

Community Priority Evaluation Scoring

CPE Criteria in ICANN gTLD Applicant Guidebook		Score Awarded by EIU/ICANN	Correct Score (Expert Report of Michael A. Flynn)		
			.INC	.LLC	.LLP
Criterion 1 Community Establishment (0-4 Points)	Delineation (2 points) ("clearly delineated, organized and pre-existing community")	0	2	2	2
	Extension—Size (1 point) ("community of considerable size and longevity")	0	1	1	1
	Extension—Longevity (1 point) ("community of considerable size and longevity")	0	1	1	1
	Total Points for Criterion 1	0	4	4	4
Criterion 2 Nexus (0-4 Points)	Nexus between String and Community – Nexus (3 points) ("string matches the name of the community or well-known short form or abbreviation of the community name.")	0	2	3	2
	Nexus between String and Community – Uniqueness (1 point) ("String has no other significant meaning beyond identifying the community described in the application.")	0	1	1	1
	Total Points for Criterion 2	0	3	4	3
Criterion 3 Registration Policies (0-4 Points)	Registration Policies – Eligibility (1 point) ("Eligibility is restricted to community members.")	1	1	1	1
	Registration Policies – Name selection (1 point) ("Policies include name selection rules consistent with the articulated community-based purpose of the applied for gTLD")	1	1	1	1
	Registration Policies – Content and Use (1 point) ("Policies include rules for content and use consistent with the articulated community-based purpose of the applied for gTLD")	1	1	1	1
	Registration Policies – Enforcement (1 Point) ("Policies include specific enforcement measures...constituting a coherent set with appropriate appeal mechanisms.")	0	1	1	1
	Total Points for Criterion 3	0	4	4	4
Criterion 4 Community Endorsement (0-4 Points)	Community Endorsement – Support (2 Points) ("Applicant is or has documented support from the recognized community institution(s)/member organization(s) or has otherwise documented authority to represent the community")	1	2	2	2
	Community Endorsement – Opposition (2 Points) ("No opposition of relevance.")	1	2	2	2
	Total Points for Criterion 4	0	4	4	4
TOTAL POINTS FOR ALL CRITERIA (16 Points)		5 (did not pass)	15 (pass)	16 (pass)	15 (pass)

RECOMMENDATION
OF THE BOARD GOVERNANCE COMMITTEE (BGC)
RECONSIDERATION REQUEST 13-5

1 AUGUST 2013¹

On 7 July 2013, Booking.com B.V. (“Booking.com”), through its counsel, Crowell & Moring, submitted a reconsideration request (“Request”). The Request was revised from Booking.com’s 28 March 2013 submission of a similar reconsideration request, which was put on hold pending the completion of a request pursuant to ICANN’s Documentary Information Disclosure Policy (“DIDP”).

The Request asked the Board to reconsider the ICANN staff action of 26 February 2013, when the results of the String Similarity Panel were posted for the New gTLD Program. Specifically, the Request seeks reconsideration of the placement of the applications for .hotels and .hoteis into a string similarity contention set.

I. Relevant Bylaws

As the Request is deemed filed as of the original 28 March 2013 submission, this Request was submitted and should be evaluated under the Bylaws that were in effect from 20 December 2012 through 10 April 2013. Article IV, Section 2.2 of that version of ICANN’s Bylaws states in relevant part that any entity may submit a request for reconsideration or review of an ICANN action or inaction to the extent that it has been adversely affected by:

¹ At its 1 August 2013 meeting, the Board Governance Committee deliberated and reached a decision regarding this Recommendation. During the discussion, however, the BGC noted revisions that were required to the draft Recommendation in order to align with the BGC’s decision. After revision and allowing for the BGC member review, the BGC Recommendation on Request 13-5 was finalized and submitted for posting on 21 August 2013.

(a) one or more staff actions or inactions that contradict established ICANN policy(ies); or

(b) one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act.

A third criteria was added to the Bylaws effective 11 April 2013, following the Board's adoption of expert recommendations for revisions to the Reconsideration process. That third basis for reconsideration, focusing on Board rather than staff conduct, is "one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information." (See <http://www.icann.org/en/about/governance/bylaws#IV>.)

When challenging a staff action or inaction, a request must contain, among other things, a detailed explanation of the facts as presented to the staff and the reasons why the staff's action or inaction was inconsistent with established ICANN policy(ies). See Article IV §2.6(g) of the 20 December 2012 version of Bylaws (<http://www.icann.org/en/about/governance/bylaws/bylaws-20dec12-en.htm#IV>) and the current Reconsideration form effective as of 11 April 2013 (<http://www.icann.org/en/groups/board/governance/reconsideration/request-form-11apr13-en.doc>).

Dismissal of a request for reconsideration is appropriate if the Board Governance Committee ("BGC") finds that the requesting party does not have standing because the party failed to satisfy the criteria set forth in the Bylaws. These standing requirements are intended to protect the reconsideration process from abuse and to ensure that it is not used as a mechanism simply to challenge an action with which someone disagrees, but that it is limited to situations where the staff acted in contravention of established policies.

The Request was originally received on 28 March 2013, which makes it timely under the then effective Bylaws.² Bylaws, Art. IV, § 2.5.

II. Background

Within the New gTLD Program, every applied-for string has been subjected to the String Similarity Review set out at Section 2.2.1.1 of the Applicant Guidebook. The String Similarity Review checks each applied-for string against existing TLDs, reserved names and other applied-for TLD strings (among other items) for “visual string similarities that would create a probability of user confusion.” (Applicant Guidebook, Section 2.2.1.1.1.) If applied-for strings are determined to be visually identical or similar to each other, the strings will be placed in a contention set, which is then resolved pursuant to the contention resolution processes in Module 4 of the Applicant Guidebook. If a contention set is created, only one of the strings within that contention set may ultimately be approved for delegation.

After issuing a request for proposals, ICANN selected InterConnect Communications (“ICC”) to perform the string similarity review called for in the Applicant Guidebook. On 26 February 2013, ICANN posted ICC’s report, which included two non-exact match contention sets (.hotels/.hoteis and .unicorn/.unicom) as well as 230 exact match contention sets. <http://www.icann.org/en/news/announcements/announcement-26feb13-en.htm>. The String Similarity Review was performed in accordance with process documentation posted at <http://newgtlds.icann.org/en/program-status/evaluation-panels/geo-names-similarity-process-07jun13-en.pdf>. As part of ICANN’s acceptance of the ICC’s results, a quality assurance review

² ICANN staff and the requester communicated regarding the holds placed on the Request pending the DIDP Response, and the requester met all agreed-upon deadlines, thereby maintaining the timely status of this Request.

was performed over a random sampling of applications to, among other things, test whether the process referenced above was followed.

Booking.com is an applicant for the .hotels string. As a result of being placed in a contention set, .hotels and .hoteis cannot both proceed to delegation. Booking.com will have to resort to private negotiations with the applicant for .hoteis, or proceed to an auction to resolve the contention issue. Request, page 4.

Although the String Similarity Review was performed by a third party, ICANN has determined that the Reconsideration process can properly be invoked for challenges of the third party's decisions where it can be stated that either the vendor failed to follow its process in reaching the decision, or that ICANN staff failed to follow its process in accepting that decision. Because the basis for the Request is not Board conduct, regardless of whether the 20 December 2012 version, or the 11 April 2013 version, of the Reconsideration Bylaws is operative, the BGC's analysis and recommendation below would not change.

III. Analysis of Booking.com's Request for Reconsideration

Booking.com seeks reconsideration and reversal of the decision to place .hotels and .hoteis in a non-exact match contention set. Alternatively, Booking.com requests that an outcome of the Reconsideration process could be to provide "detailed analysis and reasoning regarding the decision to place .hotels into a non-exact match contention set" so that Booking.com may "respond" before ICANN takes a "final decision." (Request, Page 9.)

A. Booking.com's Arguments of Non-Confusability Do Not Demonstrate Process Violations

The main focus of Booking.com's Request is that .hotels and .hoteis can co-exist in the root zone without concern of confusability. (Request, pages 10 – 12.) To support this assertion, Booking.com cites to the opinion of an independent expert that was not part of the string

similarity review panel (Request, pages 10-11), references the intended uses of the .hotels and .hoteis strings (Request, page 11) and the difference in language populations that is expected to be using .hotels and .hoteis (Request, page 11), references ccTLDs that coexist with interchangeable “i”s and “l”s (Request, page 11), notes the keyboard location of “i”s and “l”s (Request, page 12), and contends that potential users who get to the wrong page would understand the error they made to get there (Request, page 12).

Booking.com does not suggest that the process for String Similarity Review set out in the Applicant Guidebook was not followed, or that ICANN staff violated any established ICANN policy in accepting the String Similarity Review Panel (“Panel”) decision on placing .hotels and .hoteis in contention sets. Instead, Booking.com is supplanting what it believes the review methodology for assessing visual similarity should have been, as opposed to the methodology set out at Section 2.2.1.1.2 of the Applicant Guidebook. In asserting a new review methodology, Booking.com is asking the BGC (and the Board through the New gTLD Program Committee (NGPC)) to make a substantive evaluation of the confusability of the strings and to reverse the decision. In the context of the New gTLD Program, the Reconsideration process is not however intended for the Board to perform a substantive review of Panel decisions.. While Booking.com may have multiple reasons as to why it believes that its application for .hotels should not be in contention set with .hoteis, Reconsideration is not available as a mechanism to re-try the decisions of the evaluation panels.³

³ Notably, Booking.com fails to reference one of the key components of the documented String Similarity Review, the use of the SWORD Algorithm, which is part of what informs the Panel in assessing the visual similarity of strings. .hotels and .hoteis score a 99% on the publicly available SWORD algorithm for visual similarity. See <https://icann.sword-group.com/algorithm/>.

Booking.com also claims that its assertions regarding the non-confusability of the .hotels and .hoteis strings demonstrate that “it is contrary to ICANN policy⁴ to put them in a contention set.” (Request, pages 6-7.) This is just a differently worded attempt to reverse the decision of the Panel. No actual policy or process is cited by Booking.com, only the suggestion that – according to Booking.com – the standards within the Applicant Guidebook on visual similarity should have resulted in a different outcome for the .hotels string. This is not enough for Reconsideration.

Booking.com argues that the contention set decision was taken without material information, including Booking.com’s linguistic expert’s opinion, or other “information that would refute the mistaken contention that there is likely to be consumer confusion between ‘.hotels’ and ‘.hoteis.’” (Request, page 7.) However, there is *no* process point in the String Similarity Review for applicants to submit additional information. This is in stark contrast to the reviews set out in Section 2.2.2 of the Applicant Guidebook, including the Technical/Operational review and the Financial Review, which allow for the evaluators to seek clarification or additional information through the issuance of clarifying questions. (AGB, Section 2.2.2.3 (Evaluation Methodology).) As ICANN has explained to Booking.com in response to its DIDP requests for documentation regarding the String Similarity Review, the Review was based upon the methodology in the Applicant Guidebook, supplemented by the Panel’s process documentation; the process does not allow for additional inputs.

Just as the process does not call for additional applicant inputs into the visual similarity review, Booking.com’s call for further information on the decision to place .hotels and .hoteis in

⁴ It is clear that when referring to “policy”, Booking.com is referring to the process followed by the String Similarity Review.

a contention set “to give the Requester the opportunity to respond to this, before taking a final decision” is similarly not rooted in any established ICANN process at issue. (Request, page 9.) First, upon notification to the applicants and the posting of the String Similarity Review Panel report of contention sets, the decision was already final. While applicants may avail themselves of accountability mechanism to challenge decisions, the use of an accountability mechanism when there is no proper ground to bring a request for review under the selected mechanism does not then provide opportunity for additional substantive review of decisions already taken.

Second, while we understand the impact that Booking.com faces by being put in a contention set, and that it wishes for more narrative information regarding the Panel’s decision, no such narrative is called for in the process. The Applicant Guidebook sets out the methodology used when evaluating visual similarity of strings. The process documentation provided by the String Similarity Review Panel describes the steps followed by the Panel in applying the methodology set out in the Applicant Guidebook. ICANN then coordinates a quality assurance review over a random selection of Panel’s reviews to gain confidence that the methodology and process were followed. That is the process used for a making and assessing a determination of visual similarity. Booking.com’s disagreement as to whether the methodology should have resulted in a finding of visual similarity does not mean that ICANN (including the third party vendors performing String Similarity Review) violated any policy in reaching the decision (nor does it support a conclusion that the decision was actually wrong).⁵

⁵ In trying to bring forward this Request, Booking.com submitted requests to ICANN under the Documentary Information Disclosure Policy (DIDP). As of 25 July 2013, all requests had been responded to, including the release of the Panel process documentation as requested. See Request 20130238-1 at <http://www.icann.org/en/about/transparency>. Booking.com describes the information it sought through the DIDP at Pages 8 – 9 of its Request. The discussion of those requests, however, has no bearing on the outcome of this Reconsideration.

B. Booking.com’s Suggestion of the “Advisory Status” of the String Similarity Panel Decision Does Not Support Reconsideration

In its Request, Booking.com suggests that the Board has the ability to overturn the Panel’s decision on .hotels/.hoteis because the Panel merely provided “advice to ICANN” and ICANN made the ultimate decision to accept that advice. Booking.com then suggests that the NGPC’s acceptance of GAC advice relating to consideration of allowing singular and plural versions of strings in the New gTLD Program, as well as the NGPC’s later determination that no changes were needed to the Applicant Guidebook regarding the singular/plural issue, shows the ability of the NGPC to override the Panel determinations. (Request, pages 5-6.) Booking.com’s conclusions in these respects are not accurate and do not support Reconsideration.

The Panel reviewed all applied for strings according to the standards and methodology of the visual string similarity review set out in the Applicant Guidebook. The Guidebook clarifies that once contention sets are formed by the Panel, ICANN will notify the applicants and will publish results on its website. (AGB, Section 2.2.1.1.1.) That the Panel considered its output as “advice” to ICANN (as stated in its process documentation) is not the end of the story. Whether the results are transmitted as “advice” or “outcomes” or “reports”, the important query is what ICANN was expected to do with that advice once it was received. ICANN had always made clear that it would rely on the advice of its evaluators in the initial evaluation stage of the New gTLD Program, subject to quality assurance measures. Therefore, Booking.com is actually proposing a new and *different* process when it suggests that ICANN should perform substantive review (instead of process testing) over the results of the String Similarity Review Panel’s outcomes prior to the finalization of contention sets.

The subsequent receipt and consideration of GAC advice on singular and plural strings does not change the established process for the development of contention sets based on visual

similarity. The ICANN Bylaws require the ICANN Board to consider GAC advice on issues of public policy (ICANN Bylaws, Art. XI, Sec. 2.1.j); therefore the Board, through the NGPC, was obligated to respond to the GAC advice on singular and plural strings. Ultimately, the NGPC determined that no changes were needed to the Guidebook on this issue. (Resolution 2013.06.25.NG07, at <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-25jun13-en.htm#2.d>.) Notably, neither the GAC advice nor the NGPC resolution focused on the issue of visual similarity (which the String Similarity Review Panel was evaluating), but instead the issue was potential consumer confusion from having singular and plural versions of the same word in the root zone. It is unclear how the NGPC's decision on a separate topic – and a decision that did not in any way alter or amend the work of an evaluation panel – supports reconsideration of the development of the .hotels/.hoteis contention set.

VIII. Recommendation And Conclusion

Based on the foregoing, the BGC concludes that Booking.com has not stated proper grounds for reconsideration and we therefore recommend that Booking.com's request be denied without further consideration. This Request challenges a substantive decision taken by a panel in the New gTLD Program and not the process by which that decision was taken. As stated in our Recommendation on Request 13-2, Reconsideration is not a mechanism for direct, de novo appeal of staff or panel decisions with which the requester disagrees, and seeking such relief is, in fact, in contravention of the established processes within ICANN. See <http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-nameshop-01may13-en.pdf>.

The BGC appreciates the impact to an applicant when placed in a contention set and does not take this recommendation lightly. It is important to recall that the applicant still has the

opportunity to proceed through the New gTLD Program subject to the processes set out in the Applicant Guidebook on contention. We further appreciate that applicants, with so much invested and so much at stake within the evaluation process, are interested in seeking any avenue that will allow their applications to proceed easily through evaluation. However, particularly on an issue such as visual similarity, which is related to the security and stability of the domain name system, there is not – nor is it desirable to have – a process for the BGC or the Board (through the NGPC) to supplant its own determination as to the visual similarity of strings over the guidance of an expert panel formed for that particular purpose. As there is no indication that either the Panel or ICANN staff violated any established ICANN policy in reaching or accepting the decision on the placement of .hotels and .hoteis in a non-exact contention set, this Request should not proceed.

If Booking.com thinks that it has been treated *unfairly* in the new gTLD evaluation process, and the NGPC adopts this Recommendation, Booking.com is free to ask the Ombudsman to review this matter. (See ICANN Bylaws the Ombudsman shall “have the right to have access to (but not to publish if otherwise confidential) all necessary information and records from ICANN staff and constituent bodies to enable an informed evaluation of the complaint and to assist in dispute resolution where feasible (subject only to such confidentiality obligations as are imposed by the complainant or any generally applicable confidentiality policies adopted by ICANN)”.)



