

INDEPENDENT REVIEW PROCESS
INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

DOT REGISTRY LLC
(Claimant)

And

INTERNET CORPORATION FOR ASSIGNED
NAMES AND NUMBERS
(Respondent)

**INDEX TO DOCUMENTS SUBMITTED WITH ICANN'S RESPONSE TO
CLAIMANT'S REQUEST FOR INDEPENDENT REVIEW PROCESS**

<u>Exhibit</u>	<u>DESCRIPTION</u>
R-1	Community Priority Evaluation (CPE) Guidelines, <i>available at</i> http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf .
R-2	New gTLD Application Terms and Conditions, <i>available at</i> http://newgtlds.icann.org/en/applicants/agb/terms .
R-3	NGPC Resolution No. 2014.02.05.NG01, <i>available at</i> https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-02-05-en ; Annex 2 to NGPC Resolution No. 2014.02.05.NG01, <i>available at</i> https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-2-05feb14-en.pdf .
R-4	Advisory Declaration of IRP Panel, ICM Registry, LLC v. ICANN, ICDR Case No. 50 117 T 00224 08, ¶ 133, <i>available at</i> https://www.icann.org/en/system/files/files/-panel-declaration-19feb10-en.pdf .

R-1

RESPONDENT'S EXHIBIT

Community Priority Evaluation (CPE) Guidelines

Prepared by The Economist Intelligence Unit

Version 2.0

Interconnection between Community Priority Evaluation (CPE) Guidelines and the Applicant Guidebook (AGB)

The CPE Guidelines are an accompanying document to the AGB, and are meant to provide additional clarity around the process and scoring principles outlined in the AGB. This document does not modify the AGB framework, nor does it change the intent or standards laid out in the AGB. The Economist Intelligence Unit (EIU) is committed to evaluating each applicant under the criteria outlined in the AGB. The CPE Guidelines are intended to increase transparency, fairness and predictability around the assessment process.

Criterion #1: Community Establishment

This section relates to the community as explicitly identified and defined according to statements in the application. (The implicit reach of the applied-for string is not considered here, but taken into account when scoring Criterion #2, “Nexus between Proposed String and Community.”)

Measured by

1-A Delineation

1-B Extension

A maximum of 4 points is possible on the Community Establishment criterion, and each sub-criterion has a maximum of 2 possible points.

1-A Delineation

AGB Criteria	Evaluation Guidelines
Scoring	
<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>
Definitions	
<p>“Community” - Usage of the expression “community” has evolved considerably from its Latin origin – “communitas” meaning “fellowship” – while still implying more of cohesion than a mere commonality of interest. Notably, as “community” is used throughout the application, there should be: (a) an awareness and recognition of a community among its members; (b) some</p>	<p>The “community,” as it relates to Criterion #1, refers to the stated community in the application.</p> <p>Consider the following:</p> <ul style="list-style-type: none"> • <i>Was the entity established to administer the community?</i> • <i>Does the entity’s mission statement clearly identify the community?</i>

<p>understanding of the community’s existence prior to September 2007 (when the new gTLD policy recommendations were completed); and (c) extended tenure or longevity—non-transience—into the future.</p>	<p>Additional research may need to be performed to establish that there is documented evidence of community activities. Research may include reviewing the entity’s web site, including mission statements, charters, reviewing websites of community members (pertaining to groups), if applicable, etc.</p>
<p>"Delineation" relates to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low.</p>	<p>"Delineation" also refers to the extent to which a community has the requisite awareness and recognition from its members.</p> <p>The following non-exhaustive list denotes elements of straight-forward member definitions: fees, skill and/or accreditation requirements, privileges or benefits entitled to members, certifications aligned with community goals, etc.</p>
<p>"Pre-existing" means that a community has been active as such since before the new gTLD policy recommendations were completed in September 2007.</p>	
<p>"Organized" implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities.</p>	<p>"Mainly" 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.</p> <p>Consider the following:</p> <ul style="list-style-type: none"> • <i>Was the entity established to administer the community?</i> • <i>Does the entity’s mission statement clearly identify the community?</i>
<p>Criterion 1-A guidelines</p>	
<p>With respect to "Delineation" and "Extension," it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international federation of national communities of a similar nature). All are viable as such, provided the requisite awareness and recognition of the</p>	<p>With respect to the Community, consider the following:</p> <ul style="list-style-type: none"> • <i>Are community members aware of the existence of the community as defined by the applicant?</i> • <i>Do community members recognize the community as defined by the applicant?</i>

<p>community is at hand among the members. Otherwise the application would be seen as not relating to a real community and score 0 on both “Delineation” and “Extension.”</p> <p>With respect to “Delineation,” if an application satisfactorily demonstrates all three relevant parameters (delineation, pre-existing and organized), then it scores a 2.</p>	<ul style="list-style-type: none"> • <i>Is there clear evidence of such awareness and recognition?</i>
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1-B Extension

AGB Criteria	Evaluation Guidelines
Scoring	
<p>Extension:</p> <p>2=Community of considerable size and longevity</p> <p>1=Community of either considerable size or longevity, but not fulfilling the requirements for a score of 2.</p> <p>0=Community of neither considerable size nor longevity</p>	<p>The following questions must be scored when evaluating the application:</p> <p style="text-align: center;"><i>Is the community of considerable size?</i></p> <p style="text-align: center;"><i>Does the community demonstrate longevity?</i></p>
Definitions	
<p>“Extension” relates to the dimensions of the community, regarding its number of members, geographical reach, and foreseeable activity lifetime, as further explained in the following.</p>	
<p>"Size" relates both to the number of members and the geographical reach of the community, and will be scored depending on the context rather than on absolute numbers - a geographic location community may count millions of members in a limited location, a language community may have a million members with some spread over the globe, a community of service providers may have "only" some hundred members although well spread over the globe, just to mention some examples - all these can be regarded as of "considerable size."</p>	<p>Consider the following:</p> <ul style="list-style-type: none"> • <i>Is the designated community large in terms of membership and/or geographic dispersion?</i>

<p>"Longevity" means that the pursuits of a community are of a lasting, non-transient nature.</p>	<p>Consider the following:</p> <ul style="list-style-type: none"> • <i>Is the community a relatively short-lived congregation (e.g. a group that forms to represent a one-off event)?</i> • <i>Is the community forward-looking (i.e. will it continue to exist in the future)?</i>
<p>Criterion 1-B Guidelines</p>	
<p>With respect to "Delineation" and "Extension," it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international federation of national communities of a similar nature). All are viable as such, provided the requisite awareness and recognition of the community is at hand among the members. Otherwise the application would be seen as not relating to a real community and score 0 on both "Delineation" and "Extension."</p> <p>With respect to "Extension," if an application satisfactorily demonstrates both community size and longevity, it scores a 2.</p>	

Criterion #2: Nexus between Proposed String and Community

This section evaluates the relevance of the string to the specific community that it claims to represent.

Measured by

2-A Nexus

2-B Uniqueness

A maximum of 4 points is possible on the Nexus criterion, and with the Nexus sub-criterion having a maximum of 3 possible points, and the Uniqueness sub-criterion having a maximum of 1 possible point.

2-A Nexus

AGB Criteria	Evaluation Guidelines
Scoring	
<p>Nexus:</p> <p>3= The string matches the name of the community or is a well-known short-form or abbreviation of the community</p> <p>2= String identifies the community, but does not qualify for a score of 3</p> <p>0= String nexus does not fulfill the requirements for a score of 2</p>	<p>The following question must be scored when evaluating the application:</p> <p style="text-align: center;"><i>Does the string match the name of the community or is it a well-known short-form or abbreviation of the community name? The name may be, but does not need to be, the name of an organization dedicated to the community.</i></p>
Definitions	
<p>“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.</p>	<p>“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 organization(s), such as quasi-official, publicly recognized institutions, or other peer groups.</p>
<p>“Identify” means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community.</p>	<p>“Match” is of a higher standard than “identify” and means ‘corresponds to’ or ‘is equal to’.</p> <p>“Identify” does not simply mean ‘describe’, but means ‘closely describes the community’.</p> <p>“Over-reaching substantially” means that the string indicates a wider geographical or thematic remit than the community has.</p>

	<p>Consider the following:</p> <ul style="list-style-type: none"> • <i>Does the string identify a wider or related community of which the applicant is a part, but is not specific to the applicant’s community?</i> • <i>Does the string capture a wider geographical/thematic remit than the community has? The “community” refers to the community as defined by the applicant.</i> • <i>An Internet search should be utilized to help understand whether the string identifies the community and is known by others.</i> • <i>Consider whether the application mission statement, community responses, and websites align.</i>
Criterion 2-A Guidelines	
<p>With respect to “Nexus,” for a score of 3, the essential aspect is that the applied-for string is commonly known by others as the identification / name of the community.</p> <p>With respect to “Nexus,” 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 globally well-known but local tennis club applying for “.TENNIS”) then it would not qualify for a 2.</p>	

2-B Uniqueness

AGB Criteria	Evaluation Guidelines
Scoring	
<p>Uniqueness: 1=String has no other significant meaning beyond</p>	<p>The following question must be scored when evaluating the application:</p>

<p>identifying the community described in the application. 0=String does not fulfill the requirement for a score of 1.</p>	<p><i>Does the string have any other significant meaning (to the public in general) beyond identifying the community described in the application?</i></p>
<p>Definitions</p>	
<p>“Identify” means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community.</p>	<p>“Over-reaching substantially” means that the string indicates a wider geographical or thematic remit than the community has.</p>
<p>“Significant meaning” relates to the public in general, with consideration of the community language context added</p>	<p>Consider the following:</p> <ul style="list-style-type: none"> • <i>Will the public in general immediately think of the applying community when thinking of the applied-for string?</i> • <i>If the string is unfamiliar to the public in general, it may be an indicator of uniqueness.</i> • <i>Is the geography or activity implied by the string?</i> • <i>Is the size and delineation of the community inconsistent with the string?</i> • <i>An internet search should be utilized to find out whether there are repeated and frequent references to legal entities or communities other than the community referenced in the application.</i>
<p>Criterion 2-B Guidelines</p>	
<p>"Uniqueness" will be scored both with regard to the community context and from a general point of view. For example, a string for a particular geographic location community may seem unique from a general perspective, but would not score a 1 for uniqueness if it carries another significant meaning in the common language used in the relevant community location. The phrasing "...beyond identifying the community" in the score of 1 for "uniqueness" implies a requirement that the string does identify the community, i.e. scores</p>	

2 or 3 for "Nexus," in order to be eligible for a score of 1 for "Uniqueness."

