



New gTLD Program
Community Priority Evaluation Report

Report Date: 10 September 2014

Application ID:	1-1675-51302
Applied-for String:	ART
Applicant Name:	EFLUX.ART, LLC

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Did Not Prevail
<p>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.</p> <p>Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.</p>	

Panel Summary

Overall Scoring	7 Point(s)	
Criteria	Earned	Achievable
#1: Community Establishment	0	4
#2: Nexus between Proposed String and Community	3	4
#3: Registration Policies	1	4
#4: Community Endorsement	3	4
Total	7	16
Minimum Required Total Score to Pass: 14		

Criterion #1: Community Establishment	0/4 Point(s)
1-A Delineation	0/2 Point(s)
<p>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, 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.</p> <p><u>Delineation</u> According to the Applicant Guidebook, two conditions must be met to fulfill the requirements for delineation: there must be “a clear and straight-forward membership definition” and there must be “an</p>	

awareness and recognition of a community among its members.” The AGB additionally states that a community as defined in the application should show “more of cohesion than a mere commonality of interest.”

The community is defined in the application (“ART”) as follows:

Both the production and the study of art have been transformed by the rise of the Internet, which has exponentially expanded access to the media, analysis, audiences, and materials necessary for artists, art galleries, collectors, museums, and scholars... This expanded access now allows us to understand the art community in its broadest sense, and e-flux consequently intends to cater to individuals, organizations and companies who are actively involved, on a professional and semi-professional level, with an art community that includes architecture, dance, sculpture, music, painting, poetry, film, photography and comics. Any individual, organization or company that already belongs to one of the art community categories that have been established by e-flux, referred to in our response to Question 20 (b) below, is considered a member of the art community.

This community definition does not delineate a clear and straightforward membership as the AGB requires. Membership in the community as defined by the applicant is unverifiable, given the absence of a requirement for any formal relationship between individuals and membership organizations, associations, or other such structures by which membership could be clearly demonstrated. Indeed, the applicant “understand[s] the art community in *its broadest sense*” (emphasis added) and acknowledges “the diverse nature of what is considered ‘art’” and “the subjective affiliations with this term are manifold.” The AGB nevertheless requires a clear definition of membership regardless of the diffuse nature inherent in a given string. Ultimately, the membership as defined in the application is overly dispersed and unbound. The applicant includes a broad range of individuals and entities involved in a wide array of both professional and semi-professional arts-related activities globally in the proposed community. The proposed community, therefore, lacks the clarity and delineation required of a community under the AGB.

In addition, according to the AGB, “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 community as defined in the application does not demonstrate an awareness and recognition among its members. Based on the community definition provided in the application materials, the community may include a Japanese poet, a German architect, and a network of Brazilian comic book illustrators. Based on the Panel’s research and materials provided in the application, there is insufficient evidence to suggest that the disperse membership as defined in the application would cohere as a clearly delineated community (as required by the AGB), even if many of the disparate entities defined share a commonality of interest in the arts.

The application materials and the endorsing organizations, to which the applicant refers throughout the application and whose letters of support the Panel has reviewed, indicate that there is a commonality of interest among some, but not all, of the entities and individuals defined by the application as members of the proposed community. However, 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).

For example, the Architects’ Council of Europe (ACE) is a federation of organizations in Europe devoted to advancing architectural best practices and the interests of their member architects. ACE falls within one of the articulated parts of the proposed community. Based on Panel’s review, however, ACE does not show an awareness or recognition of the numerous other parts of the proposed community¹, whether by way of interaction or an explicit statement of cohesion. This is the case with most other such organizations researched, including the majority of organizations from which the applicant has submitted letters of support.

¹ The Panel acknowledges that an exhaustive review of all proposed community member organizations is not possible and has used ACE as a representative example of the review carried out to determine awareness and recognition of the proposed community.

These endorsing entities have neither mentioned their perception of cohesion with other disparate groups nor demonstrated it through records of their activities or objectives.

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

Organization

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.