Approved Resolutions | Meeting of the New gTLD Program Committee

This page is available in: [English](#) | [Español](#) | [Français](#) | [Русский](#) | [中文](#) |

10 Sep 2013

1. **Consent Agenda**
 - a. [Approval of NGPC Meeting Minutes](#)
2. **Main Agenda**
 - a. [Update on String Similarity](#)
 - b. [BGC recommendation on Reconsideration Request 13-5 Rationale for Resolution 2013.09.10.NG02](#)
 - c. [GAC Communiqué Durban – Scorecard Rationale for Resolution 2013.09.10.NG03](#)
 - d. [GAC Communiqué Beijing – Scorecard](#)
 - e. [GAC Communiqué Beijing – Category 1](#)
 - f. [ALAC Statement on the Preferential Treatment for Community Applications in String Contention](#)
 - g. [ALAC Statement on Community Expertise in Community Priority Evaluation](#)
 - h. [AOB](#)

1. Consent Agenda:

- a. Approval of NGPC Meeting Minutes

Resolved (2013.09.10.NG01), the Board approves the minutes of the 13 July 2013 and 17 July 2013 New gTLD Program Committee Meetings.

2. Main Agenda:

- a. Update on String Similarity

No resolution taken.

- b. BGC recommendation on Reconsideration Request 13-5

Whereas, Booking.com B.V.'s ("Booking.com") Reconsideration Request, Request 13-5, sought reconsideration of the ICANN staff action of 26 February 2013, when the results of the String Similarity Panel were posted for the New gTLD Program, placing the applications for .hotels and .hotelis into a string similarity contention set.

Whereas, the BGC considered the issues raised in Reconsideration Request 13-5.

Whereas, the BGC recommended that Reconsideration Request 13-5 be denied because Booking.com has not stated proper grounds for reconsideration.

Resolved (2013.09.10.NG02), the New gTLD Program Committee adopts the BGC Recommendation on Reconsideration Request 13-5, which can be found at <http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-booking-01aug13-en.pdf> [PDF, 117 KB].

Rationale for Resolution 2013.09.10.NG02

ICANN's Bylaws call for the Board Governance Committee to evaluate and make recommendations to the Board with respect to Reconsideration Requests. See Article IV, section 3 of the Bylaws. The New gTLD Program Committee ("NGPC"), bestowed with the powers of the Board in this instance, has reviewed and thoroughly considered the BGC Recommendation on Reconsideration Request 13-5 and finds the analysis sound.

Having a reconsideration process whereby the BGC reviews and, if it chooses, makes a recommendation to the Board/NGPC for approval positively affects ICANN's transparency and accountability. It provides an avenue for the community to ensure that staff and the Board are acting in accordance with ICANN's policies, Bylaws, and Articles of Incorporation.

The Request seeks a reversal of the 26 February 2013 decision of the String Similarity Review Panel (the "Panel") to place Booking.com's application for .hotels in the same contention set as .hoteis. Specifically, Booking.com asserted that its applied for string of .hotels can co-exist in the root zone with the applied for string .hoteis without concern of confusability, and therefore, .hotels should not have been placed in the same contention set with .hoteis.

The Request calls into consideration: (1) whether the Panel violated any policy or process in conducting its visual similarity review of Booking.com's application; and (2) whether the NGPC has the ability to overturn the Panel's decision on .hotels/.hoteis on the basis that the decision was provided as an "advice to ICANN" and that ICANN made the ultimate decision to accept that advice.

The BGC noted that a similar reconsideration request was previously submitted by Booking.com on 28 March 2013 and placed on hold pending the completion of a request pursuant to ICANN's Documentary Information Disclosure Policy. Therefore, this Request relates back to the date of the original filing and should be evaluated under the Bylaws that were in effect from 20 December 2012 through 10 April 2013.

In consideration of the first issue, the BGC reviewed the grounds stated in the Request, including the attachments, and concluded that Booking.com failed to adequately state a Request for Reconsideration of Staff action because they failed to identify any policy or process that was violated by Staff. The BGC noted that Booking.com does not suggest that the process for String Similarity Review set out in the Applicant Guidebook was not followed, or that ICANN staff violated any established ICANN policy in accepting the Panel's decision to place .hotels and .hoteis in the same contention set. Rather, Booking.com seeks to supplant what it believes the review methodology for assessing visual similarity should have been as opposed to the methodology set out in Section 2.2.1.1.2 of the Applicant Guidebook and asks that the BGC (and the Board through the New gTLD Program Committee) retry the 26 February 2013 decision based upon its proposed methodology. The BGC concluded that this is not sufficient ground for Reconsideration because the Reconsideration process is not available as a mechanism to re-try the decisions of the evaluation panels.

With respect to Booking.com's contention that the 26 February 2013 decision was taken without material information, such as that of Booking.com's linguistic expert's opinion or other "information that would refute the mistaken contention that there is likely to be consumer confusion between '.hotels' and '.hoteis'", the BGC concluded that there is no process in the String Similarity Review for applicants to submit additional information. As ICANN has explained to Booking.com in response to its DIDP requests for documentation regarding the String Similarity Review, the Review was based upon the methodology in the Applicant Guidebook, supplemented by the Panel's process documentation; the process does not allow for additional inputs. The BGC noted that Booking.com's disagreement as to whether the methodology should have resulted in a finding of visual similarity does not mean that ICANN (including the third party vendors performing String Similarity Review) violated any policy in reaching the decision (nor does it support a conclusion that the decision was actually wrong).

In consideration of the second issue, the BGC determined that Booking.com's suggestion that the Board (through the NGPC) has the ability to overturn the Panel's decision on .hotels/.hoteis because the Panel merely provided "advice to ICANN" and that ICANN made the ultimate decision to accept that advice is based upon inaccurate conclusions of the String Similarity Review process. As such, the BGC concluded that Booking.com has not stated sufficient grounds for reconsideration. The BGC noted that all applied for strings are reviewed the Panel according to the standards and methodology of the visual string similarity review set out in the Applicant Guidebook. The Guidebook clarifies that once contention sets are formed by the Panel, ICANN will notify the applicants and will publish results on its website. (AGB, Section 2.2.1.1.1.) Whether the results are transmitted as "advice" or "outcomes" or "reports", ICANN had always made clear that it would rely on the advice of its evaluators in the initial evaluation stage of the New gTLD Program, subject to quality assurance measures. The subsequent receipt and consideration of GAC advice on singular and plural strings does not change the established process for the development of contention sets based on visual similarity as the ICANN Board is required under the Bylaws to consider GAC Advice on issues of public policy, such as singular and plural strings. The BGC concluded that Booking.com is actually proposing a new and different process when it suggests that ICANN should perform substantive review (instead of process testing) over the results of the String Similarity Review Panel's outcomes prior to the finalization of contention sets.

In addition to the above, the full BGC Recommendation that can be found at <http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-booking-01aug13-en.pdf> [PDF, 117 KB] and that is attached to the Reference Materials to the Board Submission supporting this resolution, shall also be deemed a part of this Rationale.

Adopting the BGC's recommendation has no financial impact on ICANN and will not negatively impact the systemic security, stability and resiliency of the domain name system.

This decision is an Organizational Administrative Function that does not require public comment.

c. GAC Communiqué Durban – Scorecard

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

Whereas, on 1 August 2013, ICANN posted the Durban Communiqué and officially notified applicants of the advice <<http://newgtlds.icann.org/en/announcements-and-media/announcement-01aug13-en>>, triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1.

Whereas, the NGPC met on 12 August 2013 to consider a plan for responding to the GAC's advice on the New gTLD Program, transmitted to the Board through its Durban Communiqué.

Whereas, the NGPC has considered the applicant responses submitted during the 21- day applicant response period, and the NGPC has identified items of advice in the attached scorecard where its position is consistent with the GAC's advice in the Durban Communiqué.

Whereas, the NGPC developed a scorecard to respond to the GAC's advice in the Durban Communiqué similar to the one used to address the Beijing Advice as well as during the GAC and the Board meetings in Brussels on 28 February and 1 March 2011, and has identified where the NGPC's position is consistent with GAC advice, noting those as "1A" items.

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 (2013.09.10.NG03), the NGPC adopts the "ICANN Board New gTLD Program Committee Scorecard in response to GAC Durban Communiqué" (10 September 2013), attached as [Annex 1](#) [PDF, 119 KB] to this Resolution, in response to the items of GAC advice in the Durban Communiqué as presented in the scorecard.

Rationale for Resolution 2013.09.10.NG03

Why the NGPC is addressing the issue?

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 Durban Communiqué dated 18 July 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 polices. 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.

What is the proposal being considered?

The NGPC is being asked to consider accepting the GAC's Durban advice as described in the attached ICANN Board New gTLD Program Committee Scorecard in response to GAC Durban Communiqué" (10 September 2013). As noted in the scorecard, most items of advice are scored as "1A," which indicates that the NGPC's position is consistent with GAC advice as described in the scorecard.

Which stakeholders or others were consulted?

On 1 August 2013, ICANN posted the GAC advice and officially notified applicants of the advice <<http://newgtlds.icann.org/en/announcements-and-media/announcement-01aug13-en>>, triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. The complete set of applicant responses are provided at: <http://newgtlds.icann.org/en/applicants/gac-advice/durban47>. The NGPC has considered the applicant responses in formulating its response to the GAC advice as applicable.

What concerns or issues were raised by the community?

As part of the 21-day applicant response period, several of the applicants indicated that they have entered into dialogue with the affected parties, and they anticipated reaching agreement on the areas of concern. Some of the applicants noted that they have proposed additional safeguards to address the concerns of the relevant governments are unsure as to whether a settlement can be reached. These applicants asked that the ICANN Board allow their applications to proceed even if an agreement among the relevant parties cannot be reached. Additionally, inquiries have been made as to whether applicants and the relevant governments will have the opportunity to comment on conversations among the GAC, ICANN Board, and ICANN staff. There have been requests that that the GAC, NGPC, and ICANN staff consult with applicants before decisions regarding any additional safeguards are made.

Other applicants noted the important role of governments in the multi-stakeholder model, but advised the NGPC that it should not allow governments to exercise veto power over ICANN policies adopted through the multi-stakeholder process.

What significant materials did the Board review?

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

- GAC Durban Communiqué:
https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130717.pdf?version=1&modificationDate=1374215119858&api=v2 [PDF, 103 KB]
- Applicant responses to GAC advice:
<http://newgtlds.icann.org/en/applicants/gac-advice/durban47>
- Applicant Guidebook, Module 3:
<http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf> [PDF, 261 KB]
- Summary of Applicant Responses to GAC Advice in the Durban Communiqué (see reference materials).

What factors did the Board find to be significant?

In adopting its response to the GAC's advice in the Durban Communiqué, the NGPC considered the applicant comments submitted, the GAC's advice transmitted in the Durban Communiqué, and the procedures established in the AGB.

Are there positive or negative community impacts?

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.

Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?

There are no foreseen fiscal impacts associated with the adoption of this resolution.

Are there any security, stability or resiliency issues relating to the DNS?

Approval of the proposed resolution will not impact security, stability or resiliency issues relating to the DNS.

Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?

ICANN posted the GAC advice and officially notified applicants of the advice on 1 August 2013. This triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1.

d. GAC Communiqué Beijing – Scorecard

No resolution taken.

e. GAC Communiqué Beijing – Category 1

No resolution taken.

f. ALAC Statement on the Preferential Treatment for Community Applications in String Contention

No resolution taken.

g. ALAC Statement on Community Expertise in Community Priority Evaluation

No resolution taken.

h. AOB

No resolution taken.

Published on 12 September 2013

[You Tube](#)

[Twitter](#)

[LinkedIn](#)

[Flickr](#)

[Facebook](#)

[RSS Feeds](#)

[Community Wiki](#)

[ICANN Blog](#)

[Who We Are](#)

[Contact Us](#)

[Accountability & Transparency](#)

[Governance](#)

[Help](#)

© 2014 Internet Corporation For Assigned Names and Numbers. [Privacy Policy](#) [Terms of Service](#) [Cookie Policy](#)

INDEPENDENT REVIEW PROCESS

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

BOOKING.COM B.V.,) ICDR CASE NO. 50 117 T 00247 14
)
Claimant,)
)
and)
)
INTERNET CORPORATION FOR ASSIGNED)
NAMES AND NUMBERS,)
)
Respondent.)
_____)

**ICANN'S RESPONSE TO CLAIMANT BOOKING.COM'S
REQUEST FOR INDEPENDENT REVIEW PROCESS**

Jeffrey A. LeVee
Kate Wallace
Jones Day
555 South Flower Street
50th Floor
Los Angeles, CA 90071
Tel: +1 213-489-3939
Fax: +1 213-243-2539

Counsel to Respondent
The Internet Corporation
For Assigned Names and Numbers

INTRODUCTION

1. The Internet Corporation for Assigned Names and Numbers (“ICANN”) hereby submits its Response to the Request for Independent Review Process (“IRP Request”) submitted by claimant Booking.com B.V. (“Booking.com”) on 18 March 2014.

2. These unique proceedings occur pursuant to Article IV, Section 3 of ICANN’s Bylaws, which creates a non-binding method of evaluating certain actions of ICANN’s Board of Directors.¹ This Independent Review Process Panel (“IRP Panel”) is “charged with comparing contested actions of the [ICANN] Board to the [ICANN] Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws.”² In particular, the IRP Panel is to “apply a defined standard of review to the IRP Request, focusing on”:

- a. did the Board act without conflict of interest in taking its decision?;
- b. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and
- c. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?³

3. As the Bylaws make clear, the Independent Review Process (“IRP”) addresses challenges to conduct undertaken by ICANN’s Board of Directors; it is not available as a

¹ ICANN’s Bylaws, *available at* <http://www.icann.org/en/about/governance/bylaws> and Cl. Ex. RM-2. Booking.com submitted two sets of numbered exhibits: (1) an “Annex”; and (2) “Reference Materials”. Citations to “Cl. Ex. Annex- ___” refer to exhibits submitted in Claimant Booking.com’s Annex, citations to “Cl. Ex. RM-___” refer to exhibits submitted in Claimant Booking.com’s Reference Materials, and citations to “Resp. Ex. ___” refer to exhibits submitted with Respondent ICANN’s Response.

² Bylaws, Cl. Ex. RM-2, at Art. IV, § 3.4. Booking.com submitted as Cl. Ex. RM-2 ICANN’s Bylaws of 11 April 2013. ICANN’s Bylaws have been revised since that time, but the provisions relevant to Booking.com’s IRP Request and ICANN’s response have not changed. For ease of reference, ICANN will refer to the Bylaws as submitted by Booking.com in Cl. Ex. RM-2.

³ *Id.*

mechanism to challenge the actions or inactions of ICANN staff or third parties that may be involved with ICANN's activities. As discussed below, this distinction is critical.

4. These proceedings generally involve ICANN's program to facilitate the creation of hundreds of new "generic Top Level Domains" or "gTLDs" on the Internet to supplement the gTLDs (i.e., .com, .net, .org) that have existed for many years. ICANN is administering this "New gTLD Program" pursuant to an "Applicant Guidebook" (or "Guidebook") that ICANN adopted in June 2011 following years of consideration and public input.⁴ The process for applying for new gTLDs, which is open to all interested entities, commenced on 12 January 2012; ICANN received 1,930 new gTLD applications.

5. In its IRP Request, Booking.com challenges ICANN's "adoption" of the determination by a panel of independent, third-party experts ("String Similarity Panel") – as set forth in Section 2.2.1 of the Guidebook – that Booking.com's applied-for gTLD ".hotels" (also called a "string") is visually confusingly similar to another applicant's applied-for string ".hoteis." Per Section 2.2.1 of the Guidebook, all gTLD applications were subjected to this "String Similarity Review" in order to avoid confusion that could occur in the event that two applied-for gTLDs were visually similar. If the String Similarity Panel determined that two strings were so similar as to be confusing, the Guidebook provides that those applied-for strings would enter into a "contention set," meaning that one, but not both, of those strings could proceed. In this instance, the String Similarity Panel determined that the strings .hotels and .hoteis were confusingly similar, such that only one of those strings will be permitted to proceed to delegation (which means that Booking.com's application for .hotels has not been denied, and it could very well be the successful applicant).

⁴ Booking.com included the New gTLD Applicant Guidebook (version of 4 June 2012) as Cl. Ex. RM-5 ("Guidebook"). The Guidebook is also available at <http://newgtlds.icann.org/en/applicants/agb>.

6. Booking.com further claims that ICANN breached its Bylaws by failing to publish the String Similarity Panel’s rationale for its determination and that ICANN’s subsequent decision to reject Booking.com’s Request for Reconsideration on the same issues was improper.

7. In this response, ICANN demonstrates that determinations regarding string similarity were made by the independent String Similarity Panel and were not reviewed by the ICANN Board. Neither the Guidebook, ICANN’s Bylaws, nor ICANN’s Articles of Incorporation suggests that the ICANN Board would or should conduct a substantive review of – or otherwise exercise its own independent judgment concerning – the String Similarity Panel’s determination that .hotels and .hoteis are visually confusingly similar. Booking.com’s IRP Request is therefore misplaced as it challenges an action of independent, third-party expert evaluators selected to perform a String Similarity Review of all applied-for strings, and not an action of the ICANN Board. As the Independent Review Process is strictly limited to challenging actions of ICANN’s Board of Directors, Booking.com’s IRP Request must be denied.

8. ICANN will further demonstrate that the ICANN Board did exactly what it was supposed to do under its Bylaws, its Articles of Incorporation, and the Guidebook.⁵ In particular, the record reflects the following:

- Within the New gTLD Program, every applied-for string has been subjected to the String Similarity Review set out at Section 2.2.1.1 of the Guidebook.
- As set forth in the Guidebook, “[t]his similarity review will be conducted by an independent String Similarity Panel,”⁶ not the ICANN Board. ICANN selected

⁵ As noted in the Preamble of the Guidebook (Cl. Ex. RM-5), the Guidebook was the product of an extensive evaluation process that involved public comment on multiple drafts.

⁶ Guidebook, Cl. Ex. RM-5, at § 2.2.1.1.