It should be noted that "Uniqueness" is only about the meaning of the string - since the evaluation takes place to resolve contention there will obviously be other applications, community-based and/or standard, with identical or confusingly similar strings in the contention set to resolve, so the string will clearly not be "unique" in the sense of "alone."

Criterion #3: Registration Policies

This section evaluates the applicant’s registration policies as indicated in the application. 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.

Measured by

3-A Eligibility

3-B Name Selection

3-C Content and Use

3-D Enforcement

A maximum of 4 points is possible on the Registration Policies criterion and each sub-criterion has a maximum of 1 possible point.

3-A Eligibility

AGB Criteria	Evaluation Guidelines
Scoring	
Eligibility: 1= Eligibility restricted to community members 0= Largely unrestricted approach to eligibility	The following question must be scored when evaluating the application: <i>Is eligibility for being allowed as a registrant restricted?</i>
Definitions	
“Eligibility” means the qualifications that organizations or individuals must have in order to be allowed as registrants by the registry.	
Criterion 3-A Guidelines	
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 be within the boundaries of the location.	

3-B Name Selection

AGB Criteria	Evaluation Guidelines
Scoring	
<p>Name selection: 1= Policies include name selection rules consistent with the articulated community-based purpose of the applied-for TLD 0= Policies do not fulfill the requirements for a score of 1</p>	<p>The following questions must be scored when evaluating the application:</p> <p style="text-align: center;"><i>Do the applicant’s policies include name selection rules?</i></p> <p style="text-align: center;"><i>Are name selection rules consistent with the articulated community-based purpose of the applied-for gTLD?</i></p>
Definitions	
<p>“Name selection” means the conditions that must be fulfilled for any second-level domain name to be deemed acceptable by the registry.</p>	<p>Consider the following:</p> <ul style="list-style-type: none"> <i>Are the name selection rules consistent with the entity’s mission statement?</i>
Criterion 3-B Guidelines	
<p>With respect to “Name selection,” scoring of applications against these subcriteria 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 B and C 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 D. 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.</p>	

3-C Content and Use

AGB Criteria	Evaluation Guidelines
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Scoring	
<p>Content and use: 1= Policies include rules for content and use consistent with the articulated community-based purpose of the applied-for TLD 0= Policies do not fulfill the requirements for a score of 1</p>	<p>The following questions must be scored when evaluating the application:</p> <p><i>Do the applicant’s policies include content and use rules?</i></p> <p><i>If yes, are content and use rules consistent with the articulated community-based purpose of the applied-for gTLD?</i></p>
Definitions	
<p>“Content and use” means the restrictions stipulated by the registry as to the content provided in and the use of any second-level domain name in the registry.</p>	<p>Consider the following:</p> <ul style="list-style-type: none"> • <i>Are the content and use rules consistent with the applicant’s mission statement?</i>
Criterion 3-C Guidelines	
<p>With respect to “Content and Use,” scoring of applications against these subcriteria 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 B and C 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 D. 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.</p>	

3-D Enforcement

AGB Criteria	Evaluation Guidelines
Scoring	
<p>Enforcement 1= Policies include specific enforcement measures</p>	<p>The following question must be scored when evaluating the application:</p>

<p>(e.g. investigation practices, penalties, takedown procedures) constituting a coherent set with appropriate appeal mechanisms 0= Policies do not fulfill the requirements for a score of 1</p>	<p><i>Do the policies include specific enforcement measures constituting a coherent set with appropriate appeal mechanisms?</i></p>
<p>Definitions</p>	
<p>“Enforcement” means the tools and provisions set out by the registry to prevent and remedy any breaches of the conditions by registrants.</p>	<p>“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.</p> <p>Consider the following: Do the enforcement measures include:</p> <ul style="list-style-type: none"> • <i>Investigation practices</i> • <i>Penalties</i> • <i>Takedown procedures (e.g., removing the string)</i> • <i>Whether such measures are aligned with the community-based purpose of the TLD</i> • <i>Whether such measures demonstrate continuing accountability to the community named in the application</i>
<p>Criterion 3-D Guidelines</p>	
<p>With respect to “Enforcement,” scoring of applications against these subcriteria 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 B and C 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 D. More restrictions do not automatically result in a higher score. The restrictions and corresponding enforcement</p>	

<p>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.</p>	
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Criterion #4: Community Endorsement

This section evaluates community support and/or opposition to the application. Support and opposition will be scored in relation to the communities explicitly addressed in the application, with due regard for communities implicitly addressed by the string.

Measured by

4-A Support

4-B Opposition

A maximum of 4 points is possible on the Community Endorsement criterion and each sub-criterion (Support and Opposition) has a maximum of 2 possible points.

4-A Support

AGB Criteria	Evaluation Guidelines
Scoring	
<p>Support:</p> <p>2= Applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community</p> <p>1= Documented support from at least one group with relevance, but insufficient support for a score of 2</p> <p>0= Insufficient proof of support for a score of 1</p>	<p>The following questions must be scored when evaluating the application:</p> <p><i>Is the applicant the recognized community institution or member organization?</i></p> <p>To assess this question please consider the following:</p> <p><i>a. Consider whether the community institution or member organization is the clearly recognized representative of the community.</i></p> <p>If the applicant meets this provision, proceed to Letter(s) of support and their verification. If it does not, or if there is more than one recognized community institution or member organization (and the applicant is one of them), consider the following:</p> <p><i>Does the applicant have documented</i></p>

	<p><i>support from the recognized community institution(s)/member organization(s) to represent the community?</i></p> <p>If the applicant meets this provision, proceed to Letter(s) of support and their verification. If not, consider the following:</p> <p><i>Does the applicant have documented authority to represent the community?</i></p> <p>If the applicant meets this provision, proceed to Letter(s) of support and their verification. If not, consider the following:</p> <p><i>Does the applicant have support from at least one group with relevance?</i></p> <p>If the applicant meets this provision, proceed to Letter(s) of support and their verification.</p> <p>➤ Instructions on letter(s) of support requirements are located below, in Letter(s) of support and their verification</p>
<p>Definitions</p>	
<p>“Recognized” means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of that community.</p>	
<p>“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.</p>	<p>The institution(s)/organization(s) could be deemed relevant when not identified in the application but has an association to the applied-for string.</p>
<p>Criterion 4-A Guidelines</p>	
<p>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.</p>	<p>Letter(s) of support and their verification: Letter(s) of support must be evaluated to determine both the relevance of the organization and the validity of the documentation and must meet the criteria spelled out below. The letter(s) of support is an input used to determine the relevance of the organization and the validity of</p>

<p>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.</p> <p>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.</p> <p>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.</p>	<p>the documentation.</p> <p>Consider the following:</p> <p>Are there multiple institutions/organizations supporting the application, with documented support from institutions/organizations representing a majority of the overall community addressed?</p> <p>Does the applicant have support from the majority of the recognized community institution/member organizations?</p> <p>Has the applicant provided full documentation that it has authority to represent the community with its application?</p> <p>A majority of the overall community may be determined by, but not restricted to, considerations such as headcount, the geographic reach of the organizations, or other features such as the degree of power of the organizations.</p> <p><u>Determining relevance and recognition</u></p> <p><i>Is the organization relevant and/or recognized as per the definitions above?</i></p> <p><u>Letter requirements & validity</u></p> <p><i>Does the letter clearly express the organization’s support for the community-based application?</i></p> <p><i>Does the letter demonstrate the organization’s understanding of the string being requested?</i></p> <p><i>Is the documentation submitted by the applicant valid (i.e. the organization exists and the letter is authentic)?</i></p> <p>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</p>
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	expressions of support received.
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4-B Opposition

AGB Criteria	Evaluation Guidelines
Scoring	
<p>Opposition: 2= No opposition of relevance 1= Relevant opposition from one group of non-negligible size 0= Relevant opposition from two or more groups of non-negligible size</p>	<p>The following question must be scored when evaluating the application:</p> <p style="text-align: center;"><i>Does the application have any opposition that is deemed relevant?</i></p>
Definitions	
<p>“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.</p>	<p>Consider the following: For “non-negligible” size, “relevant” and “relevance” consider:</p> <ul style="list-style-type: none"> • <i>If the application has opposition from communities that are deemed to be relevant.</i> • <i>If a web search may help determine relevance and size of the objecting organization(s).</i> • <i>If there is opposition by some other reputable organization(s), such as a quasi-official, publicly recognized organization(s) or a peer organization(s)?</i> • <i>If there is opposition from a part of the community explicitly or implicitly addressed?</i>
Criterion 4-B Guidelines	
<p>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</p>	<p>Letter(s) of opposition and their verification: Letter(s) of opposition should be evaluated to determine both the relevance of the organization and the validity of the documentation and should meet the criteria spelled out below.</p> <p><u>Determining relevance and recognition</u> <i>Is the organization relevant and/or</i></p>

<p>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.</p>	<p><i>recognized as per the definitions above?</i></p> <p><u>Letter requirements & validity</u></p> <p><i>Does the letter clearly express the organization's opposition to the applicant's application?</i></p> <p><i>Does the letter demonstrate the organization's understanding of the string being requested?</i></p> <p><i>Is the documentation submitted by the organization valid (i.e. the organization exists and the letter is authentic)?</i></p> <p>To be considered relevant opposition, such documentation should contain a description of the process and rationale used in arriving at the expression of opposition. Consideration of opposition is not based merely on the number of comments or expressions of opposition received.</p>
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Verification of letter(s) of support and opposition

Additional information on the verification of letter(s) of support and opposition:

- Changes in governments may result in new leadership at government agencies. As such, the signatory need only have held the position as of the date the letter was signed or sealed.
- A contact name should be provided in the letter(s) of support or opposition.
- The contact must send an email acknowledging that the letter is authentic, as a verbal acknowledgement is not sufficient.
- In cases where the letter was signed or sealed by an individual who is not currently holding that office or a position of authority, the letter is valid only if the individual was the appropriate authority at the time that the letter was signed or sealed.

