Community Priority Evaluation Guidelines: Feedback

We raise four issues in our response to the feedback request:

#1: Provide clarity that the guidelines CANNOT supersede the AGB

We remain concerned about certain communication between CTAG and ICANN, which sought to modify the process and scoring guidelines in the AGB and relax the CPE standards

One can infer from Mr Craig Schwartz's recent letter to Christine[1] and correspondence on the NTAG list[2] that a closed meeting was held in Durban where community TLD applicants lobbied ICANN to amend the Guidebook and relax the CPE standards.

We submit that the publication of these guidelines for feedback must not lead to a re-litigation of the Guidebook criteria. Hundreds of applicants have relied on the AGB and paid tens of millions of dollars in applying for specific strings.

Changing the Guidebook at this stage would significantly change the rights of applicants and the value of their investment. Applicants would have made different decisions if the CPE criteria were different.

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[1] http://www.icann.org/en/news/correspondence/schwartz-to-willett-01aug13-en.pdf

[2] The CTAG communication stated: "During the public forum break I connected with Christine. I reiterated our appreciation for the opportunity to meet and also shared the sentiment some of you expressed to her comment that CPE is a steep/difficult process and her inquiry about what we think our chances are of passing. She visibly cringed at the thought that she'd offended anyone, that was not her intention. I mentioned that we've heard some in the community talk about the impossibility of the process and that the inference from her (though unintentional) was disheartening.

"Her other remarks:
- ICANN is considering a pilot CPE process, but is concerned about implications for the timeline and more delays. I reminded her this is something CTAG proposed in its November 2012 communication to ICANN.
- The public comment period for the anticipated August 5th publication will be much shorter than normal...probably a couple to few weeks and not the traditional 42 days. (For CTAG this may mean coming together quickly to develop a coordinated response.)
- She's very interested in developing a process for applicants to provide additional information other than the change request process. Changes requests are often difficult, time consuming and generally result in delays for applicants.

"She offered to have another meeting with us. I suggested this probably would make more sense after we see what's published on August 5th."

The CPE has been built upon a foundation of guiding principles that the CTAG and community applicants 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.

We would like a confirmation that nothing stated in these guidelines must supersede the AGB in any manner and that incase of any contradiction between this new guidelines document and the AGB, the AGB must prevail.

#2: We request a more detailed process

The limited CPE process as defined in the current guidelines document is (verbatim):

- All applications will be evaluated and scored, in the first instance by two evaluators, working independently.
- All applications will subsequently 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.

The process, when published should address the following questions:

- What happens if the two evaluators agree? Will there still be a core team review?
- What if the core team disagrees with the two evaluators?
- If the two evaluators disagree, will the determination of the core team be dispositive?
- What is the process if the two evaluators disagree?
- What documentation must accompany each evaluation result?
- What is the timing for each of these steps?
- Rules for interaction between community applicants and panelists ensuring that
    - Community applicants do not send unsolicited communication to the panelists and that any unsolicited communication must not be considered
    - No communication by a community applicant can be deemed to be a change in their application as submitted. Applicants must not be permitted to make any last minute changes or adjustments / supplements to their applications during the process
    - All communication between the applicant and the panelist that is considered by the panelist must be made public with an opportunity for comments
- What is the day-by-day timeline for the process?
- How will evaluators be assigned?

#3: Recommendations for Training and Process

We recommend that ICANN and EIU institute processes to ensure consistency in decisions. We are concerned about consistency given the absence of the same in the string contention procedures.

Training:

We recommend that follow-on documents from EIU should describe training and scenario testing to ensure that panels arrive at similar conclusions given identical data sets. Training should conclude when consistency is attained.

Training should include exposure to documents describing development of the CPE that include 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 process should include collaboration among panelists or evaluation of applications by the same evaluation panel (with several members) so that results are consistent. QA and other reviews should review rationale as well as 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 Guidebook.

#4: The guidelines should be clearer and must not weaken the AGB criteria or change the application

In many cases, the Guidelines, taken as written, seem to weaken the Guidebook criteria, either through vagueness or an inadvertent change to the intent. The Guidelines should serve to retain the level of the existing Guidebook criteria and provide additional clarity in a way to realize the public policy intent.

While the EIU document provides additional information for evaluators, the information is vague in some places, and may lead to inconsistent results. Examples where direction takes the specific Guidebook 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 that includes the words "non-exhaustive" and "etc.' provides 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" will lead to varying results.]*

We are also concerned about the use of Internet searches employed by evaluators. We submit that Internet searches maybe used only to the extent of *verifying* claims of the applicant. However information gathered from an Internet search must not be used towards changing any statement made in the application. It is important to limit the evaluators' discretion in this area.

This leads to the second concern; the document omits significant portions of the AGB definitions and replaces them with general questions to be answered by panels. We are concerned that the EIU should not use a different standard than the published standard.

Here is a non-exhaustive list of examples:

With regard to Extension, and in particular Longevity, the Guidelines 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 guidance could lead evaluators to award a point for any organization that exists for longer than one or a few events. Real communities are organized for the long-term but this is not indicated in the Guidelines at all.

With regard to Nexus, the Guidebook states:

> "Name" of the community means the established name by which the community is commonly known by others.

The Guidelines provide:

> "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 at-large public by that "name"? The Guidelines should not rely on knowledgeable individuals only.

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

> Is eligibility for being allowed as a registrant restricted?

This is a relaxation of the original intent. In order to qualify for a point, the restrictions must be described in the application, and the universe of potential registrants must be limited to "community members" only. Many community applications put restrictions on registrations initially, only to open up for general registrations later. Others have limitations that essentially make registrations open to most of the world's population. Some applications claim that the final restrictions will be put into place in the future. Restrictions must be significantly, permanently and clearly limited to "community members". There should be no scope of modifying these restrictions in the future.

With regard to the requirement for a "coherent set" of "enforcement measures" the 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.

There are other examples.

Conclusion

While we know that the guidelines are well-intentioned, we request that care must be taken to ensure that the Guidebook intent is realized in the evaluation. Otherwise, the reliance made by applicants upon the Guidebook processes and standards would have been misplaced. Those processes and standards were developed after long, intensive community discussion. Individual interests should not be allowed to change the agreed upon implementation of the new gTLD policy at this late date.