(following an open and public request for proposal process) InterConnect Communications (“ICC”) to perform the String Similarity Reviews.

- The Guidebook sets forth the process for making and publishing a determination of visual similarity, and the record demonstrates that ICANN followed that process. The Guidebook, which is the product of years of public debate and deliberation, does not require ICANN or the String Similarity Panel to publish the rationale for the independent String Similarity Panel’s determinations. While Booking.com may wish for more information regarding the Panel’s decision, no such disclosure is called for in the Guidebook, or in ICANN’s Bylaws or ICANN’s Articles of Incorporation.
- To the extent Booking.com is challenging ICC’s failure to publish details regarding its determination, that is a challenge to conduct undertaken by the String Similarity Panel, not the ICANN Board, and is therefore not properly subject to an IRP.
- Finally, ICANN properly denied Booking.com’s Request for Reconsideration pursuant to Article IV, Section 2 of the Bylaws.

9. Booking.com’s IRP Request is really about Booking.com’s disagreement with the merits of the String Similarity Panel’s conclusion that .hotels and .hoteis are confusingly similar. But the Panel’s determination does not constitute Board action, and the Independent Review Process is not available as a mechanism to re-try the decisions of an independent evaluation panel. The IRP Panel is tasked only with comparing contested actions of the ICANN Board to ICANN’s Bylaws and Articles of Incorporation; it is not within the IRP Panel’s mandate to evaluate whether the String Similarity Panel’s conclusion that .hotels and .hoteis are confusingly similar was wrong.

10. Nonetheless, as established below (Section IV), the String Similarity Panel’s determination was well-supported. Of the more than 1900 applications submitted, the String

Similarity Panel created only two non-identical string contentions sets: (1) .hotels/.hoteis; and (2) .unicorn/.unicom, which demonstrates how circumspect the String Similarity Panel was in rendering its determinations. Moreover, there can be no dispute that .hotels and .hoteis are, in fact, visually similar. Indeed, .hotels and .hoteis satisfy each of the factors that the String Similarity Panel found to create confusing similarity:

- .hotels and .hoteis are of similar visual length;
- the strings are within +/- 1 character of each other;
- .hotels and .hoteis are strings where the majority of characters are the same and in the same position in each string;
- .hotels and .hoteis possess letter combinations that visually appear similar to other letters in the same position in each string, namely “l” & “i”; and
- .hotels and .hoteis scored 99% on the publicly available algorithm that assesses visual similarity, more than any other non-exact match applied-for strings.

BACKGROUND FACTS AND STANDARD OF REVIEW

11. ICANN was formed in 1998. It is a California not-for-profit public benefit corporation. As set forth in Article I, Section 1 of its Bylaws, ICANN’s mission “is to coordinate, at the overall level, the global Internet’s system of unique identifiers, and in particular to ensure the stable and secure operation of the Internet’s unique identifier systems.”⁷

12. ICANN is a complex organization that facilitates input from a wide variety of Internet stakeholders. ICANN has a Board of Directors and staff members from around the globe, as well as an Ombudsman. ICANN, however, is much more than just the corporation—it is a community of participants. In broader terms, ICANN includes the Board of Directors, the

⁷ Bylaws, Cl. Ex. RM-2, at Art. I, § 1.

Staff, the Ombudsman,⁸ an independent Nominating Committee,⁹ three Supporting Organizations,¹⁰ four Advisory Committees,¹¹ a Technical Liaison Group,¹² and a very large, globally distributed group of community members who participate in ICANN's processes. The Supporting Organizations provide policy recommendations and advice on specific topics, and Advisory Committees provide advice to the ICANN Board.

13. In its early years, and in accordance with its Core Values set forth in ICANN's Bylaws, ICANN focused on increasing the number of Internet registrars that could sell domain name registrations to consumers. ICANN also focused on expanding, although more slowly, the number of Internet registries that operate generic Top Level Domains (gTLDs). In 2000, ICANN approved a limited number of new gTLDs, including .NAME and .INFO, in a "proof of concept" phase that was designed to confirm that adding additional gTLDs would not adversely affect the stability and security of the Internet. In 2004-05, ICANN approved a few more gTLDs.

14. The New gTLD Program, which the ICANN Board approved in June 2011, constitutes by far ICANN's most ambitious expansion of the Internet's naming system. The Program's goals include enhancing competition and consumer choice, and enabling the benefits of innovation via the introduction of new gTLDs, including both new ASCII and internationalized domain name (IDN) gTLDs. In conjunction with this process, ICANN continuously iterated and revised versions of the Guidebook, an extensive document that provides details to gTLD applicants and forms the basis for ICANN's evaluation of new gTLD applications. Booking.com attached the 4 June 2012 version of the Guidebook to its IRP

⁸ *Id.* at Art. V.

⁹ *Id.* at Art. VII.

¹⁰ *Id.* at Arts. VIII-X.

¹¹ *Id.* at Art. XI.

¹² *Id.* at Art. XI-A, § 2.

Request as Exhibit RM-5.¹³ The Guidebook is divided into “Modules,” with Module 1 being the “introduction,” Module 2 providing “evaluation procedures” (including String Similarity Review), Module 3 containing the “objection procedures,” and so forth.

15. Within the New gTLD Program, every applied-for string (or gTLD) has been subjected to the String Similarity Review set out in Section 2.2.1.1 of the Guidebook. The String Similarity Review checks each applied-for string against existing TLDs, reserved names, and other applied-for gTLDs for “visual string similarities that would create a probability of user confusion.”¹⁴ The objective of this review “is to prevent user confusion and loss of confidence in the [domain name system] resulting from delegation of many similar strings.”¹⁵ Early on in the iterations of the Guidebook, it was determined that, in the initial evaluation stage, the String Similarity Panel would only examine strings for visual confusion.¹⁶ If applied-for strings are determined to so nearly resemble each other visually that it is likely to deceive or cause confusion, the string will be placed in a contention set, which is then resolved pursuant to the contention set resolution processes in Module 4 of the Guidebook. If a contention set is created, only one of the strings within that contention set may ultimately be approved for delegation.

16. As set forth in the Guidebook, “[t]his similarity review will be conducted by an independent String Similarity Panel,” not by ICANN.¹⁷ After issuing an open and public request for proposals, ICANN selected InterConnect Communications (“ICC”) to perform the String Similarity Review. ICC was responsible for the development of its own process documents and methodology for performing the String Similarity Review consistent with the provisions of the

¹³ The provisions in the 4 June 2012 version of the Guidebook concerning String Similarity Review govern Booking.com’s application for .hotels.

¹⁴ Guidebook, Cl. Ex. RM-5, at § 2.2.1.1.1.

¹⁵ *Id.* at § 2.2.1.1.

¹⁶ Cl. Ex. Annex-16 (Meeting of the New gTLD Program Committee, Minutes, 10 September 2013.)

¹⁷ Guidebook, Cl. Ex. RM-5, at § 2.2.1.1.

Guidebook, and was also responsible for the maintenance of its own work papers.¹⁸ The ICANN Board played no role in performing the String Similarity Review.

17. The Guidebook does not provide for any process by which ICANN (or anyone else) may conduct a substantive review of ICC's results. The only "review" of ICC's results that was ever contemplated is procedural, in the form of a quality assurance review over a random sampling of applications to test whether the process referenced above was followed.¹⁹ This quality assurance procedural review was conducted by another independent, third-party administrator – JAS Advisors – not by ICANN.²⁰ Following completion of this procedural safeguard, ICANN was required to post the findings of the String Similarity Panel.²¹

18. ICANN received over 1900 applications for new gTLDs. On 26 February 2013, ICANN posted ICC's report, which included only two non-exact match contention sets: (1) .hotels/.hoteis – which is at issue here; and (2) .unicorn/.unicom. The ICC also determined there to be 230 exact match contention sets.²²

19. As a result of being placed in a contention set, .hotels and .hoteis cannot both proceed to delegation, but this does not mean that Booking.com's application has been terminated. Booking.com may resort to private negotiations with the applicant for .hoteis, or proceed to an auction to resolve the contention issue.²³

¹⁸ Cl. Ex. Annex-5.

¹⁹ New gTLD Program Update, 26 October 2011, Dakar, *available at* <http://dakar42.icann.org/node/26953> and Resp. Ex. 1, at p. 19.

²⁰ *Id.*

²¹ Guidebook, Cl. Ex. RM-5, at § 2.1.1.1 ("ICANN will notify applicants who are part of a contention set as soon as the String Similarity Review is completed.... These contention sets will also be published on ICANN's website.").

²² <http://www.icann.org/en/news/announcements/announcement-26feb13-en.htm>.

²³ Guidebook, Cl. Ex. RM-5, § 4.3.

20. After ICC’s report was posted, Booking.com filed a Request for Reconsideration for consideration by ICANN’s Board Governance Committee (“BGC”).²⁴ Reconsideration is an accountability mechanism available under ICANN’s Bylaws and involves a review process administered by the BGC.²⁵ Booking.com’s Reconsideration Request challenged the decision to place .hotels and .hoteis in a non-exact match contention set. Booking.com requested that ICANN provide “detailed analysis and reasoning regarding the decision to place .hotels into a non-exact match contention set” so that Booking.com may “respond” before ICANN makes a “final decision.”²⁶

21. The BGC recommended denying Booking.com’s Request for Reconsideration (and the Board, through the New gTLD Program Committee, approved the BGC’s recommendation) on the grounds that the “Request challenges a substantive decision taken by a panel in the New gTLD Program and not the process by which that decision was taken.... Reconsideration is not a mechanism for direct, de novo appeal of staff or panel decisions with which the request disagrees, and seeking such relief is, in fact, in contravention of the established processes within ICANN.”²⁷

22. Booking.com, dissatisfied with the denial of its Request for Reconsideration, notified ICANN of its intent to seek independent review of ICANN’s actions.²⁸ Independent

²⁴ See Booking.com’s Reconsideration Request (Request 13-5), available at <http://www.icann.org/en/groups/board/governance/reconsideration/13-5/request-booking-07jul13-en.pdf> and Cl. Ex. Annex-13.

²⁵ See Bylaws, Cl. Ex. RM-2, at Art. IV, § 2.

²⁶ See Booking.com’s Reconsideration Request (Request 13-5), available at <http://www.icann.org/en/groups/board/governance/reconsideration/13-5/request-booking-07jul13-en.pdf> and Cl. Ex. Annex-13, at p. 9.

²⁷ See BGC Recommendation on Reconsideration Request 13-5, available at <http://www.icann.org/en/groups/board/governance/reconsideration/13-5/recommendation-booking-01aug13-en.pdf> and Cl. Ex. Annex-14.

²⁸ See Booking.com’s Notice of Independent Review.

Review is another accountability mechanism available under ICANN’s Bylaws and is defined as 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.”²⁹

23. The Independent Review Process (“IRP”) is not a form of traditional dispute resolution (*i.e.*, mediation or arbitration), and is a non-binding process in which entities that deal with ICANN can have a further check-and-balance with respect to specific decisions of the ICANN Board, and specifically, whether the Board’s actions are consistent with ICANN’s Bylaws and Articles of Incorporation.³⁰ The IRP focuses on the actions of the ICANN Board; it is not available as a mechanism to challenge the conduct of ICANN staff, or third parties such as the third-party evaluators in the context of the New gTLD Program.

24. ICANN’s Bylaws specify that a deferential standard of review be applied when evaluating the actions of the ICANN Board, and the rules are clear that the appointed IRP Panel is neither asked to, nor allowed to, substitute its judgment for that of the Board. Instead, the IRP Panel is tasked with determining whether the Board’s actions were inconsistent with ICANN’s Articles of Incorporation or Bylaws.³¹

25. In April 2004, ICANN appointed the ICDR as ICANN’s IRP Provider. ICANN’s Bylaws and the Supplementary Procedures that the ICDR has adopted specially for IRP proceedings, apply here.³² Unlike a traditional arbitration or mediation through the ICDR, the

²⁹ Bylaws, Cl. Ex. RM-2, at Art. IV, § 3. Prior to initiating an independent review, parties are urged to enter into a period of cooperative engagement with ICANN for the purpose of resolving or narrowing the issues in dispute. *Id.* at § 3.14. The parties engaged in the cooperative engagement process before commencing the independent review at issue here but were not able to resolve the dispute.

³⁰ See Bylaws, Cl. Ex. RM-2, at Art. IV, §§ 3.2, 3.4.

³¹ See *id.*

³² Absent a governing provision in ICANN’s Bylaws or the ICDR’s Supplemental Procedures, the ICDR Rules apply. But in the event of any inconsistency between the Supplementary Procedures and the ICDR’s Rules, the Supplementary Procedures shall govern. Bylaws, Cl. Ex. RM-2, at Art. IV, § 3.8; see

Bylaws expressly provide that the IRP should be conducted via “email and otherwise via the Internet to the maximum extent feasible.” The IRP Panel may also hold meetings via telephone where necessary, and “[i]n the unlikely event that a telephone or in-person hearing is convened, the hearing shall be limited to argument only; all evidence, including witness statements, must be submitted in writing in advance.”³³

26. Consistent with ICANN’s Bylaws, the IRP Panel is supposed to issue a written declaration designating, among other things, the prevailing party.³⁴ The IRP Panel’s declaration is not binding because the Board is not permitted to outsource its decision-making authority. The Board will, of course, give serious consideration to the IRP Panel’s declaration and, “where feasible,” shall consider the IRP Panel’s declaration at the Board’s next meeting.³⁵

ARGUMENT

I. **BOOKING.COM’S CLAIM THAT ICANN BREACHED ITS BYLAWS BY “ACCEPTING” THE ICC’S DETERMINATION IS FACTUALLY INCORRECT AND DOES NOT SUPPORT ITS IRP REQUEST.**

27. Booking.com argues that the ICANN Board has the ability to overturn the decision of the String Similarity Panel finding .hotels and .hoteis visually similar. Specifically, Booking.com claims that “[b]y accepting a third-party determination that is contrary to its

(continued...)

also ICDR Supplementary Procedures for Internet Corporation for Assigned Names and Numbers, Independent Review Process, § 2, *available at* <https://www.adr.org/cs/groups/international/documents/document/z2uy/mde0/~edis/adrstage2014403.pdf> [Hereinafter, ICDR Supplementary Procedures].

³³ Bylaws, Cl. Ex. RM-2, at Art. IV, § 3.12; ICDR Supplementary Procedures, ¶ 10 (Resp. Ex. 2.) The Bylaws provide that requests for independent review shall not exceed 25 pages (double-spaced, 12-point font) of argument (Booking.com’s IRP Request was 25 pages), and that ICANN’s response shall not exceed that same length. Booking.com states that it is “reserving all rights to rebut ICANN’s response in further briefs...” ICANN disagrees that Booking.com has any “rights to rebut,” but will reserve discussion on that topic unless and until Booking.com seeks leave to place additional information before the IRP Panel.

³⁴ Bylaws, Cl. Ex. RM-2, at Art. IV, § 3.18.

³⁵ *Id.* at Art. IV, § 3.21.

policies, ICANN has failed to act with due diligence and failed to exercise independent judgment.”³⁶ Booking.com’s conclusions in this regard are factually incorrect and do not support an IRP Request under ICANN’s Bylaws.

28. The Guidebook states that the “string similarity review will be conducted by an independent String Similarity Panel,” not ICANN.³⁷ And “[i]n performing this review, the String Similarity Panel [not ICANN] will create contention sets that may be used in later stages of evaluation.”³⁸ After a request for proposal process, ICANN selected ICC to perform the String Similarity Reviews and create contention sets (if applicable). ICC reviewed all applied-for strings according to the standards and methodology of the visual String Similarity Review set out in the Guidebook.³⁹ ICANN played no role in performing the String Similarity Review or the creation of the contention sets.

29. In the provisions governing the outcome of the String Similarity Panel’s evaluation, the Guidebook does not provide ICANN discretion to review or otherwise substantively consider the String Similarity Panel’s determination. Instead, the Guidebook provides that following the conclusion of the Panel’s evaluation, “[a]n application for a string that is found too similar to another applied-for string will be placed in a contention set.”⁴⁰ Thus, under the applicable Guidebook provisions, the Panel’s determination that .hotels and .hoteis are visually similar mandated that these two strings be put into a contention set.

³⁶ IRP Request, ¶¶ 9, 59.

³⁷ Guidebook, Cl. Ex. RM-5, at § 2.2.1.1.

³⁸ *Id.* at § 2.2.1.1.1. That the string similarity review would be entirely within the purview of an independent string similarity review panel – and not the ICANN Board – was made clear as early as 31 July 2009, when ICANN issued its Call for Expressions of Interest, and stated that “String Similarity Examiners will review all applied-for strings and decide whether the strings proposed in any pair of applications are so similar to another applied-for string ... that they should be placed into direct string contention as part of a contention set.” *See* Cl. Ex. RM-15, at p. 4 (emphasis added).

³⁹ Cl. Ex. Annex-11.

⁴⁰ Guidebook, Cl. Ex. RM-5, at § 2.2.1.1.3 (emphasis added).

30. The only “review” performed following the String Similarity Panel’s evaluation was procedural, in the form of a quality control review over a random sampling of applications to, among other things, test whether the process referenced above was followed.⁴¹ This procedural review was conducted by an independent third-party consultant – JAS Advisors – not ICANN,⁴² and certainly not the ICANN Board. Following completion of this procedural safeguard, ICANN posted the findings of the String Similarity Panel, as the Guidebook requires.⁴³

31. Therefore, upon notification to the applicants and the posting of the String Similarity Panel report of contention sets, the decision concerning .hotels/.hoteis was already final. Booking.com does not cite – and the Guidebook does not provide for – any discretion for ICANN to exercise “independent judgment” to “accept” or “reject” the determination of the String Similarity Review Panel.⁴⁴

32. ICANN’s Bylaws provide that the Independent Review Process is only available to persons “materially affected by a decision or action of the [ICANN] Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws.”⁴⁵ The IRP is thus limited to challenging ICANN Board conduct, and is not available as a means to challenge the conduct of

⁴¹ New gTLD Program Update, Dakar, 26 October 2011, *available at* <http://dakar42.icann.org/node/26953> and Resp. Ex. 1, at p. 19. *See also* <http://newgtlds.icann.org/en/blog/preparing-evaluators-22nov11-en>.