About the Community Priority Evaluation Panel and its Processes

The Economist Intelligence Unit (EIU) is the business information arm of The Economist Group, publisher of The Economist. Through a global network of more than 900 analysts and contributors, the EIU continuously assesses political, economic, and business conditions in more than 200 countries. As the world's leading provider of country intelligence, the EIU helps executives, governments, and institutions by providing timely, reliable, and impartial analysis.

The EIU was selected as a Panel Firm for the gTLD evaluation process based on a number of criteria, including:

- The panel will be an internationally recognized firm or organization with significant demonstrated expertise in the evaluation and assessment of proposals in which the relationship of the proposal to a defined public or private community plays an important role.
- The provider must be able to convene a linguistically and culturally diverse panel capable, in the aggregate, of evaluating Applications from a wide variety of different communities.
- The panel must be able to exercise consistent and somewhat subjective judgment in making its evaluations in order to reach conclusions that are compelling and defensible, and
- The panel must be able to document the way in which it has done so in each case.

The evaluation process will respect the principles of fairness, transparency, avoiding potential conflicts of interest, and non-discrimination. Consistency of approach in scoring Applications will be of particular importance.

The following principles characterize the EIU evaluation process for gTLD applications:

- All EIU evaluators must ensure that no conflicts of interest exist.
- All EIU evaluators must undergo training and be fully cognizant of all CPE requirements as listed in the Applicant Guidebook. This process will include a pilot testing process.
- EIU evaluators are selected based on their knowledge of specific countries, regions and/or industries, as they pertain to Applications.
- Language skills will also be considered in the selection of evaluators and the assignment of specific Applications.
- 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 EIU will fully cooperate with ICANN's quality control process.

R-1

RESPONDENT'S EXHIBIT

Community Priority Evaluation (CPE) Guidelines

Prepared by The Economist Intelligence Unit

Version 2.0

Interconnection between Community Priority Evaluation (CPE) Guidelines and the Applicant Guidebook (AGB)

The CPE Guidelines are an accompanying document to the AGB, and are meant to provide additional clarity around the process and scoring principles outlined in the AGB. This document does not modify the AGB framework, nor does it change the intent or standards laid out in the AGB. The Economist Intelligence Unit (EIU) is committed to evaluating each applicant under the criteria outlined in the AGB. The CPE Guidelines are intended to increase transparency, fairness and predictability around the assessment process.

Criterion #1: Community Establishment

This section relates to the community as explicitly identified and defined according to statements in the application. (The implicit reach of the applied-for string is not considered here, but taken into account when scoring Criterion #2, “Nexus between Proposed String and Community.”)

Measured by

1-A Delineation

1-B Extension

A maximum of 4 points is possible on the Community Establishment criterion, and each sub-criterion has a maximum of 2 possible points.

1-A Delineation

AGB Criteria	Evaluation Guidelines
Scoring	
<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>
Definitions	
<p>“Community” - Usage of the expression “community” has evolved considerably from its Latin origin – “communitas” meaning “fellowship” – while still implying more of cohesion than a mere commonality of interest. Notably, as “community” is used throughout the application, there should be: (a) an awareness and recognition of a community among its members; (b) some</p>	<p>The “community,” as it relates to Criterion #1, refers to the stated community in the application.</p> <p>Consider the following:</p> <ul style="list-style-type: none"> • <i>Was the entity established to administer the community?</i> • <i>Does the entity’s mission statement clearly identify the community?</i>

<p>understanding of the community's existence prior to September 2007 (when the new gTLD policy recommendations were completed); and (c) extended tenure or longevity—non-transience—into the future.</p>	<p>Additional research may need to be performed to establish that there is documented evidence of community activities. Research may include reviewing the entity's web site, including mission statements, charters, reviewing websites of community members (pertaining to groups), if applicable, etc.</p>
<p>"Delineation" relates to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low.</p>	<p>"Delineation" also refers to the extent to which a community has the requisite awareness and recognition from its members.</p> <p>The following non-exhaustive list denotes elements of straight-forward member definitions: fees, skill and/or accreditation requirements, privileges or benefits entitled to members, certifications aligned with community goals, etc.</p>
<p>"Pre-existing" means that a community has been active as such since before the new gTLD policy recommendations were completed in September 2007.</p>	
<p>"Organized" implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities.</p>	<p>"Mainly" 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.</p> <p>Consider the following:</p> <ul style="list-style-type: none"> • <i>Was the entity established to administer the community?</i> • <i>Does the entity's mission statement clearly identify the community?</i>
<p>Criterion 1-A guidelines</p>	
<p>With respect to "Delineation" and "Extension," it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international federation of national communities of a similar nature). All are viable as such, provided the requisite awareness and recognition of the</p>	<p>With respect to the Community, consider the following:</p> <ul style="list-style-type: none"> • <i>Are community members aware of the existence of the community as defined by the applicant?</i> • <i>Do community members recognize the community as defined by the applicant?</i>

<p>community is at hand among the members. Otherwise the application would be seen as not relating to a real community and score 0 on both “Delineation” and “Extension.”</p> <p>With respect to “Delineation,” if an application satisfactorily demonstrates all three relevant parameters (delineation, pre-existing and organized), then it scores a 2.</p>	<ul style="list-style-type: none"> • <i>Is there clear evidence of such awareness and recognition?</i>
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1-B Extension

AGB Criteria	Evaluation Guidelines
Scoring	
<p>Extension:</p> <p>2=Community of considerable size and longevity</p> <p>1=Community of either considerable size or longevity, but not fulfilling the requirements for a score of 2.</p> <p>0=Community of neither considerable size nor longevity</p>	<p>The following questions must be scored when evaluating the application:</p> <p><i>Is the community of considerable size?</i></p> <p><i>Does the community demonstrate longevity?</i></p>
Definitions	
<p>“Extension” relates to the dimensions of the community, regarding its number of members, geographical reach, and foreseeable activity lifetime, as further explained in the following.</p>	
<p>"Size" relates both to the number of members and the geographical reach of the community, and will be scored depending on the context rather than on absolute numbers - a geographic location community may count millions of members in a limited location, a language community may have a million members with some spread over the globe, a community of service providers may have "only" some hundred members although well spread over the globe, just to mention some examples - all these can be regarded as of "considerable size."</p>	<p>Consider the following:</p> <ul style="list-style-type: none"> • <i>Is the designated community large in terms of membership and/or geographic dispersion?</i>

<p>"Longevity" means that the pursuits of a community are of a lasting, non-transient nature.</p>	<p>Consider the following:</p> <ul style="list-style-type: none"> • <i>Is the community a relatively short-lived congregation (e.g. a group that forms to represent a one-off event)?</i> • <i>Is the community forward-looking (i.e. will it continue to exist in the future)?</i>
<p>Criterion 1-B Guidelines</p>	
<p>With respect to "Delineation" and "Extension," it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international federation of national communities of a similar nature). All are viable as such, provided the requisite awareness and recognition of the community is at hand among the members. Otherwise the application would be seen as not relating to a real community and score 0 on both "Delineation" and "Extension."</p> <p>With respect to "Extension," if an application satisfactorily demonstrates both community size and longevity, it scores a 2.</p>	

Criterion #2: Nexus between Proposed String and Community

This section evaluates the relevance of the string to the specific community that it claims to represent.

Measured by

2-A Nexus

2-B Uniqueness

A maximum of 4 points is possible on the Nexus criterion, and with the Nexus sub-criterion having a maximum of 3 possible points, and the Uniqueness sub-criterion having a maximum of 1 possible point.

2-A Nexus

AGB Criteria	Evaluation Guidelines
Scoring	
<p>Nexus:</p> <p>3= The string matches the name of the community or is a well-known short-form or abbreviation of the community</p> <p>2= String identifies the community, but does not qualify for a score of 3</p> <p>0= String nexus does not fulfill the requirements for a score of 2</p>	<p>The following question must be scored when evaluating the application:</p> <p style="text-align: center;"><i>Does the string match the name of the community or is it a well-known short-form or abbreviation of the community name? The name may be, but does not need to be, the name of an organization dedicated to the community.</i></p>
Definitions	
<p>“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.</p>	<p>“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 organization(s), such as quasi-official, publicly recognized institutions, or other peer groups.</p>
<p>“Identify” means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community.</p>	<p>“Match” is of a higher standard than “identify” and means ‘corresponds to’ or ‘is equal to’.</p> <p>“Identify” does not simply mean ‘describe’, but means ‘closely describes the community’.</p> <p>“Over-reaching substantially” means that the string indicates a wider geographical or thematic remit than the community has.</p>

	<p>Consider the following:</p> <ul style="list-style-type: none"> • <i>Does the string identify a wider or related community of which the applicant is a part, but is not specific to the applicant’s community?</i> • <i>Does the string capture a wider geographical/thematic remit than the community has? The “community” refers to the community as defined by the applicant.</i> • <i>An Internet search should be utilized to help understand whether the string identifies the community and is known by others.</i> • <i>Consider whether the application mission statement, community responses, and websites align.</i>
Criterion 2-A Guidelines	
<p>With respect to “Nexus,” for a score of 3, the essential aspect is that the applied-for string is commonly known by others as the identification / name of the community.</p> <p>With respect to “Nexus,” 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 globally well-known but local tennis club applying for “.TENNIS”) then it would not qualify for a 2.</p>	

2-B Uniqueness

AGB Criteria	Evaluation Guidelines
Scoring	
<p>Uniqueness: 1=String has no other significant meaning beyond</p>	<p>The following question must be scored when evaluating the application:</p>

<p>identifying the community described in the application. 0=String does not fulfill the requirement for a score of 1.</p>	<p><i>Does the string have any other significant meaning (to the public in general) beyond identifying the community described in the application?</i></p>
<p>Definitions</p>	
<p>“Identify” means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community.</p>	<p>“Over-reaching substantially” means that the string indicates a wider geographical or thematic remit than the community has.</p>
<p>“Significant meaning” relates to the public in general, with consideration of the community language context added</p>	<p>Consider the following:</p> <ul style="list-style-type: none"> • <i>Will the public in general immediately think of the applying community when thinking of the applied-for string?</i> • <i>If the string is unfamiliar to the public in general, it may be an indicator of uniqueness.</i> • <i>Is the geography or activity implied by the string?</i> • <i>Is the size and delineation of the community inconsistent with the string?</i> • <i>An internet search should be utilized to find out whether there are repeated and frequent references to legal entities or communities other than the community referenced in the application.</i>
<p>Criterion 2-B Guidelines</p>	
<p>"Uniqueness" will be scored both with regard to the community context and from a general point of view. For example, a string for a particular geographic location community may seem unique from a general perspective, but would not score a 1 for uniqueness if it carries another significant meaning in the common language used in the relevant community location. The phrasing "...beyond identifying the community" in the score of 1 for "uniqueness" implies a requirement that the string does identify the community, i.e. scores</p>	

2 or 3 for "Nexus," in order to be eligible for a score of 1 for "Uniqueness."