The community as defined in the application does not have at least one entity mainly dedicated to the community as defined by the applicant. Research showed that existing entities do not represent a majority of the community as defined by the applicant, as they are limited in geographic scope or only represent parts of the community. The application itself acknowledges the lack of an entity representing the community that it defines. According to the application:

Given the diverse nature of what is considered “art,” and given the fact that the subjective affiliations with this term are manifold, there is no national or international group or organization that caters for the needs and interests of the members of the art community. For this reason, as is evidenced by the many letters of endorsement and support received by the Applicant, there is a clear need and demand from the art community to have a TLD that is specifically destined for and operated by members of the art community.

According to the AGB, “organized” implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities.” As described above, there is no entity(ies) that represents all of the types of “art” member categories outlined by the applicant. The application’s intent (expressed above) is to use the gTLD to foster such organization, but this does not meet the AGB’s requirement that the defined community currently be organized. Moreover, an “organized” community, according to the AGB, is one that is represented by at least one entity that encompasses the entire community as defined by the applicant. There should, therefore, be at least one entity that encompasses and organizes “individuals, organizations and companies who are actively involved, on a professional and semi-professional level, with an art community that includes architecture, dance, sculpture, music, painting, poetry, film, photography and comics.” Based on information provided in the application materials and the Panel’s research, there is no entity that organizes the community defined in the application, in all the breadth of categories explicitly defined.

Regarding the second requirement for organization – documented evidence of community activities – the Panel has concluded that no such evidence can exist because there is no entity that is mainly dedicated to the community as 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).

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 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 various groups

mentioned in the documentation through a gTLD. The proposed community therefore could not have been active prior to the above date (although its constituent parts were active).

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)

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 Applicant Guidebook, as the application did not fulfill the requirements for size, nor demonstrate longevity for 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. The community for .ART as defined in the application is large both in terms of geographical reach and number of members. According to the applicant:

e-flux consequently intends to cater to individuals, organizations and companies who are actively involved, on a professional and semi-professional level, with an art community that includes architecture, dance, sculpture, music, painting, poetry, film, photography and comics. Any individual, organization or company that already belongs to one of the art community categories that have been established by e-flux, referred to ... below, is considered a member of the art community.

Museums such as: The Museum of Modern Art, New York; The Guggenheim, New York;...

- Biennials such as: Sao Paulo Biennial; Istanbul Biennial...

- Art fairs such as: Art Basel, Frieze Art Fair (London)...

- Magazines such as: Artforum, Parkett, Frieze...

- Art book publishers and distributors such as: Phaidon, Great Britain...

However, as previously stated, the community as defined in the application does not have awareness and recognition among its members. Failing such qualities, the community cannot be said to have the “cohesion” required by the AGB.

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

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 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 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 proposed community construed to obtain a sought-after generic word as a gTLD, and that the applicant is attempting to organize the various groups mentioned in the documentation through a gTLD. Therefore, the Panel has determined that the transient nature of this purpose, as well as the proposed community’s lack of cohesion, does not meet the requirements for receiving credit for longevity.

Additionally, as previously stated, the community as defined in the application does not have awareness and recognition among its members. As such, the proposed community cannot demonstrate 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

3/4 Point(s)

2-A Nexus

2/3 Point(s)

The Panel determined that the application partially met the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the name of the community, without over-reaching substantially beyond the community. The application received a score of 2 out of 3 points under criterion 2-A: Nexus.

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, the applied-for string must identify 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 applied-for string (.ART) identifies the name of the proposed community but does not match it. The string closely describes the community and does not over-reach substantially, as the general public will associate the string with the community as defined by the applicant. The community encompasses individuals and institutions involved in the creation and promotion of art and artistic works. This community definition is broad and encompasses all areas that are typically considered as art². However, given the subjective nature and meaning of what constitutes art, the general public may not necessarily associate all of the members of the defined community with the string. Hence, the string cannot be seen as a “match” for the defined community, as required by the AGB. Partial credit is therefore given for Nexus.

The Panel determined that the applied-for string identifies the name of the community as defined in the application. It therefore partially meets the requirements for Nexus.