⁴² *Id.* Even if JAS Advisors could be considered as acting as ICANN staff, the actions of ICANN staff are not subject to an IRP challenge.

⁴³ Guidebook, Cl. Ex. RM-5, at § 2.2.1.1.1.

⁴⁴ ICANN has always made clear that it would rely on the advice of its evaluators in the initial evaluation stage of the New gTLD Program, subject to quality assurance measures. Therefore, Booking.com is actually proposing a new and different process when it suggests that ICANN should have deviated from this established procedure and perform a substantive review (instead of process testing) over the results of the String Similarity Panel’s outcomes prior to the finalization of contention sets. Of course, had ICANN actually deviated from the Guidebook in this respect, as Booking.com suggests, it could then have been accused of acting improperly.

⁴⁵ Bylaws, Cl. Ex. RM-2, at Art. IV, § 3.2.

third parties, or even conduct of ICANN staff. Because the determination that .hotels and .hoteis are visually similar and properly included in a contention set was the decision of the independent String Similarity Panel – and not the ICANN Board – Booking.com has failed to challenge any Board conduct appropriately subject to the Independent Review Process.

II. **BOOKING.COM’S CLAIM THAT IT WAS NOT GIVEN THE REASONS FOR THE STRING SIMILARITY PANEL’S DETERMINATION DOES NOT SUPPORT ITS IRP REQUEST.**

33. Booking.com claims that “neither ICANN nor the SSP [String Similarity Panel] has ever published a reasoned report [explaining why .hotels and .hoteis were put into a contention set] ... [and that] no reasons were given for the outcome of the String Similarity Review.”⁴⁶ This, Booking.com says, constitutes a violation of ICANN’s “obligation to act in good faith by failing to provide due process to Booking.com’s application.”⁴⁷ Booking.com also claims that this amounts to a violation of ICANN’s obligation to act transparently, insofar as “[t]he principle of transparency arises from, and is generally seen as an element of, the principle of good faith.”⁴⁸ Booking.com states that “[t]he principle of good faith includes an obligation to ensure procedural fairness by, *inter alia*, adhering to substantive and procedural rules...” and that “ICANN’s core values require ICANN to obtain informed input from those entities most affected by ICANN’s decision.”⁴⁹ Booking.com fails to mention that ICANN, in processing the application for .hotels, adhered to substantive and procedural rules that were formed only after obtaining informed input from the ICANN community, including prospective gTLD applicants.

⁴⁶ IRP Request, ¶ 26; *see also id.* at ¶ 30 (ICANN “failed to provide any particularized rationale or analysis for putting .hotels and .hoteis in a contention set.”); *id.* at ¶ 55 (“ICANN never provided any information on the standards to be used by the String Similarity Panel, or the manner in which they were applied in this case....”).

⁴⁷ *Id.* at 18.

⁴⁸ *Id.* ¶¶ 50, 67.

⁴⁹ *Id.* ¶ 44.

34. ICANN’s decision to proceed with the New gTLD Program followed many years of discussion, debate and deliberation within the Internet community, including participation from end users, civil society, technical experts, business groups, governments and others. ICANN’s work to implement the Program – including the creation of an application and evaluation process for new gTLDs that is aligned with the policy recommendations and provides a clear roadmap for applicants to reach delegation – is reflected in the numerous drafts of the Guidebook that were released for public comment, and in the explanatory papers giving insight into the rationale behind some of the conclusions reached on specific topics.⁵⁰ Meaningful community input from participants around the globe led to numerous and significant revisions of each draft version of the Guidebook, resulting in the Guidebook that is used in the current application round.⁵¹

35. Section 2.2.1.1 of the Guidebook is clear on the standards to be used in the String Similarity Review process and ICC has confirmed that the standard it used for string similarity evaluation “comes from the AGB [Guidebook].”⁵² Nowhere in the Guidebook is there a requirement that the rationale for the determination(s) rendered by the independent third-party evaluators be published.

36. Nonetheless, contrary to Booking.com’s assertion, ICC did publish documentation setting forth the factors considered by the String Similarity Panel when determining whether applied-for strings are visually confusingly similar under applicable Guidebook provisions.⁵³ Specifically, ICC’s process documentation “provide[d] a summary of the process, quality control mechanisms and some considerations surrounding non-exact

⁵⁰ See <http://newgtlds.icann.org/en/about/historical-documentation>.

⁵¹ *Id.*

⁵² Cl. Ex. Annex-11.

⁵³ *Id.*

contention sets for the string similarity evaluation as requested by ICANN.”⁵⁴ And ICANN subsequently published that information on its website.⁵⁵ While the published documentation was not specifically tailored to any particular String Similarity Panel determination, there is no requirement that either ICC or ICANN publish any such detailed narrative.

37. The fact that ICANN, following years of inclusive policy development and implementation planning, ultimately did not include a requirement that ICANN publish the rationale for the String Similarity Panel’s individual determinations does not mean that ICANN acted inconsistent with its Bylaws or Articles of Incorporation. Indeed, there is no established policy or process that requires ICANN to take such action. While parties subject to the String Similarity Review may not always be satisfied with the determinations of the String Similarity Panel, an IRP is not intended to be an avenue to reexamine the Guidebook. Booking.com’s belief that the String Similarity Review process should have included certain requirements (such as a requirement to publish the Panel’s rationale) does not constitute a Bylaws violation. Booking.com’s invocation of the Independent Review Process is not supported.

38. The Guidebook sets forth the methodology to be used when evaluating visual similarity of strings. Pursuant to the procedure set forth in the Guidebook, the String Similarity Review was conducted by an independent String Similarity Panel (the ICC).⁵⁶ The process documentation provided by the ICC described, in considerable detail, the steps the String Similarity Panel followed in applying the methodology set out in the Guidebook.⁵⁷ Another independent third-party – JAS Advisors – then performed a quality assurance review over a

⁵⁴ *Id.*

⁵⁵ <http://www.icann.org/en/news/correspondence/mcfadden-to-weinstein-18dec13-en>.

⁵⁶ Guidebook, Cl. Ex. RM-5, at § 2.2.1.1 (“This similarity review will be conducted by an independent String Similarity Panel.”).

⁵⁷ Cl. Ex. Annex-11.

random selection of the Panel’s reviews to confirm that the methodology and process were followed, at which point ICANN published the conclusions of the String Similarity Panel.⁵⁸ The record demonstrates that ICANN followed the process set forth in the Guidebook. Demonstrated adherence to approved and documented processes cannot provide a basis for an IRP under ICANN’s Bylaws.⁵⁹

39. Booking.com also appears to be challenging the ICC’s conduct in performing the String Similarity Review, and specifically the ICC’s decision not to publish its rationale for finding .hotels and .hoteis confusingly similar. But the IRP does not exist to address the propriety of action or inaction by third parties. And even if ICC’s conduct could be considered that of ICANN staff, the IRP cannot be used to challenge ICANN staff action or inaction. Instead, as noted, this IRP Panel’s charge is limited to “comparing contested actions of the [ICANN] Board to the [ICANN] Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws.”⁶⁰ That Booking.com disagrees with the outcome of the Panel’s review is not a basis to conclude that the Board acted contrary to its Bylaws or Articles.

III. ICANN PROPERLY REJECTED BOOKING.COM’S REQUEST FOR RECONSIDERATION.

40. Article IV, Section 2 of ICANN’s Bylaws permits an entity that has been materially affected by an ICANN staff or ICANN Board decision to request that the Board

⁵⁸ Guidebook, Cl. Ex. RM-5, at § 2.2.1.1.1 (“ICANN will notify applicants who are part of a contention set as soon as the String Similarity review is completed.... These contention sets will also be published on ICANN’s website.”).

⁵⁹ *Id.* at § 2.2.1.1.3 (“An application for a string that is found too similar to another applied-for gTLD will be placed in a contention set.”) (emphasis added). The only conceivable way ICANN’s conduct in following exactly the provisions of the Guidebook could provide a basis for an IRP is if Booking.com is challenging the ICANN Board’s adoption of the Guidebook. Booking.com has not asserted – and could not assert – such a claim.

⁶⁰ Bylaws, Cl. Ex. RM-2, at Art. IV, § 3.4.

reconsider that decision.⁶¹ After ICANN staff posted the results of the String Similarity Panel on 26 February 2013, Booking.com filed a Request for Reconsideration.⁶² The main focus of Booking.com’s Reconsideration Request was that .hotels and .hoteis can co-exist on the Internet without concern of confusability, arguing that the String Similarity Panel’s decision to put .hotels and .hoteis in a contention set was substantively wrong. Booking.com also claimed that the Panel merely provided “advice to ICANN” and that ICANN improperly “accepted” that advice because .hotels and .hoteis are not, in Booking.com’s opinion, confusingly similar.

41. ICANN rejected Booking.com’s Reconsideration Request because:

This Request challenges a substantive decision taken by a panel in the New gTLD Program and not the process by which that decision was taken. ... Reconsideration is not a mechanism for direct, de novo appeal of staff or panel decisions with which requester disagrees, and seeking such relief is, in fact, in contravention of the established processes within ICANN.⁶³

42. Booking.com now claims that “ICANN’s denial to reconsider its decision to put .hotels and .hoteis in a contention set is ... contrary to ICANN’s Articles of Incorporation and Bylaws.” But Booking.com does not explain how the denial of Booking.com’s Reconsideration Request constitutes a violation of ICANN’s Bylaws or Articles of Incorporation, except to say that “[i]t is unclear which of ICANN’s core values could have possibly led ... to declining Booking.com’s Reconsideration Request.”⁶⁴

43. Booking.com’s Reconsideration Request made clear that Booking.com was asking – much like it does here – for a re-determination of the String Similarity Review between .hotels and .hoteis. That is not a proper use of the reconsideration process, as ICANN

⁶¹ See *id.* at Art. IV, § 2.

⁶² See Booking.com’s Reconsideration Request (Request 13-5) (Cl. Ex. Annex-13).

⁶³ BGC Determination on Reconsideration Request 13-5, at 9 (Cl. Ex. Annex-14).

⁶⁴ IRP Request, ¶ 36.

has confirmed repeatedly in conjunction with the New gTLD Program.⁶⁵ ICANN's role was not to second-guess the substantive decisions of the selected third-party evaluators.

44. Booking.com points to statements by a few ICANN Board members that the String Similarity Panel's determination on .hotels/.hoteis was "not fair or correct," but these statements do not demonstrate that any process was violated.⁶⁶ Indeed, Booking.com fails to note that these Board members specifically "agreed that the process was followed," that "the BGC has done an appropriate job of applying a limited review standard to the application for reconsideration," and "that the BGC did the right thing" under ICANN's Bylaws governing Reconsideration Requests.⁶⁷

45. Under ICANN's Bylaws, in order to present a proper Reconsideration Request based on staff action or inaction, a requester must provide a detailed explanation of the facts as presented to the staff and the reasons why "one or more staff actions or inactions ... contradict established ICANN policy(ies)."⁶⁸ As one ICANN Board member noted at the 11 April 2013 Board meeting, the reconsideration process does not allow for a full-scale review of a new gTLD application.⁶⁹ The focus instead is on the process followed in reaching decisions on New gTLD Applications. Because Booking.com did not point to any ICANN staff or Board action that

⁶⁵ See, e.g., BGC Determination on Reconsideration Request 13-21, at p. 6 ("In the context of the New gTLD Program ... the reconsideration process does not call for the BGC to perform a substantive review of expert determinations. Rather, the BGC's review is limited to whether the Panel violated any established policy or process..."), available at <http://www.icann.org/en/groups/board/governance/reconsideration/13-21/determination-european-lotteries-21jan14-en.pdf>; BGC Determination on Reconsideration Request 14-2, at p. 5 (same), available at <http://www.icann.org/en/groups/board/governance/reconsideration/14-2/determination-wgc-05feb14-en.pdf>.

⁶⁶ IRP Request, ¶ 35 (citing Cl. Ex. Annex-16 (Minutes of the Meeting of the New gTLD Program Committee on 10 September 2013)).

⁶⁷ Cl. Ex. Annex-16 at p. 3.

⁶⁸ Bylaws, Cl. Ex. RM-2, at Art. IV, §2.2.

⁶⁹ Preliminary Report of 11 April 2013 meeting, available at <http://www.icann.org/en/groups/board/documents/prelim-report-11apr13-en.htm> and Resp. Ex. 3.

violated any process or policy in the String Similarity Panel’s review of .hotels and .hoteis – but instead challenged the substance of the String Similarity Review Panel’s decision –

Booking.com’s Reconsideration Request was properly denied.

IV. BOOKING.COM’S CLAIM THAT THE STRING SIMILARITY PANEL “GOT IT WRONG” IS IRRELEVANT, BUT IS WITHOUT MERIT IN ALL EVENTS.

46. As discussed above, Booking.com’s IRP Request is really about Booking.com’s disagreement with the String Similarity Panel’s conclusion, as evidenced by Booking.com’s repeated assertion that “there is no probability of user confusion if both .hotels and .hoteis are delegated as gTLD strings in the Internet root zone.”⁷⁰ To support this assertion, Booking.com cites to the opinion of an independent expert who was not part of the String Similarity Panel,⁷¹ references certain (largely irrelevant) two-letter country-code (“cc”) TLDs that coexist with interchangeable “i”s and “l”s,⁷² and references gTLDs that coexist with interchangeable “i”s and “t”s.⁷³

47. Booking.com is challenging the merits of the Panel’s conclusions, and in so doing, Booking.com supplants what it believes the review methodology for assessing visual similarity should have been, as opposed to the methodology set out at Section 2.2.1.1.2 of the Guidebook. In proposing a new review methodology, Booking.com is asking the IRP Panel to substantively evaluate the confusability of the strings and reverse the decision of the independent String Similarity Panel. Under ICANN’s Bylaws, however, an IRP Panel does not have the authority to perform a substantive review of the String Similarity Panel’s decision (even if the String

⁷⁰ See, e.g., IRP Request, ¶ 27; *Id.* at ¶ 58 (“There is no probability of user confusion if both .hotels and .hoteis were delegate as gTLDs into the Internet root zone.”); *id.* at ¶ 59 (“.hotels and .hoteis are not confusingly similar”).

⁷¹ Cl. Ex. Annex-20.

⁷² IRP Request, ¶ 66.

⁷³ *Id.* at ¶¶ 63-65.

Similarity Panel’s conduct was deemed to be that of ICANN staff). The IRP Panel is only “charged with comparing contested actions of the [ICANN] Board to the [ICANN] Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws.”⁷⁴ The IRP Panel is not tasked with determining whether the String Similarity Panel’s decision to include .hotels and .hoteis in a contention set was wrong, and the IRP is not available as a mechanism to re-try the decisions of independent evaluation panels.

48. The visual String Similarity Review focused on whether the applied-for string will contribute to instability of the domain name system.⁷⁵ It is therefore not practical or desirable to create a process for the Board or an IRP Panel to supplant its own determination as visual string similarity over the guidance of an expert panel formed for that particular purpose.

49. Booking.com actually has recognized that the IRP Panel’s role is not to review the merits of the String Similarity Panel’s determination.⁷⁶ Booking.com complains that “ICANN has not created any process for challenging the substance of the SSP’s [String Similarity Panel’s] determination.”⁷⁷ But the absence of an appeal mechanism allowing Booking.com to challenge the merits of the independent String Similarity Panel’s determination does not give rise to an IRP because there is nothing in ICANN’s Bylaws or Articles of Incorporation requiring ICANN to act in the manner preferred by Booking.com.

⁷⁴ Bylaws, Cl. Ex. RM-2, at Art. IV, § 3.4.

⁷⁵ Guidebook, § 2.2.1.1.

⁷⁶ IRP Request, ¶ 70.

⁷⁷ *Id.* The Guidebook does not set forth any “appeal” process, only that an “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.” (Guidebook, Cl. Ex. RM-5, at Module 6 (Terms and Conditions).)

50. In all events, the ICC’s determination that .hotels and .hoteis are visually confusingly similar was well supported. The Guidebook sets out detail regarding the String Similarity Review, including the review methodology. The independent String Similarity Panel was responsible for the development of its own process documentation and methodology for performing the String Similarity Review, and was also responsible for the maintenance of its own work papers. In that regard, and contrary to Booking.com’s claims, ICC did publish details concerning its process, quality control mechanisms, and considerations surrounding non-exact contention sets for string similarity evaluation.⁷⁸ Regarding non-exact match contention sets, ICC explained that a string pair was found to be confusingly similar when the following features were present:

- Strings of similar visual length on the page;
- Strings within +/- 1 character of each other;
- Strings where the majority of characters are the same and in the same position in each string; and
- The two strings possess letter combinations that visually appear similar to other letters in the same position in each string
 - For example m~m & l~i⁷⁹

51. Importantly, .hotels and .hoteis meet every one of these criteria.

- .hotels and .hoteis are “strings of similar visual length on the page”;
- .hotels and .hoteis are “strings within +/- 1 character of each other”;

⁷⁸ 18 December 2013 ICC Memorandum Re: String Similarity Process, Quality Control and Non-Exact Contention Sets (Cl. Ex. Annex-11 at p. 3).