It should be noted that "Uniqueness" is only about the meaning of the string - since the evaluation takes place to resolve contention there will obviously be other applications, community-based and/or standard, with identical or confusingly similar strings in the contention set to resolve, so the string will clearly not be "unique" in the sense of "alone."

Criterion #3: Registration Policies

This section evaluates the applicant’s registration policies as indicated in the application. 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.

Measured by

3-A Eligibility

3-B Name Selection

3-C Content and Use

3-D Enforcement

A maximum of 4 points is possible on the Registration Policies criterion and each sub-criterion has a maximum of 1 possible point.

3-A Eligibility

AGB Criteria	Evaluation Guidelines
Scoring	
Eligibility: 1= Eligibility restricted to community members 0= Largely unrestricted approach to eligibility	The following question must be scored when evaluating the application: <i>Is eligibility for being allowed as a registrant restricted?</i>
Definitions	
“Eligibility” means the qualifications that organizations or individuals must have in order to be allowed as registrants by the registry.	
Criterion 3-A Guidelines	
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 be within the boundaries of the location.	

3-B Name Selection

AGB Criteria	Evaluation Guidelines
Scoring	
<p>Name selection: 1= Policies include name selection rules consistent with the articulated community-based purpose of the applied-for TLD 0= Policies do not fulfill the requirements for a score of 1</p>	<p>The following questions must be scored when evaluating the application:</p> <p style="text-align: center;"><i>Do the applicant’s policies include name selection rules?</i></p> <p style="text-align: center;"><i>Are name selection rules consistent with the articulated community-based purpose of the applied-for gTLD?</i></p>
Definitions	
<p>“Name selection” means the conditions that must be fulfilled for any second-level domain name to be deemed acceptable by the registry.</p>	<p>Consider the following:</p> <ul style="list-style-type: none"> <i>Are the name selection rules consistent with the entity’s mission statement?</i>
Criterion 3-B Guidelines	
<p>With respect to “Name selection,” scoring of applications against these subcriteria 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 B and C 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 D. 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.</p>	

3-C Content and Use

AGB Criteria	Evaluation Guidelines
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Scoring	
<p>Content and use: 1= Policies include rules for content and use consistent with the articulated community-based purpose of the applied-for TLD 0= Policies do not fulfill the requirements for a score of 1</p>	<p>The following questions must be scored when evaluating the application:</p> <p><i>Do the applicant’s policies include content and use rules?</i></p> <p><i>If yes, are content and use rules consistent with the articulated community-based purpose of the applied-for gTLD?</i></p>
Definitions	
<p>“Content and use” means the restrictions stipulated by the registry as to the content provided in and the use of any second-level domain name in the registry.</p>	<p>Consider the following:</p> <ul style="list-style-type: none"> <i>Are the content and use rules consistent with the applicant’s mission statement?</i>
Criterion 3-C Guidelines	
<p>With respect to “Content and Use,” scoring of applications against these subcriteria 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 B and C 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 D. 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.</p>	

3-D Enforcement

AGB Criteria	Evaluation Guidelines
Scoring	
<p>Enforcement 1= Policies include specific enforcement measures</p>	<p>The following question must be scored when evaluating the application:</p>

<p>(e.g. investigation practices, penalties, takedown procedures) constituting a coherent set with appropriate appeal mechanisms 0= Policies do not fulfill the requirements for a score of 1</p>	<p><i>Do the policies include specific enforcement measures constituting a coherent set with appropriate appeal mechanisms?</i></p>
<p>Definitions</p>	
<p>“Enforcement” means the tools and provisions set out by the registry to prevent and remedy any breaches of the conditions by registrants.</p>	<p>“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.</p> <p>Consider the following: Do the enforcement measures include:</p> <ul style="list-style-type: none"> • <i>Investigation practices</i> • <i>Penalties</i> • <i>Takedown procedures (e.g., removing the string)</i> • <i>Whether such measures are aligned with the community-based purpose of the TLD</i> • <i>Whether such measures demonstrate continuing accountability to the community named in the application</i>
<p>Criterion 3-D Guidelines</p>	
<p>With respect to “Enforcement,” scoring of applications against these subcriteria 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 B and C 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 D. More restrictions do not automatically result in a higher score. The restrictions and corresponding enforcement</p>	

<p>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.</p>	
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Criterion #4: Community Endorsement

This section evaluates community support and/or opposition to the application. Support and opposition will be scored in relation to the communities explicitly addressed in the application, with due regard for communities implicitly addressed by the string.

Measured by

4-A Support

4-B Opposition

A maximum of 4 points is possible on the Community Endorsement criterion and each sub-criterion (Support and Opposition) has a maximum of 2 possible points.

4-A Support

AGB Criteria	Evaluation Guidelines
Scoring	
<p>Support:</p> <p>2= Applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community</p> <p>1= Documented support from at least one group with relevance, but insufficient support for a score of 2</p> <p>0= Insufficient proof of support for a score of 1</p>	<p>The following questions must be scored when evaluating the application:</p> <p><i>Is the applicant the recognized community institution or member organization?</i></p> <p>To assess this question please consider the following:</p> <p><i>a. Consider whether the community institution or member organization is the clearly recognized representative of the community.</i></p> <p>If the applicant meets this provision, proceed to Letter(s) of support and their verification. If it does not, or if there is more than one recognized community institution or member organization (and the applicant is one of them), consider the following:</p> <p><i>Does the applicant have documented</i></p>

	<p><i>support from the recognized community institution(s)/member organization(s) to represent the community?</i></p> <p>If the applicant meets this provision, proceed to Letter(s) of support and their verification. If not, consider the following:</p> <p><i>Does the applicant have documented authority to represent the community?</i></p> <p>If the applicant meets this provision, proceed to Letter(s) of support and their verification. If not, consider the following:</p> <p><i>Does the applicant have support from at least one group with relevance?</i></p> <p>If the applicant meets this provision, proceed to Letter(s) of support and their verification.</p> <p>➤ Instructions on letter(s) of support requirements are located below, in Letter(s) of support and their verification</p>
<p>Definitions</p>	
<p>“Recognized” means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of that community.</p>	
<p>“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.</p>	<p>The institution(s)/organization(s) could be deemed relevant when not identified in the application but has an association to the applied-for string.</p>
<p>Criterion 4-A Guidelines</p>	
<p>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.</p>	<p>Letter(s) of support and their verification: Letter(s) of support must be evaluated to determine both the relevance of the organization and the validity of the documentation and must meet the criteria spelled out below. The letter(s) of support is an input used to determine the relevance of the organization and the validity of</p>

<p>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.</p> <p>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.</p> <p>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.</p>	<p>the documentation.</p> <p>Consider the following:</p> <p>Are there multiple institutions/organizations supporting the application, with documented support from institutions/organizations representing a majority of the overall community addressed?</p> <p>Does the applicant have support from the majority of the recognized community institution/member organizations?</p> <p>Has the applicant provided full documentation that it has authority to represent the community with its application?</p> <p>A majority of the overall community may be determined by, but not restricted to, considerations such as headcount, the geographic reach of the organizations, or other features such as the degree of power of the organizations.</p> <p><u>Determining relevance and recognition</u></p> <p><i>Is the organization relevant and/or recognized as per the definitions above?</i></p> <p><u>Letter requirements & validity</u></p> <p><i>Does the letter clearly express the organization’s support for the community-based application?</i></p> <p><i>Does the letter demonstrate the organization’s understanding of the string being requested?</i></p> <p><i>Is the documentation submitted by the applicant valid (i.e. the organization exists and the letter is authentic)?</i></p> <p>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</p>
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	expressions of support received.
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4-B Opposition

AGB Criteria	Evaluation Guidelines
Scoring	
<p>Opposition: 2= No opposition of relevance 1= Relevant opposition from one group of non-negligible size 0= Relevant opposition from two or more groups of non-negligible size</p>	<p>The following question must be scored when evaluating the application:</p> <p style="text-align: center;"><i>Does the application have any opposition that is deemed relevant?</i></p>
Definitions	
<p>“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.</p>	<p>Consider the following: For “non-negligible” size, “relevant” and “relevance” consider:</p> <ul style="list-style-type: none"> • <i>If the application has opposition from communities that are deemed to be relevant.</i> • <i>If a web search may help determine relevance and size of the objecting organization(s).</i> • <i>If there is opposition by some other reputable organization(s), such as a quasi-official, publicly recognized organization(s) or a peer organization(s)?</i> • <i>If there is opposition from a part of the community explicitly or implicitly addressed?</i>
Criterion 4-B Guidelines	
<p>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</p>	<p>Letter(s) of opposition and their verification: Letter(s) of opposition should be evaluated to determine both the relevance of the organization and the validity of the documentation and should meet the criteria spelled out below.</p> <p><u>Determining relevance and recognition</u> <i>Is the organization relevant and/or</i></p>

<p>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.</p>	<p><i>recognized as per the definitions above?</i></p> <p><u>Letter requirements & validity</u></p> <p><i>Does the letter clearly express the organization's opposition to the applicant's application?</i></p> <p><i>Does the letter demonstrate the organization's understanding of the string being requested?</i></p> <p><i>Is the documentation submitted by the organization valid (i.e. the organization exists and the letter is authentic)?</i></p> <p>To be considered relevant opposition, such documentation should contain a description of the process and rationale used in arriving at the expression of opposition. Consideration of opposition is not based merely on the number of comments or expressions of opposition received.</p>
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Verification of letter(s) of support and opposition

Additional information on the verification of letter(s) of support and opposition:

- Changes in governments may result in new leadership at government agencies. As such, the signatory need only have held the position as of the date the letter was signed or sealed.
- A contact name should be provided in the letter(s) of support or opposition.
- The contact must send an email acknowledging that the letter is authentic, as a verbal acknowledgement is not sufficient.
- In cases where the letter was signed or sealed by an individual who is not currently holding that office or a position of authority, the letter is valid only if the individual was the appropriate authority at the time that the letter was signed or sealed.