2-B Uniqueness

1/1 Point(s)

The Panel determined that the application met the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the string has no other significant meaning beyond identifying the community described in the application. The application received a maximum score of 1 point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the string .ART must have no other significant meaning beyond identifying the community described in the application. The community described encompasses individuals and institutions involved in the creation and promotion of art and artistic works, which the Panel has determined would be understood by the general public as constituting an art community³. The Panel determined that the applied-for string fulfills the requirements for Uniqueness.

² According to Oxford Dictionaries, “art” refers to the expression of human creativity, typically through visual forms such as painting and sculpture, but also including music, dance, and others described in the application. While other uses of the word “art” exists, they are not as common and are typically used in construction with other words or phrases, such as “liberal arts” or “the art of communication.” There are no other communities more commonly referred to by the word “art” than to the community of those who produce it, i.e. the individuals included in the applicant’s defined community.

³ Ibid.

Criterion #3: Registration Policies	1/4 Point(s)
3-A Eligibility	1/1 Point(s)
<p>The Panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.</p> <p>To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by restricting eligibility to art-related institutions and entities, and professionals or semi-professional members of the art community, with a comprehensive verification system outlined to confirm affiliation with the community, etc. (Comprehensive details are provided in Section 20e of the applicant documentation). The Panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.</p>	
3-B Name Selection	0/1 Point(s)
<p>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.</p> <p>To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application does not demonstrate adherence to this requirement, as it does not outline comprehensive name selection rules. (Please refer to Section 20e of the applicant documentation). The Panel determined that the application did not satisfy the condition to fulfill the requirements for Name Selection.</p>	
3-C Content and Use	0/1 Point(s)
<p>The Panel determined that the application did not meet the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the rules for content and use 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-C: Content and Use.</p> <p>To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application did not demonstrate adherence to this requirement, as it does not outline comprehensive rules for content and use, apart from barring the display of abusive content on a website. (Please refer to Section 20e of the applicant documentation). The Panel determined that the application did not satisfy the condition to fulfill the requirements for Content and Use.</p>	
3-D Enforcement	0/1 Point(s)
<p>The Panel determined that the application did not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not provide specific enforcement measures or appropriate appeal mechanisms. The application received a score of 0 out of 1 point under criterion 3-D: Enforcement.</p> <p>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. The applicant did not outline policies that include specific enforcement measures constituting a coherent set. The application documentation states that the applicant reserves the right to delete content, or temporarily or permanently suspend the registration of domain names, but does not outline specific enforcement processes. However, the applicant mentions a general appeals process that allows a registrant to challenge a decision from the applicant to revoke or suspend the registration of a domain name. (Please refer</p>	

to Section 20e of the applicant documentation). The Panel determined that the application did not satisfy one of the two conditions to fulfill the requirements for Enforcement.

Criterion #4: Community Endorsement	3/4 Point(s)
4-A Support	1/2 Point(s)
<p>The Panel determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, 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.</p> <p>To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. “Recognized” means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. 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.</p> <p>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 as defined by the applicant, or documented support from the recognized community institution(s)/member organization(s). Numerous letters of support were received from a variety of entities. The panel determined that the applicant possesses documented support from multiple groups with relevance, and this documentation contained a description of the process and rationale used in arriving at the expression of support. While the applicant had support from more than one group with relevance, these groups do not constitute support from the majority of the recognized institutions that represent the community, as they are limited in geographic or thematic scope and do not represent the entire community as defined by the applicant. The Community Priority Evaluation Panel determined that the applicant partially satisfies the requirements for Support.</p>	
4-B Opposition	2/2 Point(s)
<p>The Panel determined that the application met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not receive any relevant opposition. The application received the maximum score of 2 points under criterion 4-B: Opposition.</p> <p>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 group of non-negligible size.</p> <p>The application received letters of opposition, which were determined to not be relevant, as they were either from individuals or groups of negligible size, or were from entities/communities that do not have an association to the applied for string. The Community Priority Evaluation Panel determined that the applicant satisfies the requirements for Opposition.</p>	

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 Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.