⁷⁹ *Id.*

- .hotels and .hoteis are “strings where the majority of characters are the same and in the same position in each string”; and
- .hotels and .hoteis “possess letter combinations that visually appear similar to other letters in the same position in each string”, namely “l” & “i”.

52. Further, the Guidebook provides that the String Similarity Panel would be informed by an algorithmic score for the visual similarity between each applied-for string and each of the other existing and applied-for TLDs and reserved names:⁸⁰

The score will provide one objective measure for consideration by the panel, as part of the process of identifying strings likely to result in user confusion. In general, applicants should expect that a higher visual similarity score suggests a higher probability that the application will not pass the String Similarity review.⁸¹

53. Booking.com fails to reference this publicly available SWORD algorithm, or the fact that .hotels and .hoteis scored a 99% for visual similarity.⁸² As the Guidebook makes clear, “a higher visual similarity score suggests a higher probability that the application will not pass the String Similarity review,” it was not clearly “wrong,” as Booking.com argues, for the ICC to find that .hotels/.hoteis are confusingly similar.⁸³

V. RESPONSE TO BOOKING.COM’S REQUESTED RELIEF

54. Booking.com requests that, in addition to various declarations that ICANN’s conduct was inconsistent with ICANN’s Bylaws and Articles of Incorporation, the Panel issue a

⁸⁰ Guidebook, Cl. Ex. Annex-5, at § 2.2.1.1.2 (Review Methodology).

⁸¹ *Id.*

⁸² See <https://icann.sword-group.com/algorithm/>.

⁸³ Guidebook, Cl. Ex. Annex-5, at § 2.2.1.1.2.

declaration “[r]equiring that ICANN reject the determination that .hotels and .hoteis are confusingly similar and disregard the resulting contention set.”⁸⁴

55. But any request that the IRP Panel grant affirmative relief goes beyond the IRP Panel’s authority. ICANN’s Bylaws provide, in pertinent part:

4. Requests for such independent review shall be referred to an Independent Review Process Panel (“IRP Panel”), which shall be charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws.⁸⁵

11. The IRP Panel shall have the authority to:

a. summarily dismiss requests brought without standing, lacking in substance, or that are frivolous or vexatious;

b. request additional written submissions from the party seeking review, the Board, the Supporting Organizations, or from other parties;

c. declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws; and

d. 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;

e. consolidate requests for independent review if the facts and circumstances are sufficiently similar; and

f. determine the timing for each proceeding.

56. Thus, the IRP Panel is limited to declaring whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws and recommending that the Board stay any action or decision or take any interim action until such time as the Board reviews and acts upon the opinion of the IRP Panel. Nothing in the Bylaws or Articles of Incorporation

⁸⁴ See IRP Request, ¶ 78. Booking.com also requests that “ICANN be required to overturn the string similarity determination in relation to .hotels and .hoteis and allow Booking.com’s application to proceed on its own merits without reference to the application for .hoteis.” (IRP Request, ¶ 9.)

⁸⁵ Bylaws, Cl. Ex. RM-2, at Art. IV, § 3.4.

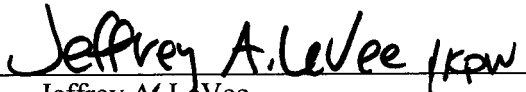
grants the IRP Panel authority to award affirmative relief or to require ICANN to undertake specific conduct.⁸⁶

CONCLUSION

57. ICANN's conduct with respect to Booking.com's application for .hotels was fully consistent with ICANN's Articles of Incorporation and Bylaws. ICANN followed the procedures in the Guidebook and followed the procedures set forth in its Bylaws in evaluating Booking.com's Request for Reconsideration. The fact that Booking.com disagrees with the String Similarity Panel's determination to put .hotels and .hoteis in a contention set does not give rise to an IRP. Booking.com's IRP Request should be denied.

Respectfully submitted,

Dated: April 25, 2014

By: 
Jeffrey A. LeVee

Jones Day
Counsel for Respondent ICANN

LAI-3213691v1

⁸⁶ Indeed, the IRP Panel in the first IRP ever constituted under ICANN's Bylaws found that "[t]he 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." See Advisory Declaration of IRP Panel, ICM Registry, LLC v. ICANN, ICDR Case No. 50 117 T 00224 08, at ¶ 133, *available at* <http://www.icann.org/en/irp/icm-v-icann/irp-panel-declaration-19feb10-en.pdf> (last visited 7 April 2014) and Cl. Ex. RM-22.

INDEPENDENT REVIEW PROCESS

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

Booking.Com B.V.
(Claimant)

v.

Internet Corporation for Assigned Names and Numbers
(Respondent)

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

<u>Exhibit</u>	<u>DESCRIPTION</u>
Resp. Ex. 1	New gTLD Program Update, Dakar, 26 October 2011, <i>available at</i> http://dakar42.icann.org/node/26953
Resp. Ex. 2	ICDR Supplementary Procedures for Internet Corporation for Assigned Names and Numbers, Independent Review Process, <i>available at</i> https://www.adr.org/cs/groups/international/documents/document/z2uy/mde0/~edi sp/adrstage2014403.pdf
Resp. Ex. 3	Preliminary Report, Regular Meeting of the ICANN Board, 11 April 2013, <i>available at</i> http://www.icann.org/en/groups/board/documents/prelim-report-11apr13-en.htm

RESP. Ex. 1

New gTLD Program Update

26 Oct 2011



Agenda

- Applicant Guidebook
- Evaluation process
- Operations
- Issues under discussion
- Communications

Applicant Guidebook



Updates per Singapore Board Resolution

- IOC and Red Cross names
- GAC Early Warning and Advice processes
- URS loser pays threshold

Additional Updates

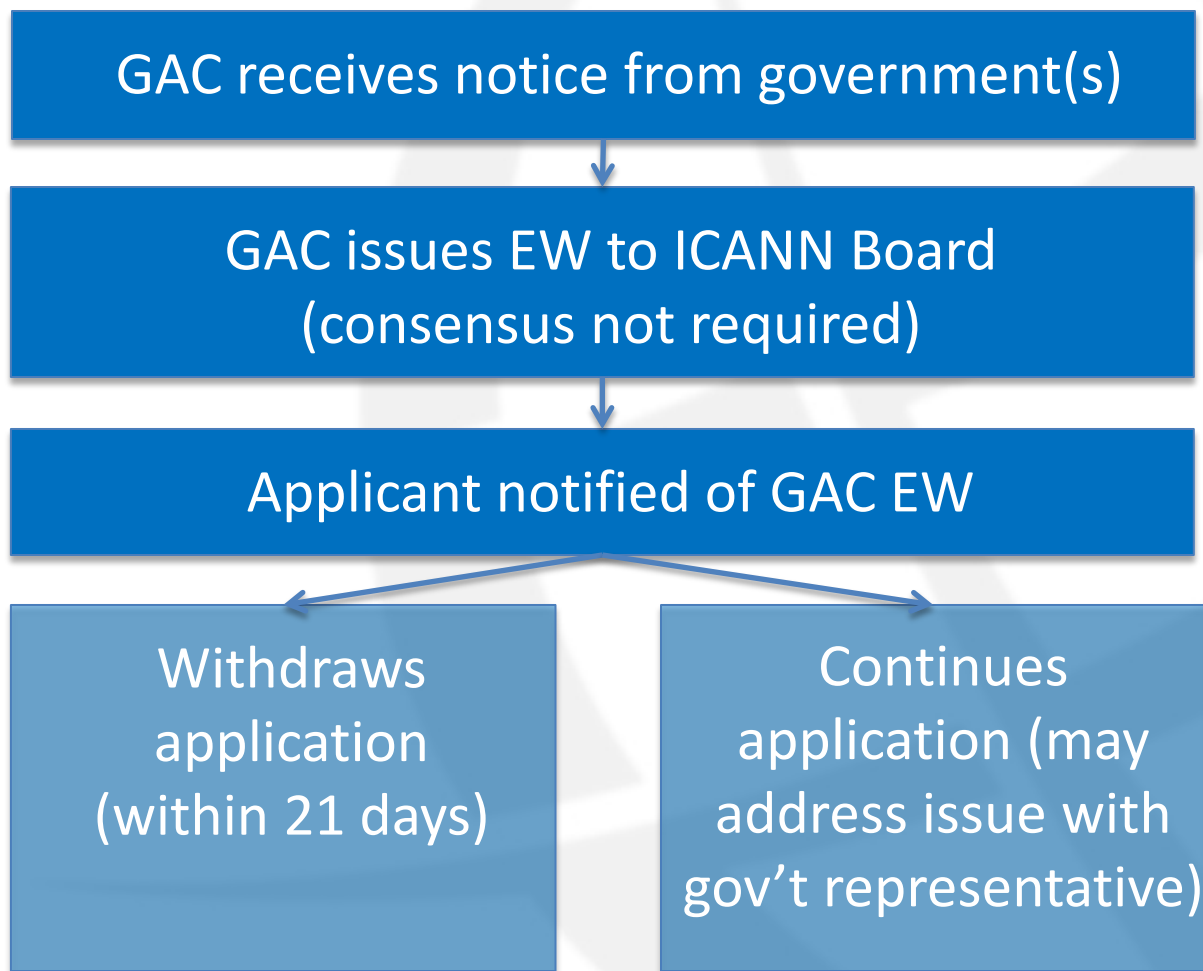
- Dates for Application Submission period
 - 12 Jan – 29 Mar 2012 user registration
 - 12 Jan – 12 Apr 2012 application submission
- Resources for Applicant Assistance

<http://newgtlds.icann.org/applicants/candidate-support>

GAC Early Warning

- WHEN: Concurrent with 60-day Application Comment period
- WHAT: Notice only, not a formal objection
- WHY: Notice to GAC by 1 or more governments that application might be problematic

GAC Early Warning Process



Recommendations

- Take GAC Early Warning seriously (likelihood that application could be the subject of GAC Advice)
- Identify potential sensitivities in advance of application submission, and work with relevant parties beforehand to mitigate concerns

GAC Advice on New gTLDs

- To address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities
 - GAC intention to develop standard vocabulary and set of rules for use in providing its advice
 - To be submitted by close of Objection Filing Period
- Applicant may submit a response before GAC Advice is considered by Board
- Board must provide reasons if it disagrees

Evaluation Process

When Can I Apply?

2012

January

Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7				1	2	3	4
8	9	10	11	12	13	14	5	6	7	8	9	10	11
15	16	17	18	19	20	21	12	13	14	15	16	17	18
22	23	24	25	26	27	28	19	20	21	22	23	24	25
29	30	31					26	27	28	29			

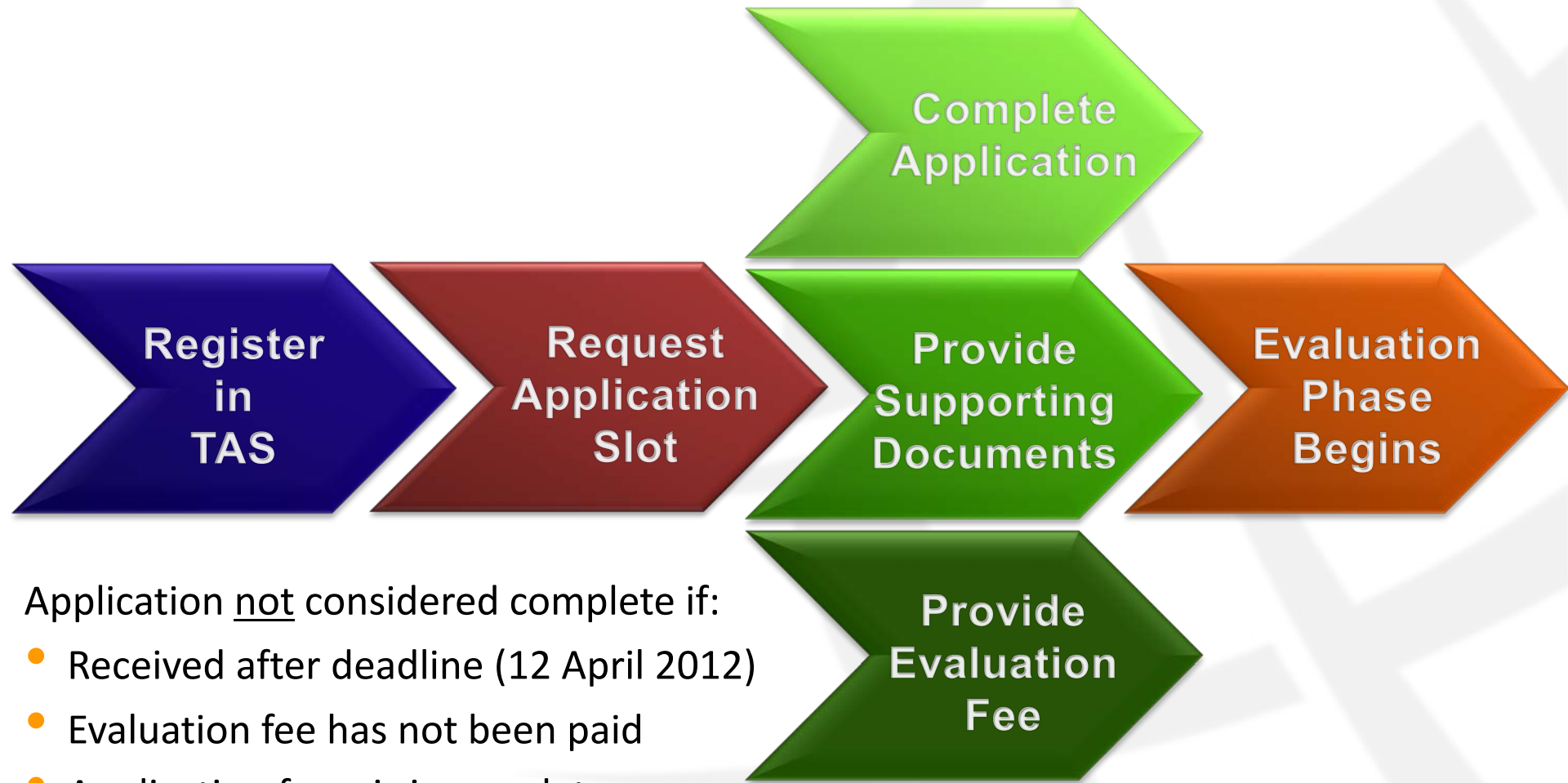
February

March

Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3	1	2	3	4	5	6	7
4	5	6	7	8	9	10	8	9	10	11	12	13	14
11	12	13	14	15	16	17	15	16	17	18	19	20	21
18	19	20	21	22	23	24	22	23	24	25	26	27	28
25	26	27	28	29	30	31	29	30					