About the Community Priority Evaluation Panel and its Processes

The Economist Intelligence Unit (EIU) is the business information arm of The Economist Group, publisher of The Economist. Through a global network of more than 900 analysts and contributors, the EIU continuously assesses political, economic, and business conditions in more than 200 countries. As the world's leading provider of country intelligence, the EIU helps executives, governments, and institutions by providing timely, reliable, and impartial analysis.

The EIU was selected as a Panel Firm for the gTLD evaluation process based on a number of criteria, including:

- The panel will be an internationally recognized firm or organization with significant demonstrated expertise in the evaluation and assessment of proposals in which the relationship of the proposal to a defined public or private community plays an important role.
- The provider must be able to convene a linguistically and culturally diverse panel capable, in the aggregate, of evaluating Applications from a wide variety of different communities.
- The panel must be able to exercise consistent and somewhat subjective judgment in making its evaluations in order to reach conclusions that are compelling and defensible, and
- The panel must be able to document the way in which it has done so in each case.

The evaluation process will respect the principles of fairness, transparency, avoiding potential conflicts of interest, and non-discrimination. Consistency of approach in scoring Applications will be of particular importance.

The following principles characterize the EIU evaluation process for gTLD applications:

- All EIU evaluators must ensure that no conflicts of interest exist.
- All EIU evaluators must undergo training and be fully cognizant of all CPE requirements as listed in the Applicant Guidebook. This process will include a pilot testing process.
- EIU evaluators are selected based on their knowledge of specific countries, regions and/or industries, as they pertain to Applications.
- Language skills will also be considered in the selection of evaluators and the assignment of specific Applications.
- 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 EIU will fully cooperate with ICANN's quality control process.

R-2

RESPONDENT'S EXHIBIT



TOP-LEVEL DOMAIN APPLICATION TERMS AND CONDITIONS

By submitting this application through ICANN's online interface for a generic Top Level Domain (gTLD) (this application), applicant (including all parent companies, subsidiaries, affiliates, agents, contractors, employees and any and all others acting on its behalf) agrees to the following terms and conditions (these terms and conditions) without modification. Applicant understands and agrees that these terms and conditions are binding on applicant and are a material part of this application.

1. 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. Applicant acknowledges that any material misstatement or misrepresentation (or omission of material information) may cause ICANN and the evaluators to reject the application without a refund of any fees paid by Applicant. Applicant agrees to notify ICANN in writing of any change in circumstances that would render any information provided in the application false or misleading.
2. Applicant warrants that it has the requisite organizational power and authority to make this application on behalf of applicant, and is able to make all agreements, representations, waivers, and understandings stated in these terms and conditions and to enter into the form of registry agreement as posted with these terms and conditions.
3. Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more gTLDs and to delegate new gTLDs after such approval is entirely at ICANN's discretion. ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant.
4. Applicant agrees to pay all fees that are associated with this application. These fees include the evaluation fee (which is to be paid in conjunction with the submission of this application), and any fees associated with the progress of the application to the extended evaluation stages of the review and consideration process with respect to the application, including any and all fees as may be required in conjunction with the dispute resolution process as set forth in the application. Applicant acknowledges that the initial fee due upon submission of the application is only to obtain consideration of an application. ICANN makes no assurances that an application will be approved or will result in the delegation of a gTLD proposed in an application. Applicant acknowledges that if it fails to pay fees within the designated time period at any stage of the application review and consideration process, applicant will forfeit any fees paid up to that point and the application will be cancelled. Except as expressly provided in this Application Guidebook, ICANN is not obligated to reimburse an applicant for or to return any fees paid to ICANN in connection with the application process.
5. Applicant shall indemnify, defend, and hold harmless ICANN (including its affiliates, subsidiaries, directors, officers, employees, consultants, evaluators, and agents, collectively the ICANN Affiliated Parties) from and against any and all third-party claims, damages, liabilities, costs, and expenses, including legal fees and expenses, arising out of or relating to: (a) ICANN's or an ICANN Affiliated Party's consideration of the application, and any approval, rejection or withdrawal of the application; and/or (b) ICANN's or an ICANN Affiliated Party's reliance on information provided by applicant in the application.

6. Applicant hereby releases ICANN and the ICANN Affiliated Parties from any and all claims by applicant that arise out of, are based upon, or are in any way related to, any action, or failure to act, by ICANN or any ICANN Affiliated Party in connection with ICANN's or an ICANN Affiliated Party's review of this application, investigation or verification, any characterization or description of applicant or the information in this application, any withdrawal of this application or the decision by ICANN to recommend, or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES AND ACCEPTS THAT APPLICANT'S NONENTITLEMENT TO PURSUE ANY RIGHTS, REMEDIES, OR LEGAL CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED PARTIES IN COURT OR ANY OTHER JUDICIAL FORA WITH RESPECT TO THE APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO ANY RECOVERY OF ANY APPLICATION FEES, MONIES INVESTED IN BUSINESS INFRASTRUCTURE OR OTHER STARTUP COSTS AND ANY AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM THE OPERATION OF A REGISTRY FOR THE TLD; PROVIDED, THAT APPLICANT MAY UTILIZE ANY ACCOUNTABILITY MECHANISM SET FORTH IN ICANN'S BYLAWS FOR PURPOSES OF CHALLENGING ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES THAT ANY ICANN AFFILIATED PARTY IS AN EXPRESS THIRD PARTY BENEFICIARY OF THIS SECTION 6 AND MAY ENFORCE EACH PROVISION OF THIS SECTION 6 AGAINST APPLICANT.

7. Applicant hereby authorizes ICANN to publish on ICANN's website, and to disclose or publicize in any other manner, any materials submitted to, or obtained or generated by, ICANN and the ICANN Affiliated Parties in connection with the application, including evaluations, analyses and any other materials prepared in connection with the evaluation of the application; provided, however, that information will not be disclosed or published to the extent that this Applicant Guidebook expressly states that such information will be kept confidential, except as required by law or judicial process. Except for information afforded confidential treatment, applicant understands and acknowledges that ICANN does not and will not keep the remaining portion of the application or materials submitted with the application confidential.

8. Applicant certifies that it has obtained permission for the posting of any personally identifying information included in this application or materials submitted with this application. Applicant acknowledges that the information that ICANN posts may remain in the public domain in perpetuity, at ICANN's discretion. Applicant acknowledges that ICANN will handle personal information collected in accordance with its gTLD Program privacy statement

<<http://newgtlds.icann.org/en/applicants/agb/program-privacy> (<https://owa.icann.org/owa/redir.aspx?C=5d8600a491ff489e9c6d2be49d784307&URL=http%3a%2f%2fnewgtlds.icann.org%2fen%2fapplicants%2faqb%2fprogram-privacy>)>, which is incorporated herein by this reference. If requested by ICANN, Applicant will be required to obtain and deliver to ICANN and ICANN's background screening vendor any consents or agreements of the entities and/or individuals named in questions 1-11 of the application form necessary to conduct these background screening activities. In addition, Applicant acknowledges that to allow ICANN to conduct thorough background screening investigations:

- a. Applicant may be required to provide documented consent for release of records to ICANN by organizations or government agencies;
- b. Applicant may be required to obtain specific government records directly and supply those records to ICANN for review;
- c. Additional identifying information may be required to resolve questions of identity of individuals within the applicant organization;
- d. Applicant may be requested to supply certain information in the original language as well as in English.

9. Applicant gives ICANN permission to use applicant's name in ICANN's public announcements (including informational web pages) relating to Applicant's application and any action taken by ICANN related thereto.

10. Applicant understands and agrees that it will acquire rights in connection with a gTLD only in the event that it enters into

a registry agreement with ICANN, and that applicant's rights in connection with such gTLD will be limited to those expressly stated in the registry agreement. In the event ICANN agrees to recommend the approval of the application for applicant's proposed gTLD, applicant agrees to enter into the registry agreement with ICANN in the form published in connection with the application materials. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed draft agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process). Applicant may not resell, assign, or transfer any of applicant's rights or obligations in connection with the application.

11. Applicant authorizes ICANN to:

a. Contact any person, group, or entity to request, obtain, and discuss any documentation or other information that, in ICANN's sole judgment, may be pertinent to the application;

b. Consult with persons of ICANN's choosing regarding the information in the application or otherwise coming into ICANN's possession, provided, however, that ICANN will use reasonable efforts to ensure that such persons maintain the confidentiality of information in the application that this Applicant Guidebook expressly states will be kept confidential.

12. For the convenience of applicants around the world, the application materials published by ICANN in the English language have been translated into certain other languages frequently used around the world. Applicant recognizes that the English language version of the application materials (of which these terms and conditions is a part) is the version that binds the parties, that such translations are non-official interpretations and may not be relied upon as accurate in all respects, and that in the event of any conflict between the translated versions of the application materials and the English language version, the English language version controls.

