.

Specific metrics that are found in the Guidebook and accompanying materials should be part of the evaluation as a scorecard and be provided as direction to the evaluator. The scorecard should be objective but mirror the high standard in the Guidebook. The scorecard should make the fairly specific Guidebook criteria very specific. The clear standard will allow easy evaluation. If the community applicant doesn't earn enough points using the very specific criteria, the application can be referred to a core team to evaluate the application against the less specific Guidebook criteria.

*We would expect to see something that provides clarity for evaluators and would serve to ensure consistency in results:*

### *Criterion 2: Nexus between proposed string and Community*

For this criteria (and for criteria 3 and 4), we simply list the material and guidance already published that can be reorganized as a reference for the evaluators.

- The AGB states:
  - For a score of 3: the string matches the name of the community or a well-known short form.
  - For a score of 2: the string identifies the community, but does not qualify for a score of 3.
  - For a score of 0: String nexus does not fulfill the requirements for a score of 2.
- The AGB further provides the definitions:
  - "Name" of the community means the established name by which the community is commonly known by others. It may be, but does not need to be, the name of an organization dedicated to the community.
  - "Identify" means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community.
- The key wording for a score of three (3) is that the string MATCHES the name of the community or a well-known short form.

For a score of 2, the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community. As an example, a string could qualify for a score of 2 if it is a noun that the typical community member would naturally be called in the context. *If the string appears excessively broad (such as, for example, a local tennis club in Durban, South Africa applying for ".SQUASH" vs. .DURBANSQUASHCLUB) then it **would not** qualify for a 2.*

Uniqueness is scored as follows:



- For a score of 1: String has no other significant meaning beyond identifying the community described in the application
- For a score of 0: String does not fulfill the requirement for a score of 1 (Guidebook §4.2.3)

The guidelines should use the same words as ICANN, “there is merit in considering uniqueness in the nexus between string and community as a main factor for achieving a high score. To be an unambiguous identifier, the "ideal" string would have no other associations than to the community in question. This can arguably be achieved by using the community institution abbreviation as string, but there are other possibilities, for example by putting a prefix or suffix on a generic string to make it distinctly and uniquely associated with the relevant community (for example, prefixing "boy" to "scouts" for the community of boy scout organizations, or suffixing "growers" to "apple" for the associations of apple growers).” (See, <http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf>, p.103.)

This puts the balancing that must be done in the hands of the applicants. Does an applicant select a popular, well-recognized term that is not unique to a community such as .SCOUTS? Or do they select a unique community name, such as .boyscoutsofamerica? This rationale makes sense as surely the scouts have a legitimate interest in protecting its exact name but should not be allowed to extend those rights into other, general areas.

“‘Uniqueness’ relates to the meaning of the string.” (see, <http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv3-15feb10-en.pdf>, p65) Therefore, the analysis must focus on the meaning (more accurately, meanings) of the word “art.”

### ***Criterion 3: Registration Policies***

Again using the words in existing materials:

Registration policies are the conditions that the future registry will set for prospective registrants, i.e., those desiring to register second-level domain names under the registry.

- Eligibility: Eligibility restricted to community members receives one point. Largely unrestricted approach to eligibility receives zero points.
- Name selections: One point if policies include name selection rules consistent with the articulated community based purpose of the applied for gTLD.
- Content and use: One point if policies include rules for content and use consistent with the articulated community based purpose of the applied for gTLD.
- Enforcement: One point if policies include specific enforcement measures (e.g.

investigation practices, penalties, takedown procedures) constituting a coherent set with appropriate appeal mechanisms.