April

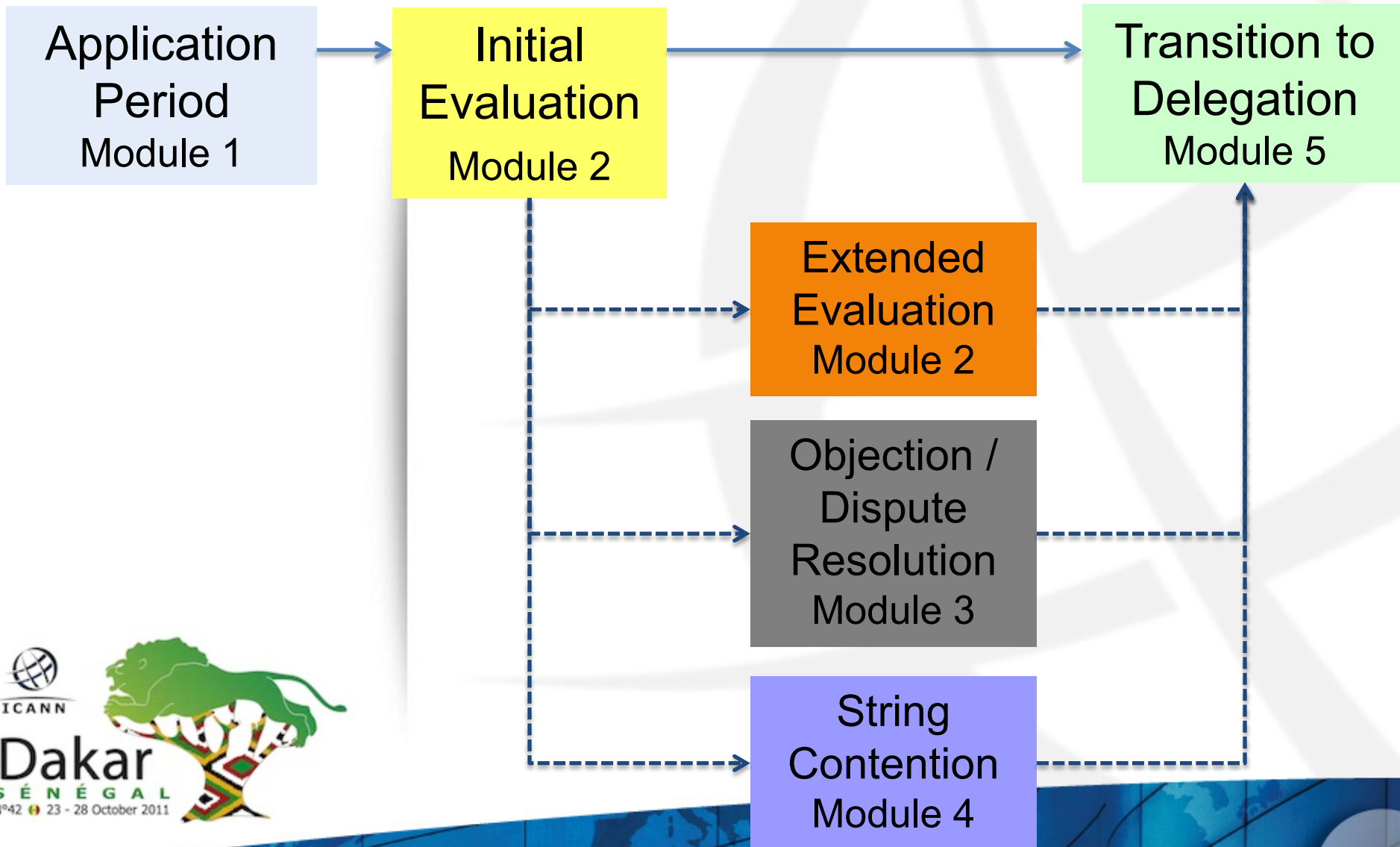
Application Process



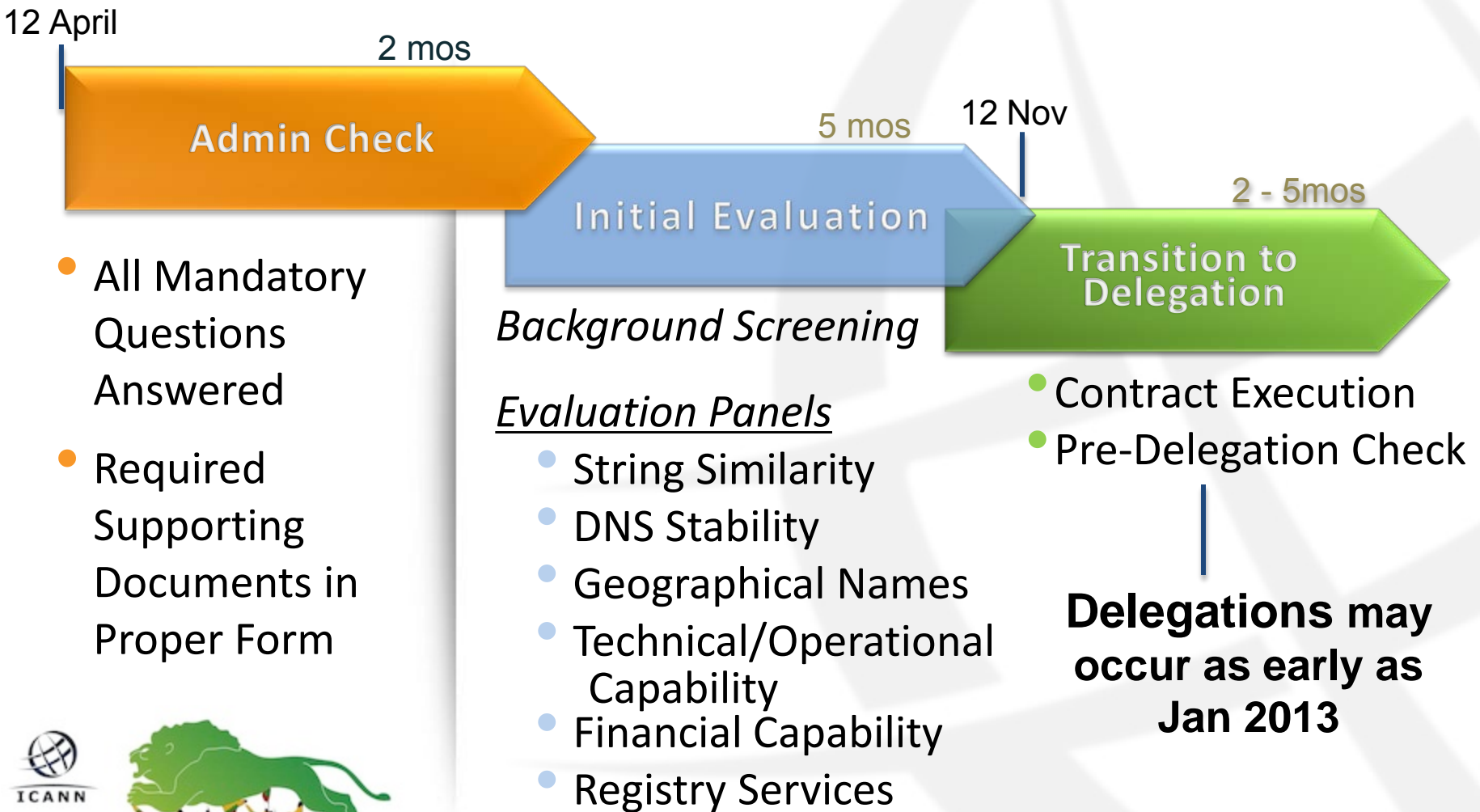
Application not considered complete if:

- Received after deadline (12 April 2012)
- Evaluation fee has not been paid
- Application form is incomplete

Application Process



Basic Evaluation Path



Key Dates

2011

12 January	Application Window Opens
29 March 12 April	Initial Registration Due Applications Complete / Window Closes
1 May	Strings Posted Opens: <ul style="list-style-type: none">✓ Application Comment Process✓ GAC Early Warning✓ GAC Advice Period✓ Objection Period
12 June	Initial Evaluation Begins
30 June	Application Comment Process Closes GAC Early Warning Closes
12 November	Initial Evaluation Closes → Results are Posted

Key Dates

2011

29 November

Last day to elect Extended Evaluation

1 December

Begins:

- ✓ Extended Evaluation
- ✓ Transition to Delegation (for Clean Applications)
- ✓ String Contention (for Applications not in Dispute Resolution or Extended Evaluation)

GAC Advice Period Closes

Last Day to file an Objection

2012

30 April

Extended Evaluation Closes

Dispute Resolution Closes

Results & Summaries Posted

15 May

String Contention Opens (for Applications with Variables)

30 May

String Contention Closes (for Clean Applications)

→ Results Posted



Service Providers

Background screening

- String Similarity
- DNS Stability
- Registry Services
- Geographic
- Technical/Ops
- Financial
- Community Priority

Quality Control

Evaluation Panels

- Currently negotiating Evaluation Panel services contracts with final candidates
- Working through simulation exercises on evaluation procedures

Evaluation Panels

Panel	Service Providers
String Similarity	<ul style="list-style-type: none">• InterConnect Communications
DNS Stability	<ul style="list-style-type: none">• Interisle Communications
Registry Services	<ul style="list-style-type: none">• Interisle Communications
Geographic Names	<ul style="list-style-type: none">• Economist Intelligence Unit• InterConnect Communications
Financial / Tech / Ops	<ul style="list-style-type: none">• Ernst & Young• JAS Advisors• KPMG
Community Priority	<ul style="list-style-type: none">• Economist Intelligence Unit• InterConnect Communications
Quality Control	<ul style="list-style-type: none">• JAS Advisors

Background Screening

- RFP issued 30 August 2011
- 11 global firms responded
- Vendor selection currently underway

Quality Control Objectives

- Consistency
- Accountability
- Improvement
- Transparency

Quality Control Components

- Performing simulation exercises
- Initial sampling
- Blind re-evaluation (~15%)
- Random procedural reviews
- Independent report will be published

Program Governance

Oversight and program management to ensure effective program administration

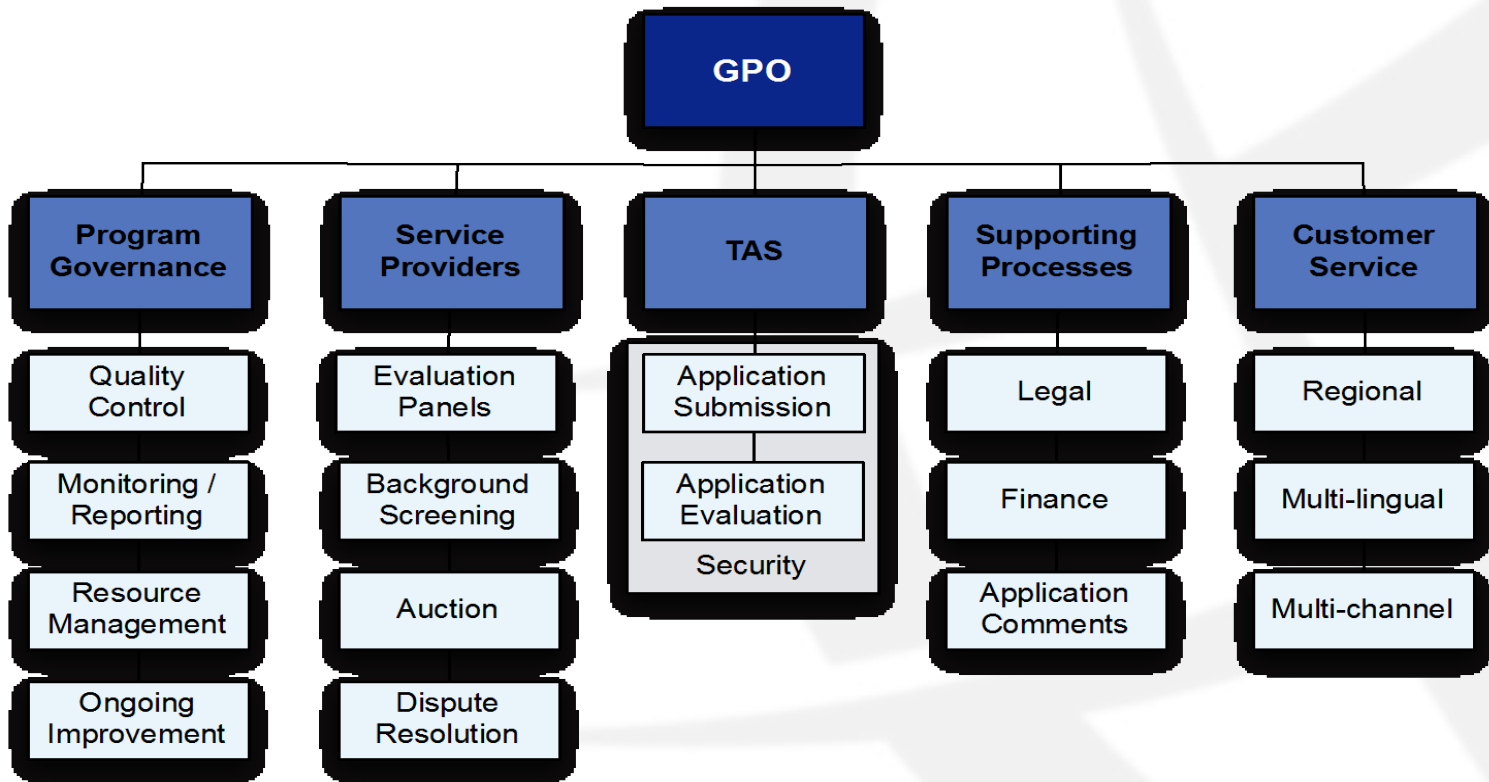


Operations

Operational Readiness

- Study completed to:
 - identify key functions
 - capture current processes
 - determine the potential impacts
 - enable operational readiness
- Goals:
 - Addressing the effects and risks to operations
 - Anticipating and addressing the impact to existing operating processes
 - gTLD Program Office Legal
 - Finance IANA
 - Registry Liaison Registrar Liaison
 - Contractual Compliance

Operational Readiness



Procurement for Post-Delegation Activities

Provider	Function	Status
Emergency Back-End Registry Operator (EBERO)	Emergency provider to sustain critical registry functions during temporary failures or transition process	RFI open through 30 November 11
Trademark Clearinghouse	Data repository offering authentication and validation services for trademark data	RFI open through 25 November 11
Independent Objector (IO)	Objector to file and prosecute objections in public interest	RFP expected mid-November – combined with recruiting activity
Uniform Rapid Suspension (URS)	Provider(s) to administer URS complaints re: registered names	RFP expected mid-November

Issues under discussion

Registry-Registrar Cross-Ownership (Vertical Integration)

- For new gTLDs, registries will be able to compete as registrars, and registrars will be able to compete as registries
- For existing gTLDs, cross-ownership is deferred pending further discussions including with competition authorities

Batching: Considerations/Requirements

- Fair and objective for all potential applicants
- Comply with applicable laws
- Should be consistent with AGB
- Delegations must not exceed 1,000 per year
- Address potential abuses
- Makes sense: e.g., keep similar and identical strings in same batch

Possible approaches to:

- Reduce need for batching:
 - “Opt In/Opt Out”
 - Lengthen initial evaluation to accommodate more applications in one batch
- Batching:
 - Random selection
 - Secondary time stamp

Applicant Support

- Applicant Support Program can be found under the Applicants tab on: <http://newgtlds.icann.org>
 - Applicants seeking support and organizations offering support can find each other
- \$USD 2 million allocated as seed funding to assist applicants from developing economies
 - Criteria and process for grant allocation will be posted to the new gTLD site once the information is available

Communications

Customer Service

- Mission: Provide support in a transparent and objective manner
- How: FAQs and Knowledge Base
- Accessing customer service:
 - Online self-help tools
 - newgtld@icann.org
 - New gTLD website
 - Applicants get priority

Communications Campaign

- Launched the New gTLD website 19 September <http://newgtlds.icann.org>
- Resources available:
 - Factsheets in the 6 UN languages
 - Educational videos
 - Calendar of upcoming events and event reports

Communications Roadshow

- Over 35 events in over 20 different countries raising awareness at events
- More outreach events planned: Moscow, Beijing, Jakarta, Mexico, Argentina, Chile
- View upcoming events and reports from previous events: <http://newgtlds.icann.org/program-status/upcoming-events>

Communications - Social & Traditional Media

- Traditional media
 - 5,800+ news articles on new gTLDs since 18 June 2011
- Twitter
 - 1,300+ followers. Up from ~400 a year ago

Remaining New gTLD Sessions

Session	Date	Location
Trademark Clearinghouse Work Session	Wed, 26 October 12:00 - 13:30	Chapiteau Tent
Operations Instrument (COI) - Discussion on RySG proposal	Thu, 27 October 09:00 - 10:30	Big Amphitheater
New gTLD Application & Evaluation Process	Thu, 27 October 11:00 - 12:30	Chapiteau Tent

Thank You



Questions

One World

One Internet



RESP. Ex. 2

Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) Independent Review Process

Table of Contents

Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) Independent Review Process..... 1

Table of Contents..... 1

1. Definitions..... 1

2. Scope..... 2

3. Number of Independent Review Panelists..... 2

4. Conduct of the Independent Review..... 2

5. Written Statements..... 2

6. Summary Dismissal..... 3

7. Interim Measures of Protection..... 3

8. Standard of Review..... 3

9. Declarations..... 3

10. Form and Effect of an IRP Declaration..... 4

11. Costs..... 4

12. Emergency Measures of Protection..... 4

These procedures supplement the International Centre for Dispute Resolution's International Arbitration Rules in accordance with the independent review procedures set forth in Article IV, Section 3 of the ICANN Bylaws.

1. Definitions

In these Supplementary Procedures:

DECLARATION refers to the decisions/opinions of the IRP PANEL.

ICANN refers to the Internet Corporation for Assigned Names and Numbers.

ICDR refers to the International Centre for Dispute Resolution, which has been designated and approved by ICANN's Board of Directors as the Independent Review Panel Provider (IRPP) under Article IV, Section 3 of ICANN's Bylaws.

INDEPENDENT REVIEW or IRP refers to the procedure that takes place upon the filing of a request to review ICANN Board actions or inactions alleged to be inconsistent with ICANN's Bylaws or Articles of Incorporation

INTERNATIONAL DISPUTE RESOLUTION PROCEDURES OR RULES refer to the ICDR's International Arbitration Rules that will govern the process in combination with these Supplementary Procedures.

IRP PANEL refers to the neutral(s) appointed to decide the issue(s) presented. The IRP will be comprised of members of a standing panel identified in coordination with the ICDR. Certain decisions of the IRP are subject to review or input of the Chair of the standing panel. In the event that an omnibus standing panel: (i) is not in place when an IRP PANEL must be convened for a given proceeding, the IRP proceeding will be considered by a one- or three-member panel comprised in accordance with the rules of the ICDR; or (ii) is in place but does not have the requisite diversity of skill and experience needed for a particular proceeding, the ICDR shall identify and appoint one or more panelists, as required, from outside the omnibus standing panel to augment the panel members for that proceeding.

2. Scope

The ICDR will apply these Supplementary Procedures, in addition to the INTERNATIONAL DISPUTE RESOLUTION PROCEDURES, in all cases submitted to the ICDR in connection with the Article IV, Section 3(4) of the ICANN Bylaws. In the event there is any inconsistency between these Supplementary Procedures and the RULES, these Supplementary Procedures will govern. These Supplementary Procedures and any amendment of them shall apply in the form in effect at the time the request for an INDEPENDENT REVIEW is received by the ICDR.

3. Number of Independent Review Panelists

Either party may elect that the request for INDEPENDENT REVIEW be considered by a three-member panel: the parties' election will be

taken into consideration by the Chair of the standing panel convened for the IRP, who will make a final determination whether the matter is better suited for a one- or three-member panel.

4. Conduct of the Independent Review

The IRP Panel should conduct its proceedings by electronic means to the extent feasible. Where necessary, the IRP Panel may conduct telephone conferences. In the extraordinary event that an in-person hearing is deemed necessary by the panel presiding over the IRP proceeding (in coordination with the Chair of the standing panel convened for the IRP, or the ICDR in the event the standing panel is not yet convened), the in-person hearing shall be limited to argument only; all evidence, including witness statements, must be submitted in writing in advance. Telephonic hearings are subject to the same limitation.

The IRP PANEL retains responsibility for determining the timetable for the IRP proceeding. Any violation of the IRP PANEL's timetable may result in the assessment of costs pursuant to Section 10 of these Procedures.