13. Applicant understands that ICANN has a long-standing relationship with Jones Day, an international law firm, and that ICANN intends to continue to be represented by Jones Day throughout the application process and the resulting delegation of TLDs. ICANN does not know whether any particular applicant is or is not a client of Jones Day. To the extent that Applicant is a Jones Day client, by submitting this application, Applicant agrees to execute a waiver permitting Jones Day to represent ICANN adverse to Applicant in the matter. Applicant further agrees that by submitting its Application, Applicant is agreeing to execute waivers or take similar reasonable actions to permit other law and consulting firms retained by ICANN in connection with the review and evaluation of its application to represent ICANN adverse to Applicant in the matter.

14. ICANN reserves the right to make reasonable updates and changes to this applicant guidebook and to the application process, including the process for withdrawing the application, at any time by posting notice of such updates and changes to the ICANN website, including as the possible result of new policies that might be adopted or advice to ICANN from ICANN advisory committees during the course of the application process. Applicant acknowledges that ICANN may make such updates and changes and agrees that its application will be subject to any such updates and changes. In the event that Applicant has completed and submitted its application prior to such updates or changes and Applicant can demonstrate to ICANN that compliance with such updates or changes would present a material hardship to Applicant, then ICANN will work with Applicant in good faith to attempt to make reasonable accommodations in order to mitigate any negative consequences for Applicant to the extent possible consistent with ICANN's mission to ensure the stable and secure operation of the Internet's unique identifier systems.

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RESPONDENT'S EXHIBIT



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Approved Resolutions | Meeting of the New gTLD Program Committee

05 Feb 2014

1. Main Agenda

- a. [Remaining Items from Beijing, Durban and Buenos Aires GAC Advice: Updates and Actions](#)
[Rationale for Resolution 2014.02.05.NG01](#)
- b. [Discussion of Report on String Confusion Expert Determinations](#)
[Rationale for Resolution 2014.02.05.NG02](#)
- c. [Staff Update on Reassignment of Registry Agreements](#)
- d. [Staff Update on Name Collision Framework](#)

1. Main Agenda:

a. Remaining Items from Beijing, Durban and Buenos Aires GAC Advice: Updates and Actions

Whereas, the [GAC](#) met during the [ICANN 46](#) meeting in Beijing and issued a Communiqué on 11 April 2013 ("Beijing Communiqué").

Whereas, the [GAC](#) met during the [ICANN 47](#) meeting in Durban and issued a Communiqué on 18 July 2013 ("Durban Communiqué").

Whereas, the [GAC](#) met during the [ICANN 48](#) meeting in Buenos Aires and issued a Communiqué on 20 November 2013 ("Buenos Aires Communiqué").

Whereas, the NGPC adopted scorecards to respond to certain items of the [GAC's](#) advice in the Beijing Communiqué and the Durban Communiqué, which were adopted on 4 June 2013, 10 September 2013, and 28 September 2013.

Whereas, the NGPC has developed another iteration of the scorecard to respond to certain remaining items of [GAC](#) advice in the Beijing Communiqué and the Durban Communiqué, and new advice in the Buenos Aires Communiqué.

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the [ICANN Board's](#) authority for any and all issues that may arise relating to the New [gTLD](#) Program.

Resolved (2014.02.05.NG01), the NGPC adopts the "GAC Advice (Beijing, Durban, Buenos Aires): Actions and Updates" (5 February 2014), attached as [Annex 1](#) [PDF, 371 KB] to this Resolution, in response to open items of Beijing, Durban and Buenos Aires [GAC](#) advice as presented in the scorecard.

Rationale for Resolution 2014.02.05.NG01

Article XI, Section 2.1 of the [ICANN](#) Bylaws

<http://www.icann.org/en/about/governance/bylaws#XI> permit the [GAC](#) to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The [GAC](#) issued advice to the Board on the New [gTLD](#) Program through its Beijing Communiqué dated 11 April 2013, its Durban Communiqué dated 18 July 2013, and its Buenos Aires Communiqué dated 20 November 2013. The [ICANN](#) Bylaws require the Board to take into account the [GAC](#)'s advice on public policy matters in the formulation and adoption of the policies. If the Board decides to take an action that is not consistent with the [GAC](#) advice, it must inform the [GAC](#) and state the reasons why it decided not to follow the advice. The Board and the [GAC](#) will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the [GAC](#) advice was not followed.

The NGPC has previously addressed items of the [GAC](#)'s Beijing and Durban advice, but there are some items that the NGPC continues to work through. Additionally, the [GAC](#) issued new advice in its Buenos Aires Communiqué that relates to the New [gTLD](#) Program. The NGPC is being asked to consider accepting some of the remaining open items of the Beijing and Durban [GAC](#) advice, and new items of Buenos Aires advice as described in the attached scorecard dated 28 January 2014.

As part of its consideration of the [GAC](#) advice, [ICANN](#) posted the [GAC](#) advice and officially notified applicants of the advice, triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. The Beijing [GAC](#) advice was posted on 18 April 2013 <http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>, the Durban [GAC](#) advice was posted on 1 August 2013 <http://newgtlds.icann.org/en/announcements-and-media/announcement-01aug13-en>, and the Buenos Aires [GAC](#) advice was posted on 11 December 2013. The complete set of applicant responses are provided at: <http://newgtlds.icann.org/en/applicants/gac-advice/>.

In addition, on 23 April 2013, [ICANN](#) initiated a public comment forum to solicit input on how the NGPC should address Beijing [GAC](#) advice regarding safeguards applicable to broad categories of new [gTLD](#) strings <http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>. The NGPC has considered the applicant responses in addition to the community feedback on how [ICANN](#) could implement the [GAC](#)'s safeguard advice in the Beijing Communiqué in formulating its response to the remaining items of [GAC](#) advice.

As part of the applicant responses, several of the applicants who were subject to [GAC](#) Category 1 Safeguard Advice have indicated that they support the NGPC's proposed implementation plan, dated 29 October 2013, and voiced their willingness to comply with the safeguards proposed in the plan. On the other hand, an applicant noted that the NGPC's plan to respond to the [GAC](#)'s Category 1 Safeguard advice is a "step back from what the [GAC](#) has asked for" with regard to certain strings. Others contended that their applied-for string should not be listed among the Category 1 Safeguard strings. Some of the applicants for the .doctor string noted that the NGPC should not accept the new [GAC](#) advice on .doctor because the term "doctor" is not

used exclusively in connection with medical services and to re-categorize the string as relating to a highly regulated sector is unfair and unjust.

With respect to the Category 2 Safeguards, some applicants urged ICANN to ensure that any Public Interest Commitments or application changes based on safeguards for applications in contention sets are "bindingly implemented and monitored after being approved as a Change Request." Additionally, some applicants indicated their support for the GAC advice protections for inter-governmental organization acronyms, protection of Red Cross/Red Crescent names, and special launch programs for geographic and community TLDs.

As part of its deliberations, the NGPC reviewed the following materials and documents:

- GAC Beijing Communiqué:
https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communiqversion=1&modificationDate=1375787122000&api=v2 [PDF, 238 KB]
- GAC Durban Communiqué:
https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communiqversion=1&modificationDate=1374215119858&api=v2 [PDF, 103 KB]
- GAC Buenos Aires Communiqué:
https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_Cversion=1&modificationDate=1385055905332&api=v2 [PDF, 97 KB]
- Letter from H. Dryden to S. Crocker dated 11 September 2013 re: .vin and .wine: <http://www.icann.org/en/news/correspondence/dryden-to-crocker-09sep13-en.pdf> [PDF, 66 KB]
- Applicant responses to GAC advice: <http://newgtlds.icann.org/en/applicants/gac-advice/>
- Applicant Guidebook, Module 3:
<http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf> [PDF, 261 KB]

In adopting its response to remaining items of Beijing and Durban GAC advice, and the new Buenos Aires advice, the NGPC considered the applicant comments submitted, the GAC's advice transmitted in the Communiqués, and the procedures established in the AGB and the ICANN Bylaws. The adoption of the GAC advice as provided in the attached scorecard will assist with resolving the GAC advice in manner that permits the greatest number of new gTLD applications to continue to move forward as soon as possible.

There are no foreseen fiscal impacts associated with the adoption of this resolution, but fiscal impacts of the possible solutions discussed will be further analysed if adopted. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS.

As part of ICANN's organizational administrative function, ICANN posted the Buenos Aires GAC advice and officially notified applicants of the advice on 11 December 2013. The Durban Communiqué and the Beijing Communiqué were posted on 18 April 2013 and 1 August 2013, respectively. In each case, this triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1.

b. Discussion of Report on String Confusion Expert Determinations

Whereas, on 10 October 2013 the Board Governance Committee (BGC) requested staff to draft a report for the NGPC on String Confusion Objections "setting out options for dealing with the situation raised within this Request, namely the differing outcomes of the String Confusion Objection Dispute Resolution process in similar disputes involving Amazon 's Applied – for String and TLDH's Applied-for String."

Whereas, the NGPC is considering potential paths forward to address the perceived inconsistent Expert Determinations from the New gTLD Program String Confusion Objections process, including implementing a review mechanism. The review will be limited to the String Confusion Objection Expert Determinations for .CAR/.CARS and .CAM/.COM.

Whereas, the proposed review mechanism, if implemented, would constitute a change to the current String Confusion Objection process in the New gTLD Applicant Guidebook.

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2014.02.05.NG02), the NGPC directs the President and CEO, or his designee, to publish for public comment the proposed review mechanism for addressing perceived inconsistent Expert Determinations from the New gTLD Program String Confusion Objections process.

Rationale for Resolution 2014.02.05.NG02

The NGPC's action today, addressing how to deal with perceived inconsistent Expert Determinations from the New gTLD Program String Confusion Objections process, is part of the NGPC's role to provide general oversight of the New gTLD Program. One core of that work is "resolving issues relating to the approval of applications and the delegation of gTLDs pursuant to the New gTLD Program for the current round of the Program." (See NGPC Charter, Section II.D).