With respect to “Name selection,” “Content and use,” and “Enforcement,” scoring of applications against these sub-criteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed. For example, an application proposing a TLD for a language community may feature strict rules imposing this language for name selection as well as for content and use, scoring 1 on both Name Selection and Content & Use above. It could nevertheless include forbearance in the enforcement measures for tutorial sites assisting those wishing to learn the language and still score 1 on Enforcement. More restrictions do not automatically result in a higher score. The restrictions and corresponding enforcement mechanisms proposed by the applicant should show an alignment with the community-based purpose of the TLD and demonstrate continuing accountability to the community named in the application. (Guidebook §4.2.3)

With respect to “Eligibility,” “the limitation to community ‘members’ can invoke a formal membership but can also be satisfied in other ways, depending on the structure and orientation of the community at hand. For example, for a geographic location community TLD, a limitation to members of the community can be achieved by requiring that the registrant’s physical address is within the boundaries of the location.” §4.2.3

However, a strict policy is required to score an eligibility point. In a policy advisory, ICANN noted, “Registration policy is a criterion where a balance is needed between what is reasonably the most appropriate registration policy for a community and the risk for gaming of the process by an “open” application declaring itself as “community-based” to get an advantage in a contention situation. The approach taken is conservative in this respect, with the high score reserved for a registration policy only permitting members of the community to register. A widening has been considered, but it appears reasonable to maintain the chosen approach...” (See, <http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf>, p.103.)

Name selection restrictions serve to protect the identified community if the rules are consistent with the articulated community-based purpose of the applied for gTLD. Absent some on-going type of name restrictions, this application cannot be awarded a point on for name selection.

The AGB defines “Content and use” restrictions stipulated by the registry as to the content provided in and the use of any second-level domain name in the registry. In other words, the application needs to impose content and use restrictions that are consistent with serving and protecting the global art “community” in order to score one point for this criterion.

Award of a point on enforcement requires specificity: investigation practices, penalties, and takedown procedures.

#### *Criteria 4: Community Endorsement*

In the case of this criterion, the AGB alone provides sufficient guidance and examples:

Support:

- To win two points: Applicant is, or has documented support from, the recognized community institution(s)/member organization(s) or has otherwise documented authority to represent the community.
- To win one point: Documented support from at least one group with relevance, but insufficient support for a score of 2.
- The AGB further provides the definitions:
  - "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community.
  - With respect to "Support," it follows that documented support from, for example, the only national association relevant to a particular community on a national level would score a 2 if the string is clearly oriented to that national level, but only a 1 if the string implicitly addresses similar communities in other nations.
  - Also with respect to "Support," the plurals in brackets for a score of 2, relate to cases of multiple institutions/organizations. In such cases there must be documented support from institutions/organizations representing a majority of the overall community addressed in order to score 2.
  - The applicant will score a 1 for "Support" if it does not have support from the majority of the recognized community institutions/member organizations, or does not provide full documentation that it has authority to represent the community with its application.
  - A 0 will be scored on "Support" if the applicant fails to provide documentation showing support from recognized community institutions/community member organizations, or does not provide documentation showing that it has the authority to represent the community. It should be noted, however, that documented support from groups or communities that may be seen as implicitly addressed but have completely different orientations compared to the applicant community

will not be required for a score of 2 regarding support.

- To be taken into account as relevant support, such documentation must contain a description of the process and rationale used in arriving at the expression of support. Consideration of support is not based merely on the number of comments or expressions of support received.
- There are three key characteristics to substantiate for a TLD in scoring for support:
  - Does it have a “majority” of the communities support and
  - If it does not have “majority”, do they provide documentation showing that it has the authority to represent the community.
  - Must show “relevant” support

#### Opposition:

- To win two points: No opposition of relevance.
- To win one point: Relevant opposition from one group of non-negligible size.
- There will be no points awarded if there is: Relevant opposition from two or more groups of non-negligible size
- The AGB further provides the definitions:
  - "Relevance" and "relevant" refer to the communities explicitly and implicitly addressed. This means that opposition from communities not identified in the application but with an association to the applied- for string would be considered relevant.
  - When scoring “Opposition,” previous objections to the application as well as public comments during the same application round will be taken into account and assessed in this context. There will be no presumption that such objections or comments would prevent a score of 2 or lead to any particular score for “Opposition.” To be taken into account as relevant opposition, such objections or comments must be of a reasoned nature. Sources of opposition that are clearly spurious, unsubstantiated, made for a purpose incompatible with competition objectives, or filed for the purpose of obstruction will not be considered relevant.