5. Written Statements

The initial written submissions of the parties shall not exceed 25 pages each in argument, double-spaced and in 12-point font. All necessary evidence to demonstrate the requestor's claims that ICANN violated its Bylaws or Articles of Incorporation should be part of the submission. Evidence will not be included when calculating the page limit. The parties may submit expert evidence in writing, and there shall be one right of reply to that expert evidence. The IRP PANEL may request additional written submissions from the party seeking review, the Board, the Supporting Organizations, or from other parties.

6. Summary Dismissal

An IRP PANEL may summarily dismiss any request for INDEPENDENT REVIEW where the requestor has not demonstrated that it meets the standing requirements for initiating the INDEPENDENT REVIEW.

Summary dismissal of a request for INDEPENDENT REVIEW is also appropriate where a prior IRP on the same issue has concluded through DECLARATION.

An IRP PANEL may also dismiss a querulous, frivolous or vexatious request for INDEPENDENT REVIEW.

7. Interim Measures of Protection

An IRP PANEL may 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 IRP declaration. Where the IRP PANEL is not yet comprised, the Chair of the standing panel may provide a recommendation on the stay of any action or decision.

8. Standard of Review

The IRP is subject to the following standard of review: (i) did the ICANN Board act without conflict of interest in taking its decision; (ii) did the ICANN Board exercise due diligence and care in having sufficient facts in front of them; (iii) did the ICANN Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?

If a requestor demonstrates that the ICANN Board did not make a reasonable inquiry to determine it had sufficient facts available, ICANN Board members had a conflict of interest in participating in the decision, or the decision was not an exercise in independent judgment, believed by the ICANN Board to be in the best interests of the company, after taking account of the Internet community and the global public interest, the requestor will have established proper grounds for review.

9. Declarations

Where there is a three-member IRP PANEL, any DECLARATION of the IRP PANEL shall be made by a majority of the IRP PANEL members. If any IRP PANEL member fails to sign the DECLARATION, it shall be accompanied by a statement of the reason for the absence of such signature.

10. Form and Effect of an IRP Declaration

- a. DECLARATIONS shall be made in writing, promptly by the IRP PANEL, based on the documentation, supporting materials and arguments submitted by the parties.
- b. The DECLARATION shall specifically designate the prevailing

party.

- c. A DECLARATION may be made public only with the consent of all parties or as required by law. Subject to the redaction of Confidential information, or unforeseen circumstances, ICANN will consent to publication of a DECLARATION if the other party so request.
- d. Copies of the DECLARATION shall be communicated to the parties by the ICDR.

11. Costs

The IRP PANEL shall fix costs in its DECLARATION. The party not prevailing in an IRP shall ordinarily be responsible for bearing all costs of the proceedings, but under extraordinary circumstances the IRP PANEL may allocate up to half of the costs to the prevailing party, taking into account the circumstances of the case, including the reasonableness of the parties' positions and their contribution to the public interest.

In the event the Requestor has not availed itself, in good faith, of the cooperative engagement or conciliation process, and the requestor is not successful in the Independent Review, the IRPPANEL must award ICANN all reasonable fees and costs incurred by ICANN in the IRP, including legal fees.

12. Emergency Measures of Protection

Article 37 of the RULES will not apply.

©2011 American Arbitration Association, Inc. All rights reserved. These rules are the copyrighted property of the American Arbitration Association (AAA) and are intended to be used in conjunction with the AAA's administrative services. Any unauthorized use or modification of these rules may violate copyright laws and other applicable laws. Please contact 800.778.7879 or websitemail@adr.org for additional information.

RESP. Ex. 3

Preliminary Report | Regular Meeting of the ICANN Board

 icann.org/en/groups/board/documents/prelim-report-11apr13-en.htm

11 April 2013

[Formal Minutes are still to be approved by the ICANN Board]

Note: This has not been approved by the Board and does not constitute minutes but does provide a preliminary attempt setting forth the unapproved reporting of the resolutions from that meeting. Details on voting and abstentions will be provided in the Board's Minutes, when approved by the Board at a future meeting.

NOTE ON ADDITIONAL INFORMATION INCLUDED WITHIN PRELIMINARY REPORT – ON RATIONALES -- Where available, a draft Rationale for each of the Board's actions is presented under the associated Resolution. A draft Rationale is not final until approved with the minutes of the Board meeting.

A Regular Meeting of the ICANN Board of Directors was held on 11 April 2013 at 6:15 pm local time in Beijing, China.

Steve Crocker, Chair, promptly called the meeting to order.

In addition to the Vice Chair the following Directors participated in all or part of the meeting: Sébastien Bachollet, Fadi Chehadé (President and CEO), Bertrand de La Chapelle, Chris Disspain, Bill Graham, Olga Madruga-Forti, Erika Mann, Gonzalo Navarro, Ray Plzak, George Sadowsky, Mike Silber, Bruce Tonkin (Vice Chair), Judith Vazquez and Kuo-Wei Wu

The following Board Liaisons participated in all or part of the meeting: Francisco da Silva (TLG Liaison), Heather Dryden (GAC Liaison), Ram Mohan (SSAC Liaison); Thomas Narten (IETF Liaison); and Suzanne Woolf (RSSAC Liaison).

This is a preliminary report of the approved resolutions resulting from the Special Meeting of the ICANN Board of Directors, which took place on 11 April 2013.

1. Consent Agenda:

The items on the Board consent agenda were summarized for the community. The Board then took the following action:

Resolved, the following resolutions in this Consent Agenda are approved:

1. Approval of Board Meeting Minutes

Resolved (2013.04.11.01), the Board approves the minutes of the 28 February 2013 Special Meeting of the ICANN Board.

2. RSSAC Bylaws Amendments

Whereas, in Resolution [2011.01.25.10](#), the Board approved the Root Server System Advisory Committee (RSSAC) review final report implementation steps and instructed the Structural Improvements Committee (SIC), in coordination with staff, to provide the Board with a final implementation plan to address the RSSAC review final recommendations and conclusions.

Whereas, in July and August 2012, a working group of RSSAC and SIC members was formed to draft a revised RSSAC charter in order to meet the requirements of the final RSSAC review recommendations. The RSSAC Charter is set forth within the ICANN Bylaws at [Article XI, Section 2.3](#).

Whereas, on 4 December 2012, the SIC reviewed the proposed Bylaws revisions and recommended that the suggested changes to Article XI, Section 2.3 be posted for public comment. The Board approved the public comment posting on 20 December 2012, and the comment period was opened on 3 January 2013. No comments were received.

Whereas, on 28 March 2013, the SIC recommended that the Board adopt the changes to Article IX, Section 2.3 of the Bylaws.

Resolved (2013.04.11.02), the Board adopts the proposed changes to Article XI, Section 2.3 of the ICANN Bylaws that are necessary to modify the charter for the RSSAC in line with the recommendations arising out of the organizational review of the RSSAC.

Rationale for Resolution 2013.04.11.02

These ICANN Bylaws amendments will clarify the continuing purpose of the Root Server Advisory Committee (RSSAC). They were recommended by the joint RSSAC-SIC Working Group formed to conclude the implementation of the [RSSAC review WG final report: implementation steps](#) [PDF, 448 KB], approved by the Board on 25 January 2011. The proposed Bylaws changes were posted for public comment, and no comments were received in response. The absence of public comment indicates that such amendments are desirable for the RSSAC to improve its effectiveness in the current environment. The Bylaws revisions are drafted to allow the RSSAC sufficient time to coordinate the new RSSAC member terms that are required under the Bylaws, with the first full term under the new Bylaws provision beginning on 1 July 2013.

The approval of these Bylaws revisions is an Organizational Administrative Function for which public comment was sought. While the approval of the Bylaws amendments has no budget implications per se, it is expected that the Bylaws revisions will induce RSSAC expenditures. Empowered by the revised Bylaws amendment, the RSSAC will contribute to strengthening the security, stability and resiliency of the DNS.

This is an Organizational Administrative Function for which public comment was received.

3. Hub office in Istanbul, Turkey

Resolved (2013.04.11.03), the President and CEO is authorized to implement either the resolutions relating to a liaison office or the resolutions relating to the branch office,

which ever is deemed by the President and CEO to be more appropriate, and to open any bank accounts necessary to support the office in Turkey.

(i) Whereas, the Internet Corporation for Assigned Names and Numbers, a legal entity duly incorporated and existing under the laws of the State of California and the United States of America, having its principal place of business at 12025 E. Waterfront Drive, Suite 300, Los Angeles, California USA 90094 ("ICANN"), has decided to establish a branch office in Istanbul, Turkey ("Branch Office").

Resolved (2013.04.11.04), David Olive, holding a United States passport numbered [REDACTED], is appointed as the representative of the Branch Office with each and every authority to act individually on behalf of the Branch Office before, including but not limited to, any and all courts, private and public institutions.

(ii) Whereas, the Internet Corporation for Assigned Names and Numbers, a legal entity duly incorporated and existing under the laws of the State of California and the United States of America, having its principal place of business at 12025 E. Waterfront Drive, Suite 300, Los Angeles, California USA 90094 ("ICANN"), has decided to establish a liaison office in Istanbul, Turkey ("Liaison Office").

Resolved (2013.04.11.05), David Olive, [personal identification information REDACTED], is appointed as the representative of the Liaison Office with each and every authority to act individually on behalf of the Liaison Office before, including but not limited to, any and all courts, private and public institutions.

Rationale for Resolutions 2013.04.11.03 – 2013.04.11.05

ICANN is committed to continuing to expand its global reach and presence in all time zones throughout the globe. One of the key aspects of ICANN's internationalization is to establish offices in Turkey and Singapore. Another key aspect of ICANN's internationalization is to ensure that not all members of ICANN's senior management are located in the Los Angeles office. To that end, one of ICANN's officers, David Olive, has agreed to relocate to Istanbul and to be the designated branch representative.

In order to formally establish an office in Istanbul, ICANN must register to do business in Turkey. The registration to do business in Turkey requires a specific Board resolution establishing the branch and designating the branch representative, which is why the Board has passed this resolution.

Establishing hub office around the globe will be a positive step for the ICANN community as it will provide a broader global reach to all members of the community. There will be a fiscal impact on ICANN, which has been considered in the FY13 budget and will be taken into account when approving the FY14 budget and beyond. This resolution is not intended to have any impact on the security, stability and resiliency of the DNS except that it might provide additional coverage around the globe that could

help more quickly address any security, stability or resiliency issues.

This is an Organizational Administrative Function not requiring public comment.

4. Accountability Structures Bylaws Effective Date

Whereas, the Accountability and Transparency Review Team's Recommendations 23 and 25 recommended that ICANN retain independent experts to review ICANN's accountability structures and the historical work performed on those structures.

Whereas, ICANN convened the Accountability Structures Expert Panel (ASEP), comprised of three international experts on issues of corporate governance, accountability and international dispute resolution, which after research and review of ICANN's Reconsideration and Independent Review processes and multiple opportunities for public input, produced a report in October 2012.

Whereas, the ASEP report was posted for public comment, along with proposed Bylaws revisions to address the recommendations within the report.

Whereas, after ASEP and Board review and consideration of the public comment received, on 20 December 2012 the Board approved Bylaws revision to give effect to the ASEP's recommendations, and directed additional implementation work to be followed by a staff recommendation for the effective date of the revised Bylaws.

Whereas, as contemplated within the Board resolution, and as reflected in public comment, further minor revisions are needed to the Bylaws to provide flexibility in the composition of a standing panel for the Independent Review process (IRP).

Resolved (2013.04.11.06), the Bylaws revisions to Article IV, Section 2 (Reconsideration) and Article IV, Section 3 (Independent Review) as approved by the Board and subject to a minor amendment to address public comments regarding the composition of a standing panel for the IRP, shall be effective on 11 April 2013.

Rationale for Resolution 2013.04.11.06

The Board's action in accepting the report of the Accountability Structures Expert Panel (ASEP) and approving the attendant Bylaws revisions is in furtherance of the Board's commitment to act on the recommendations of the Accountability and Transparency Review Team (ATRT). The ASEP's work was called for in ATRT Recommendations 23 and 25, and the work performed, including a review of the recommendations from the President's Strategy Committee's work on Improving Institutional Confidence, is directly aligned with the ATRT requested review.

The adoption of the ASEP's work represents a great stride in ICANN's commitment to accountability to its community. The revised mechanisms adopted today will bring easier access to the Reconsideration and Independent Review processes through the implementation of forms, the institution of defined terms to eliminate vagueness, and the ability to bring collective requests. A new ground for Reconsideration is being added, which will enhance the ability for the community to seek to hold the Board accountable for its decisions. The revisions are geared towards instituting more predictability into the processes, and certainty in ICANN's decision making, while at the same time making

it clearer when a decision is capable of being reviewed. The Bylaws as further revised also address a potential area of concern raised by the community during the public comments on this issue, regarding the ability for ICANN to maintain a standing panel for the Independent Review proceedings. If a standing panel cannot be comprised, or cannot remain comprised, the Bylaws now allow for Independent Review proceedings to go forward with individually selected panelists.

The adoption of these recommendations will have a fiscal impact on ICANN, in that there are anticipated costs associated with maintaining a Chair of the standing panel for the Independent Review process and potential costs to retain other members of the panel. However, the recommendations are expected to result in less costly and time-consuming proceedings, which will be positive for ICANN, the community, and those seeking review under these accountability structures. The outcomes of this work are expected to have positive impacts on ICANN and the community in enhanced availability of accountability mechanisms. This decision is not expected to have any impact on the security, stability or resiliency of the DNS.

This is an Organizational Administrative Function of the Board for which the Board received public comment.

5. .CAT Cross-Ownership Removal Request

Whereas, in December 2012, the Fundació puntCAT requested the removal of the cross-ownership restrictions reflected on the 23 September 2005 Registry Agreement signed between ICANN and Fundació puntCAT.

Whereas, the request followed the "Process for Handling Requests for Removal of Cross-Ownership Restrictions on Operators of Existing gTLDs" adopted by the Board on 18 October 2012.

Whereas, ICANN conducted a competition review in accordance to the Board-approved process and has determined that the request does not raise significant competition issues.

Whereas, a public comment period took place between 22 December 2012 and 11 February 2013 and only one comment was received, which was in support of Fundació puntCAT's request.

Resolved (2013.04.11.07), an amendment to remove the cross-ownership restriction in the Fundació puntCAT 23 September 2005 Registry Agreement is approved, and the President and CEO and the General Counsel are authorized to take such actions as appropriate to implement the amendment.

Rationale for Resolution 2013.04.11.07

Why the Board is addressing the issue?

The cross-ownership removal for existing registries has been subject to extensive discussions by the board and the community. This is the first time an existing registry has made the request according the Board-approved process adopted 18 October 2012. However, the Board is likely to see additional requests in the further. Under the Board

process adopted in October 2012, to lift cross-ownership restrictions existing gTLD registry operators could either request an amendment to their existing Registry Agreement or request transition to the new form of Registry Agreement for new gTLDs. Although Fundació puntCAT requested an amendment to its Registry Agreement, it still will be offered the opportunity to transition to the new form of Registry Agreement for the new gTLDs. Removal of the cross-ownership restrictions for .BIZ, .INFO and .ORG are being considered as part of their overall renewal negotiations. ICANN is also in preliminary discussions with .MOBI and .PRO on removal of the cross-ownership restrictions.

What is the proposal being considered?

An amendment to the 23 September 2005 Registry Agreement signed between ICANN and Fundació puntCAT.

Which stakeholders or others were consulted?

A public comment period took place between 22 December 2012 and 11 February 2013.

What concerns or issues were raised by the community?

Only one comment was received during the public comment period. The comment was in favor of the Fundació puntCAT request.

What factors did the Board find to be significant?

ICANN conducted a competition review in accordance to with the Board-approved process for handling requests of removal of cross-ownership restrictions in Registry Agreements. ICANN has determined that the request does not raise significant competition issues.

Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?

There is no fiscal impact to ICANN.

Are there any security, stability or resiliency issues relating to the DNS?

There are no security, stability and resiliency issues identified.

Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?

This request followed the "Process for Handling Requests for Removal of Cross-Ownership Restrictions on Operators of Existing gTLDs" adopted by the Board on 18 October 2012.

This is an Organizational Administrative Function for which public comment was received.

6. Confirm Process Followed Regarding Redellegation of the .GA domain representing Gabon

Resolved (2013.04.11.08), ICANN has reviewed and evaluated the request, and the documentation demonstrates the process was followed and the redelegation is in the interests of the local and global Internet communities.

Rationale for Resolution 2013.04.11.08

As part of the IANA Functions, ICANN receives request to delegate and redelegate country-code top-level domains. ICANN Staff has reviewed and evaluated a redelegation request for this domain and has provided a report to the ICANN Board that proper procedures were followed in that evaluation. The Board's oversight of the process helps ensure ICANN is properly executing its responsibilities relating to the stable and secure operation of critical unique identifier systems on the Internet and pursuant to the IANA Functions Contract.

Ensuring that the process is followed adds to the accountability of ICANN. This action will have no fiscal impact on ICANN or the community, and will have a positive impact on the security, stability and resiliency of the domain name system.

This is an Organizational Administrative Function not requiring public comment.

7. Change to Public Participation Committee Name

Whereas, Article XII of the Bylaws provides that the "Board may establish one or more committees of the Board, which shall continue to exist until otherwise determined by the Board".

Whereas, on 7 November 2008, the Board established a committee named the Public Participation Committee pursuant to its authority under Article XII of the Bylaws.

Whereas, the Public Participation Committee now desires to change its name to the "Public and Stakeholder Engagement Committee," which will be consistent with the new Stakeholder Engagement focus that ICANN has adopted.

Whereas, the Board Governance Committee has recommended that the Board approve this committee name change.