The action being approved today is to first direct the ICANN President and CEO, or his designee, to initiate a public comment period on the framework principles of a potential review mechanism to address the perceived inconsistent String Confusion Objection Expert Determinations.

The effect of this proposal, and the issue that is likely to be before the NGPC after the close of the public comments, is to consider implementing a new review mechanism in the String Confusion Objection cases where objections were raised by the same objector against different applications for the same string, where the outcomes of the String Confusion Objections differ. If the proposal is eventually adopted after public comment and further consideration by the NGPC, ICANN would work with the International Centre for Dispute Resolution (ICDR) to implement the new review mechanism outlined in the proposal.

There are no foreseen fiscal impacts associated with the adoption of this resolution, which would initiate the opening of public comments, but the fiscal impacts of the proposed new review mechanism will be further analyzed if adopted. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS. The posting of the proposal for public comment is an Organizational Administrative Action not requiring public comment, however follow on consideration of the proposal requires public comment.

c. Staff Update on Reassignment of Registry Agreements

Item not considered.

d. Staff Update on Name Collision Framework

Item not considered.

Published on 7 February 2014

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Domain Name System

Internationalized Domain Name (IDN), IDNs are domain names that include characters used in the local representation of languages that are not written with the twenty-six letters of the basic Latin alphabet "a-z". An IDN can contain Latin letters with diacritical marks, as required by many European languages, or may consist of characters from non-Latin scripts such as Arabic or Chinese. Many languages also use other types of digits than the European "0-9". The basic Latin alphabet together with the European-Arabic digits are, for the purpose of domain names, termed "ASCII characters" (ASCII = American Standard Code for Information Interchange). These are also included in the broader range of "Unicode characters" that provides the basis for IDNs. The "hostname rule" requires that all domain names of the type under consideration here are stored in the DNS using only the ASCII characters listed above, with the one further addition of the hyphen "-". The Unicode form of an IDN therefore requires special encoding before it is entered into the DNS. The following terminology is used when distinguishing between these forms: A domain name consists of a series of "labels" (separated by "dots"). The ASCII form of an IDN label is termed an "A-label". All operations defined in the DNS protocol use A-labels exclusively. The Unicode form, which a user expects to be displayed, is termed a "U-label". The difference may be illustrated with the Hindi word for "test" — परीका — appearing here as a U-label would (in the Devanagari script). A special form of "ASCII compatible encoding" (abbreviated ACE) is applied to this to produce the corresponding A-label: xn--11b5bs1di. A domain name that only includes ASCII letters, digits, and hyphens is termed an "LDH label". Although the definitions of A-labels and LDH-labels overlap, a name consisting exclusively of LDH labels, such as "icann.org" is not an IDN."

ANNEX 2 - ICANN NGPC RESOLUTION NO. 2014.02.05.NG01

GAC Category 1 Strings
(5 February 2014)

Regulated Sectors/Open Entry Requirements in Multiple Jurisdictions (Category 1 Safeguards 1-3 applicable)	Highly-regulated Sectors/Closed Entry Requirements in Multiple Jurisdictions (Category 1 Safeguards 1-8 applicable)
Children: .kid, .kids, .kinder, .game, .games, .juegos, .play, .school, .schule, toys	
Environmental: .earth, .eco, .green, .bio, .organic	
Health and Fitness: .care, .diet, .fit, .fitness, .health, .heart, .hiv, .rehab, .clinic, .healthy (IDN Chinese equivalent), .dental, .physio, .healthcare, .med, .organic	Health and Fitness: .pharmacy, .surgery, .dentist, .dds, .hospital, .medical, .doctor
Financial: capital, . cash, .cashbackbonus, .broker, .brokers, .claims, .exchange, .finance, .financial, .forex, .fund, .investments, .lease, .loan, .loans, .market, . markets, .money, .pay, .payu, .retirement, .save, .trading, .credit, .insure, .netbank, .tax, .travelersinsurance, .financialaid, .vermogensberatung, .mortgage, .reit	Financial: .bank, .banque, .creditunion, .creditcard, .insurance, .ira, .lifeinsurance, .mutualfunds, .mutuelle, .vermogensberater, and .vesicherung, .autoinsurance, .carinsurance
	Gambling: .bet, .bingo, .lotto, .poker, .spreadbetting, .casino
Charity: .care, .gives, .giving	Charity: .charity (and IDN Chinese equivalent)
Education: .degree, .mba	Education: .university
Intellectual Property: .audio, .book (and IDN equivalent), .broadway, .film, .game,	

ANNEX 2 - ICANN NGPC RESOLUTION NO. 2014.02.05.NG01

Regulated Sectors/Open Entry Requirements in Multiple Jurisdictions (Category 1 Safeguards 1-3 applicable)	Highly-regulated Sectors/Closed Entry Requirements in Multiple Jurisdictions (Category 1 Safeguards 1-8 applicable)
.games, .juegos, .movie, .music, .software, .song, .tunes, .fashion (and IDN equivalent), .video, .app, .art, .author, .band, .beats, .cloud (and IDN equivalent), .data, .design, .digital, .download, .entertainment, .fan, .fans, .free, .gratis, .discount, .sale, .hiphop, .media, .news, .online, .pictures, .radio, .rip, .show, .theater, .theatre, .tour, .tours, .tvs, .video, .zip	
Professional Services: .accountant, .accountants, .architect, .associates, .broker, .brokers, .engineer, .legal, .realtor, .realty, .vet, .engineering, .law	Professional Services: .abogado, .attorney, .cpa, .dentist, .dds, .lawyer, .doctor
Corporate Identifiers: .limited	Corporate Identifiers: .corp, .gmbh, .inc, .llc, .llp, .ltda, .ltd, .sarl, .srl, .sal
Generic Geographic Terms: .capital .town, .city	
.reise, .reisen .weather	

Special Safeguards Required

Potential for Cyber Bullying/Harassment (Category 1 Safeguards 1-9 applicable): .fail, .gripe, .sucks, .wtf
Inherently Governmental Functions (Category 1 Safeguards 1-8 and 10 applicable): .army, .navy, .airforce

ANNEX 2 - ICANN NGPC RESOLUTION NO. 2014.02.05.NG01**Category 1 Safeguards as Public Interest Commitments in Specification 11 of the New gTLD Registry Agreement**

1. Registry operators will include a provision in their Registry-Registrar Agreements that requires Registrars to include in their Registration Agreements a provision requiring registrants to comply with all applicable laws, including those that relate to privacy, data collection, consumer protection (including in relation to misleading and deceptive conduct), fair lending, debt collection, organic farming, disclosure of data, and financial disclosures.
2. Registry operators will include a provision in their Registry-Registrar Agreements that requires registrars at the time of registration to notify registrants of the requirement to comply with all applicable laws.
3. Registry operators will include a provision in their Registry-Registrar Agreements that requires Registrars to include in their Registration Agreements a provision requiring that registrants who collect and maintain sensitive health and financial data implement reasonable and appropriate security measures commensurate with the offering of those services, as defined by applicable law.
4. Registry operators will proactively create a clear pathway for the creation of a working relationship with the relevant regulatory or industry self-regulatory bodies by publicizing a point of contact and inviting such bodies to establish a channel of communication, including for the purpose of facilitating the development of a strategy to mitigate the risks of fraudulent and other illegal activities.
5. Registry operators will include a provision in their Registry-Registrar Agreements that requires Registrars to include in their Registration Agreements a provision requiring Registrants to provide administrative contact information, which must be kept up-to-date, for the notification of complaints or reports of registration abuse, as well as the contact details of the relevant regulatory, or industry self-regulatory, bodies in their main place of business.
6. Registry operators will include a provision in their Registry-Registrar Agreements that requires Registrars to include in their Registration Agreements a provision requiring a representation that the Registrant possesses any necessary authorisations, charters, licenses and/or other related credentials for participation in the sector associated with the Registry TLD string.
7. If a Registry Operator receives a complaint expressing doubt with regard to the authenticity of licenses or credentials, Registry Operators should consult with relevant national supervisory authorities, or their equivalents regarding the authenticity.

ANNEX 2 - ICANN NGPC RESOLUTION NO. 2014.02.05.NG01

8. Registry operators will include a provision in their Registry-Registrar Agreements that requires Registrars to include in their Registration Agreements a provision requiring Registrants to report any material changes to the validity of the Registrants' authorisations, charters, licenses and/or other related credentials for participation in the sector associated with the Registry TLD string in order to ensure they continue to conform to appropriate regulations and licensing requirements and generally conduct their activities in the interests of the consumers they serve.

[APPLICABLE WHERE "SPECIAL SAFEGUARDS REQUIRED" NOTED ABOVE.]

9. Registry Operator will develop and publish registration policies to minimize the risk of cyber bullying and/or harassment.
10. Registry operator will include a provision in its Registry-Registrar Agreements that requires Registrars to include in their Registration Agreements a provision requiring a representation that the Registrant will take reasonable steps to avoid misrepresenting or falsely implying that the Registrant or its business is affiliated with, sponsored or endorsed by one or more country's or government's military forces if such affiliation, sponsorship or endorsement does not exist.

R-4

RESPONDENT'S EXHIBIT

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

ICDR Case No. 50 117 T 00224 08

In the Matter of an Independent Review Process:

ICM REGISTRY, LLC,

Claimant,

v.

**INTERNET CORPORATION FOR ASSIGNED NAMES
AND NUMBERS (“ICANN”),**

Respondent

DECLARATION OF THE INDEPENDENT REVIEW PANEL

Judge Stephen M. Schwebel, *Presiding*
Mr. Jan Paulsson
Judge Dickran Tevrizian

February 19, 2010

board's concern demonstrating the existence of a sponsored community...this silence is disrespectful to the applicant and does a disservice to the community...I've also been concerned ... about the scale of the obligations accepted by the applicant...some of those have been forced upon them by the process..in the end I am satisfied that the compliance rules raise no new issues in kind from previous contracts. And I say that if ICANN is going to raise this kind of objection, then it better think seriously of getting out of the business of introducing new TLDs ... I do not think that this contract would make ICANN a content regulator..." (Id., pp. 7-8.)

51. Njeri Ronge stated that, in addition to the reasons stated in the resolution, "the ICM proposal will not protect the relevant or interested community from the adult entertainment Web sites by a significant percentage; ... the ICM proposal focuses on content management which is not in ICANN's technical mandate." (Id., p. 8.)

52. Susan Crawford dissented from the resolution, which she found "not only weak but unprincipled".

"I am troubled by the path the board has followed on this issue...ICANN only creates problems for itself when it acts in an ad hoc fashion in response to political pressures. ICANN...should resist efforts by governments to veto what it does...The most fundamental value of the global Internet community is that people who propose to use the Internet protocols and infrastructures for otherwise lawful purposes, without threatening the operational stability or security of the Internet, should be presumed to be entitled to do so. In a nutshell, everything not prohibited is permitted. This understanding...has led directly to the striking success of the Internet around the world. ICANN's role in gTLD policy development is to seek to assess and articulate the broadly shared values of the Internet community. We have very limited authority. I am personally not aware that any global consensus against the creation of a triple X domain exists. In the absence of such a prohibition, and given our mandate to create TLD competition, we have no authority to block the addition of this TLD to the root. It is very clear that we do not have a global shared set of values about content on line, save for the global norm against child pornography. But the global Internet community clearly does share the core value that no centralized authority should set itself up as the arbiter of what people may do together on line, absent a demonstration that most of those affected by the proposed activity agree that it should be banned...the

credibly resolved with the mechanisms proposed by the applicant. ICM responds that this is merely an elaboration of Reason 2. ICM's proposed agreement contained detailed provisions to address child pornography issues and detailed mechanisms that would permit the identification and filtration of content deemed to be illegal or offensive.

91. Reason 4: the ICM application raises significant law enforcement compliance issues because of countries' varying laws relating to content and practices that define the nature of the application, therefore obligating ICANN to acquire a responsibility related to content and conduct. ICM responds that this builds on the fallacy of Reasons 2 and 3: according to the Board's apparent reasoning, the GAC was requiring ICM to enforce local restrictions on access to illegal and offensive content and if proved unable to do so, ICANN would have to do so. ICM responds that ICANN could not properly require ICM to undertake such enforcement obligations, whether or not the GAC actually so requested. Given that it would have been discriminatory and unfeasible to require ICM to enforce varying national laws regarding adult content, ICANN would not have been obligated to take over that responsibility if ICANN were unable to fulfill it.

92. Reason 5: there are credible scenarios in which ICANN would be forced to assume an ongoing management and oversight role regarding Internet content, inconsistent with its technical mandate. ICM responds that this largely restates Reason 4. ICANN interpreted the GAC's advice to require ICM to be responsible for regulating content on the Internet – a task plainly outside ICANN's mandate. ICANN then criticized ICM for taking on that task and complained that it would have to undertake the task if ICM were unable to fulfill it. But ICANN could not properly require ICM to regulate content on the Internet and ICM did not undertake to do so.

93. The above exposition of the contentions of ICM, while long, does not exhaust the full range of its arguments, which were developed at length and in detail in its Memorial and in oral argument. It does not, for example, fully set out its contentions on the effect of international law and the local law on these proceedings. The essence of that argument is that ICANN is bound to act in good faith, an argument that the Panel does not find it necessary to expound since the conclusion is not open to challenge and is not challenged by counsel for ICANN. ICANN does not accept ICM's reliance on principles of international law but it agrees that the principle of good faith is found in the corporate law of California and hence is applicable in the instant dispute.

94. The “Relief Requested” by ICM Registry consists, *inter alia*, of requesting that the Panel declare that its Declaration is binding upon ICM and ICANN; and that ICANN acted inconsistently with its Articles of Incorporation and Bylaws by:

“i. Failing to conduct negotiations in good faith and to conclude an agreement with ICM to serve as registry operator for the .XXX sTLD;

“ii. Rejecting ICM’s proposed agreement to serve as registry operator...

“iii. Rejecting ICM’s application on 30 March 2007, after having previously concluded that it met the RFP criteria on 1 June 2005;

“iv. Rejecting ICM’s application on 30 March 2007 on the basis of the five grounds set forth...none of which were based on criteria set forth in the RFP criteria...

“v. Rejecting ICM’s application after ICANN had approved ICM to proceed to contract negotiations...” (Claimant’s Memorial on the Merits, pp. 265-267.)

The Contentions of ICANN

95. ICANN maintains that (a) the Independent Review Process is advisory, not arbitral; (b) the judgments of the ICANN Board are to be deferentially appraised; (c) the governing law is that of the State of California, not the principles of international law; and (d) in its treatment and disposition of the application of ICM Registry, ICANN acted consistently with its Articles of Incorporation and Bylaws.

The Nature of the Independent Review Process

96. ICANN invokes the provisions of the Bylaws that govern the IRP process, entitled, “Independent Review of Board Actions”. Article IV, Section 3, provides that:

“1. ...ICANN shall have in place a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws.

“2. Any person materially affected by a decision or action of the Board that he or she asserts is inconsistent with the Articles of

130. As to whether ICM was treated unfairly and was the object of discrimination, ICANN relies on the following statement of Dr. Cerf at the hearing:

“...I am surprised at an assertion that ICM was treated unfairly...the board could have simply accepted the recommendations of the evaluation teams and rejected the proposal at the outset...the board went out of its way to try to work with ICM through the staff to achieve a satisfactory agreement. We spent more time on this particular proposal than any other...We repeatedly defended our continued consideration of this proposal...If...ICM believes that it was treated in a singular way, I would agree that we spent more time and effort on this than any other proposal that came to the board with regard to sponsored TLDs.” (Tr. 654:3-655:7.)

PART FOUR: THE ANALYSIS OF THE INDEPENDENT REVIEW PANEL

The Nature of the Independent Review Panel Process

131. ICM and ICANN differ on the question of whether the Declaration to be issued by the Independent Review Panel is binding upon the parties or advisory. The conflicting considerations advanced by them are summarized above at paragraphs 51 and 91-94. In the light of them, the Panel acknowledges that there is a measure of ambiguity in the pertinent provisions of the Bylaws and in their preparatory work.

132. ICANN’s officers testified before committees of the U.S. Congress that ICANN had installed provision for appeal to “independent arbitration” (*supra*, paragraph 55). Article IV, Section 3 of ICANN’s Bylaws specifies that, “The IRP shall be operated by an international arbitration provider appointed from time to time by ICANN...using arbitrators...nominated by that provider”. The provider so chosen is the American Arbitration Association’s International Centre for Dispute Resolution (“ICDR”), whose Rules (at C-11) in Article 27 provide for the making of arbitral awards which “shall be final and binding on the parties. The parties undertake to carry out any such award without delay.” The Rules of the ICDR “govern the arbitration” (Article 1). It is unquestioned that the term, “arbitration” imports production of a binding award (in contrast to conciliation and mediation). Federal and California courts have so held. The Supplementary Procedures adopted to supplement the independent review procedures set forth in ICANN’s Bylaws provide that the ICDR’s “International Arbitration Rules...will govern the process in combination with these Supplementary Procedures”. (C-12.) They specify

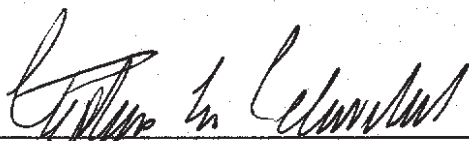
that the Independent Review Panel refers to the neutrals “appointed to decide the issue(s) presented” and further specify that, “DECLARATION refers to the decisions/opinions of the IRP”. “The DECLARATION shall specifically designate the prevailing party.” All of these elements are suggestive of an arbitral process that produces a binding award.

133. But there are other indicia that cut the other way, and more deeply. The authority of the IRP is “to declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws” – to “declare”, not to “decide” or to “determine”. Section 3(8) of the Bylaws continues that the IRP shall have the authority to “recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the opinion of the IRP”. The IRP cannot “order” interim measures but do no more than “recommend” them, and this until the Board “reviews” and “acts upon the opinion” of the IRP. A board charged with reviewing an opinion is not charged with implementing a binding decision. Moreover, Section 3(15) provides that, “Where feasible, the Board shall consider the IRP declaration at the Board’s next meeting.” This relaxed temporal proviso to do no more than “consider” the IRP declaration, and to do so at the next meeting of the Board “where feasible”, emphasizes that it is not binding. If the IRP’s Declaration were binding, there would be nothing to consider but rather a determination or decision to implement in a timely manner. The Supplementary Procedures adopted for IRP, in the article on “Form and Effect of an IRP Declaration”, significantly omit the provision of Article 27 of the ICDR Rules specifying that award “shall be final and binding on the parties”. (C-12.) Moreover, the preparatory work of the IRP provisions summarized above in paragraph 93 confirms that the intention of the drafters of the IRP process was to put in place a process that produced declarations that would not be binding and that left ultimate decision-making authority in the hands of the Board.

134. In the light of the foregoing considerations, it is concluded that the Panel’s Declaration is not binding, but rather advisory in effect.

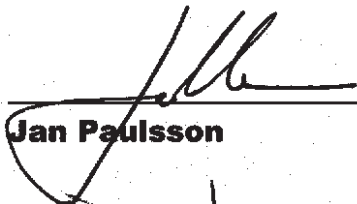
The Standard of Review Applied by the Independent Review Process

135. For the reasons summarized above in paragraph 56, ICM maintains that this is a *de novo* review in which the decisions of the ICANN Board do not enjoy a deferential standard of review. For the reasons summarized above in paragraphs 100-103, ICANN maintains that the decisions of the Board are entitled to deference by the IRP.



Stephen M. Schwebel

Date: February 19, 2010



Jan Paulsson

Date: 16 February 2010



Dickran Tevrizian

Date: February 18, 2010