Resolved (2013.04.11.09), the Board approves the name change of the Public Participation Committee to the Public and Stakeholder Engagement Committee.

Rationale for Resolution 2013.04.11.09

The proposed name change is consistent with the manner in which ICANN is now focusing on Stakeholder Engagement on a global basis.

This resolution seeks only a name change of the Committee, and not a change in the structure or scope of the Committee. As the Board Governance Committee ("BGC") intends to conduct a full review of the structure and scope of all committees later this year the current resolution seeks only a name change for the PPC.

Taking this action will positively impact the ICANN community by ensuring that the committee's name adequately reflects the global outreach and engagement with under

which ICANN is operating and the committee is overseeing. This resolution will not have any fiscal impact on ICANN or the community. This action will not have any impact on the security, stability and resiliency of the domain name system.

This is an Organizational Administrative Function not requiring public comment.

8. **SO/AC Fast-Track Budget Request**

Whereas, a working group on budget improvements, which include ICANN staff and Community members identified the need for an earlier decision on the funding of specific requests from the ICANN Community which required funding at the beginning of the fiscal year.

Whereas, an SO/AC Additional Budget Requests Fast-Track Process was developed in response to the working groups suggestion; the process was meant to facilitate the collection, review and submission of budget requests to the Board Finance Committee and the Board for consideration.

Whereas, timely requests were submitted by the ICANN Community, and were reviewed by a panel of staff members representing the Policy, Stakeholder Engagement and Finance personnel.

Whereas, the review panel recommended 12 fast track budget requests representing \$279,000 requests for approval.

Whereas the Board Finance Committee met on 5 April 2013, reviewed the process followed and the staff's recommendations, and has recommend that the Board approve the staff's recommendation.

Resolved (2013.04.11.10), the Board approves the inclusion in ICANN's Fiscal Year 2014 budget an amount for funds relating to 12 requests identified by the Community as part of the SO/AC Additional Budget Requests Fast-Track Process.

Rationale for Resolution 2013.04.11.10

The SO/AC Additional Budget Requests Fast-Track Process leading to budget approval earlier than usual is a reasonable accommodation for activities that begin near the beginning of FY14. This slight augmentation to ICANN's established budget approval process and timeline helps facilitate the work of the ICANN Community and of the ICANN Staff, and does not create additional expenses. The amount of the committed expenses resulting from this resolution is considered sufficiently small so as not to require resources to be specifically identified and separately approved.

There is no anticipated impact from this decision on the security, stability and resiliency of the domain name system as a result of this decision.

This is an Organizational Administrative Function for which ICANN received community input.

9. **Thank You Resolutions – Departing Community Members**

Whereas, ICANN wishes to acknowledge the considerable energy and skills that members of the stakeholder community bring to the ICANN process.

Whereas, in recognition of these contributions, ICANN wishes to acknowledge and thank members of the community when their terms of service on Supporting Organizations and Advisory Committees end.

Whereas, the following member of the Commercial and Business Users Constituency (BC) of the Generic Names Supporting Organization (GNSO) is leaving her position when her term ends:

Marilyn Cade

Resolved (2013.04.11.11), Marilyn Cade has earned the deep appreciation of the Board for her term of service, and the Board wishes her well in future endeavors.

Whereas, the following members of the Country Code Names Supporting Organization (ccNSO) Council are leaving their positions when their terms end:

Fernando Espana, .us Paulos Nyirenda, .mw Rolando Toledo, .pe

Resolved (2013.04.11.12), Fernando Espana, Paulos Nyirenda and Rolando Toledo have earned the deep appreciation of the Board for their terms of service, and the Board wishes them well in their future endeavors.

10. Thank You to Sponsors of ICANN 46 Meeting

The Board wishes to thank the following sponsors:

Verisign, Inc., Afiliias Limited, .ORG, The Public Interest Registry, HiChina Zchicheng Technology Limited, .PW Registry, Community.Asia, Iron Mountain, Zodiac Holding Limited, Minds + Machines, Neustar Inc., KNET Co., Ltd., Deloitte Bedrijfsrevisoren BV ovve CVBA, JSC Regional Network Information Center (RU-CENTER), UniForum SA T/A ZA Central Registry, CORE Internet Council of Registrars, Symantec, APNIC Pty Ltd, NCC Group, APTLD (Asia Pacific Top Level Domain Association), Freedom Registry B.V., Uniregistry Corp., Afnic, ICANN WIKI and our local sponsors CNNIC, CONAC and Internet Society of China.

11. Thank You to Scribes, Interpreters, Staff, Event and Hotel Teams of ICANN 46 Meeting

The Board expresses its appreciation to the scribes, interpreters, technical teams, and the entire ICANN staff for their efforts in facilitating the smooth operation of the meeting. Board would also like to thank the management and staff of the Beijing International Hotel for the wonderful facility to hold this event. Special thanks are given to Li Yun, Senior Sales Manager, Beijing International Hotel and Nick Yang, Manager of Convention Services, Beijing International Hotel.

12. Thank You to Local Hosts of ICANN 46 Meeting

The Board wishes to extend its thanks to the local host organizer, Mr. Bing SHANG,

Minister of Ministry of Industry and Information Technology; Ms. Xia HAN, Director of the Telecommunications Regulation Bureau of MIIT; Mr. Er-Wei SHI, Vice President of Chinese Academy of Sciences; Mr. Tieniu TAN, Vice Secretary General of Chinese Academy of Sciences; Mr. Xiangyang HUANG, Director of CNNIC; Mr. Xiaodong Lee, Chief Executive Officer of CNNIC; Mr. Feng WANG, Vice Minister of State Commission Office for Public Sector Reform; Mr. Ning, FU Chairman of CONAC Board; Mr. Ran ZUO, Vice Chairman of CONAC Board; Mr. Qing SONG, CEO of CONAC; Ms. Qiheng HU, President of Internet Society of China; Mr. Xinmin GAO, Vice President of Internet Society of China; Mr. Wei LU, Secretary General of Internet Society of China.

All members of the Board voted in favor of Resolutions 2013.04.11.01, 2013.04.11.02, 2013.04.11.03, 2013.04.11.04, 2013.04.11.05, 2013.04.11.06, 2013.04.11.07, 2013.04.11.08, 2013.04.11.09, 2013.04.11.10, 2013.04.11.11 and 2013.04.11.12. The Resolutions carried.

2. Main Agenda:

1. IDN Variant TLD Root LGR Procedure and User Experience Study Recommendations

After Ram Mohan presented the resolution, he provided a brief discussion noting the complexity of this issue and the analysis that still remains to be done.

Whereas, IDNs have been a Board priority for several years to enable Internet users to access domain names in their own language, and the Board recognizes that IDN variants are an important component for some IDN TLD strings;

Whereas, the Board previously resolved that [IDN variant gTLDs](#) and [IDN variant ccTLDs](#) will not be delegated until relevant work is completed;

Whereas, since December 2010 ICANN has been working to find solutions to ensure a secure and stable delegation of IDN variant TLDs, and the IDN Variant TLD Program benefited from significant community participation in developing the Procedure to Develop and Maintain the Label Generation Rules for the Root Zone in Respect of IDNA Labels and the Report on User Experience Implications of Active Variant TLDs.

Resolved (2013.04.11.13), the Board directs staff to implement the [Procedure to Develop and Maintain the Label Generation Rules for the Root Zone in Respect of IDNA Labels](#) [PDF, 772 KB] including updating the gTLD Applicant Guidebook and IDN ccTLD Process to incorporate the Label Generation Rules for the Root Zone in Respect of IDNA Labels in the respective evaluation processes.

Resolved (2013.04.11.14), the Board requests that, by 1 July 2013, interested Supporting Organizations and Advisory Committees provide staff with any input and guidance they may have to be factored into implementation of the Recommendations from the [Report on User Experience Implications of Active Variant TLDs](#) [PDF, 1.38 MB].

All members of the Board voted in favor of Resolutions 2013.04.11.13 and 2013.04.11.14. The Resolutions carried.

Rationale for Resolutions 2013.04.11.13 – 2013.04.11.14

Why the Board is addressing the issue now?

IDN variant TLDs have been a subject of interest for several years to a number of IDN users. The IDN Variant TLD Program has been working with subject matter experts in the community to develop solutions to enable a secure and stable delegation of IDN variant TLDs. The Program has concluded the work on two key components of the solution: the Procedure to Develop and Maintain the Label Generation Rules for the Root Zone in Respect of IDNA Labels and the Report on User Experience Implications of Active Variant TLDs, hereinafter referred to as the Procedure. The Procedure is now ready for consideration for adoption as the mechanism, between other things, to evaluate potential IDN TLD strings and to identify their variants (if any). The recommendations from Report on User Experience Implications of Active Variant TLDs are now ready to be implemented with any input and guidance that interested Supporting Organizations and Advisory Committees may have.

What is the proposal being considered?

The Procedure describes how to populate and maintain the Label Generation Rules for the Root Zone in Respect of IDNA Labels, which is expected to become a key component in processing IDN TLD applications. The Procedure requires participation from the relevant communities as a central component. The Procedure includes safeguards to ensure maximum community participation of a given linguistic community and avoid dominance of a single interested party, and requires technical experts involvement to ensure technical and linguistic accuracy on the contents of the Rules. The Report on User Experience Implications of Active Variant TLDs includes a series of recommendations to enable a good user experience with IDN variant TLDs.

What Stakeholders or others were consulted?

The development of the Procedure and the Report included full participation of several members from the community. Both documents also went through two public comment processes and a number of public presentations where feedback was gathered.

What concerns or issues were raised by the community?

There were concerns raised about the idea that variants in general are inappropriate in the root zone, though, allowing that some specific case might be acceptable. There were also concerns about conflict resolution and governance of the Procedure. However, by having a requirement of consensus within and between panels the conflict resolution issue would seem to be mitigated. In regard to the governance of the Procedure, it is

foreseen that having the integration panel under contract with ICANN will allow removing a panelist that could be behaving in a non-constructive manner.

Concerns were also raised that the issues raised in the Report may frighten readers away from supporting variants and the Report does not highlight the risks (problems and security issues) if variants are not supported or activated. However, in order to ensure a secure, stable and acceptable experience, these issues need to be called out for the respective parties to work on. The need for variants is well articulated by the individual issues reports, so that issue outside the scope of the current study.

What significant materials did Board review?

A Board paper and Reference Materials detailing the proposal, the Procedure to Develop and Maintain the Label Generation Rules for the Root Zone in Respect of IDNA Labels, and the Report on User Experience Implications of Active Variant TLDs.

What factors the Board found to be significant?

The Board found that the Label Generation Rules for the Root Zone in Respect of IDNA Labels will improve the current process to evaluate IDN strings by using a pre-approved, deterministic process to define which code points are allowed in the root. The Board also found significant that the rules are a key component to consistently identify the variants of applied-for IDN strings. The Procedure has the participation of the relevant communities as a core feature. In addition, the Recommendations aim to enable a good user experience in regards to IDN variant TLDs.

Are there Positive or Negative Community Impacts?

Adopting the Procedure and consequently the Label Generation Rules for the Root Zone in Respect of IDNA Labels will benefit future TLD applicants by enabling future applicants to check whether the string they are intending to apply for is allowed. The Rules will also allow the deterministic identification of IDN variants for the applied-for strings. Implementing the Recommendations will enable a good user experience with IDN variant TLDs.

Are there fiscal impacts/ramifications on ICANN (Strategic Plan, Operating Plan, Budget); the community; and/or the public?

No fiscal impacts/ramifications on ICANN are foreseen by adopting this resolution.

Are there any Security, Stability or Resiliency issues relating to the DNS?

The adoption of the Rules and the implementation of the Recommendations is expected to have a positive impact on the Security of the DNS by having a technically sound process with multiple checkpoints, including public review, of the code points and their variants (if any) that will be allowed in the root

zone and the deployment of measures avoid user confusion regarding IDN variant TLDs.

Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?

This is an Organizational Administrative Function not requiring public comment.

2. PIA-CC Application to Form New Constituency

After Ray Plzak presented the resolution, he presented a bit of background on the process that has been developed for the Board to recognize new constituencies in the GNSO. The Board discussed that it is in a role of affirmation of process.

The Board then took the following action:

Whereas, the ICANN Board wants to encourage participation by a broad spectrum of existing and potential community groupings in ICANN processes and activities.

Whereas, the ICANN Board has established a Process for the Recognition of New GNSO Constituencies that includes objective eligibility criteria, encourages collaboration and puts the decisions regarding applications, in the first instance, in the hands of the communities to be directly impacted by the potential new Constituency.

Whereas, the Cybercafé Association of India (CCAOI), submitted an application for formal recognition of a new GNSO Constituency called the "Public Internet Access/Cybercafé Ecosystem (PIA/CC)" within the GNSO's Non-Commercial Stakeholder Group (NCSG).

Whereas, ICANN staff managed a 68-day Public Comment Forum for community review and reaction to the PIA/CC proposal.

Whereas, the NCSG Leadership and ICANN staff engaged in collaborative consultation and dialogue with the PIA/CC proponents.

Whereas the NCSG Leadership and ICANN staff have followed the process and the NCSG has advised the Structural Improvements Committee of the Board of its determination to deny the application because the application does not meet the criteria established by the Board.

Resolved (2013.04.11.15) the decision of the NCSG to deny the PIA/CC application is ratified with the understanding that the decision is without prejudice and the Constituency proponents have the right to re-submit a new application.

Resolved (2013.04.11.16) the President and CEO is directed to continue collaborative discussions with the PIA/CC proponents to further investigate

and consider other options for community engagement within the ICANN community and its processes.

All members of the Board voted in favor of Resolutions 2013.04.11.15 and 2013.04.11.16. The Resolutions carried.

Rationale for Resolutions 2013.04.11.15 – 2013.04.11.16

The process for the recognition of new GNSO Constituencies was designed to provide specific and objective application criteria and to place decisions on the recognition of new GNSO Constituencies, in the first instance, in the hands of the community groups in the best position to evaluate those applications. In the present case, the process was followed and the NCSG has made its determination.

It is important to note that Board ratification of the NCSG decision to reject the PIA/CC application is without prejudice to the right of the proponents to resubmit a new application. The Board hopes that further discussions with the PIA/CC proponents can result in a course of action that will allow PIA/CC interests to be effectively incorporated into ICANN's activities and processes.

This action will have no immediate or substantial impact on ICANN's resources. This action is not expected to have any impact on the security, stability or resiliency of the DNS.

This action is an Organizational Administrative Function for which public comment was received.

3. Any Other Business

Bertrand de La Chapelle raised the issue of the working methods of the organization, as highlighted in the recent comment period on "closed" generic/exclusive use TLDs, and noted the good collection of perspectives that have been raised.

Bruce Tonkin raised the issue of ICANN's accountability mechanisms to clarify that the reconsideration process does not actually allow for a full-scale review of a new gTLD application. The Independent Review Process is for areas where there are alleged breaches by the Board of ICANN's Articles of Incorporation or Bylaws. The ICANN Ombudsman has a broader remit, to provide an evaluation of complaints that the ICANN Board, staff or a constituent body has treated the complainant unfairly. Bruce encouraged the community to use the Ombudsman where they have complaints of potential unfairness.

The Chair noted the privilege that it is to serve as the Chair of the Board, and noted the amount of work the Board does, through committees and working groups, which is in addition to all of the broader community participation in the ICANN structure that feed into ICANN's work. The Chair thanked the community for the hard work at the meeting and called the meeting to a close.

Published on 23 April 2013



Governance Guidelines

(Adopted 18 October 2012)

This page is available in: English | [Español](#) | [Français](#) | [Русский](#) | [中文](#) |

Adopted 6 May 2012

[Board Governance Guidelines](#)¹

Introduction

Over the course of the existence of Internet Corporation for Assigned Names and Numbers ("ICANN"), the Board, consisting of voting Directors and non-voting liaisons (collectively the "Board" or "Board members") has developed governance policies and practices to help it fulfill its responsibilities to ICANN and its stakeholders. These Board Governance Guidelines ("Guidelines") provide a structure within which the Board and management can effectively pursue ICANN's mission. The Board intends that these Guidelines serve as a flexible framework within which the Board may conduct its business, not as a set of binding legal obligations. These Guidelines should be interpreted in the context of all applicable laws, and ICANN's Articles of Incorporation, Bylaws, the Affirmation of Commitments, policies and processes. The Guidelines are subject to future refinement or changes as the Board may find necessary or advisable.

Role of the Board

The mission of ICANN is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems. The fundamental responsibility of Directors (as defined below) is to exercise their business judgment to act in what they reasonably believe to be the best interests of ICANN and in the global public interest, taking account of the interests of the Internet community as a whole rather than any individual group or interest. Actions of the Board reflect the Board's collective action after taking due reflection.

It is the duty of the Board to oversee management's performance to ensure that ICANN operates in an effective, efficient and ethical manner. The Board will also be responsible for overseeing the development of ICANN's short, medium and long-term strategic plans, ensuring that they will result in sustainable outcomes, and taking account of the critical interdependencies of financial, human, natural, manufactured, social and intellectual capitals.

The following core values should guide the Board's decisions and actions:

- Preserving and enhancing the operational stability, reliability, security and global interoperability of the Internet.
- Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to those matters within ICANN's mission requiring or significantly benefiting from global coordination.
- To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.
- Seeking and supporting broad, informed participation reflecting the functional, geographic and cultural diversity of the Internet at all levels of policy development and decision-making.
- Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.
- Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.
- Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.
- Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.
- Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.
- Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.
- While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.

These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances. Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new situation will necessarily depend on many factors that cannot be fully anticipated or enumerated; and because they are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. The Board will exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values. (See Bylaws, Article I, Section 2.)

Some of the Board's key responsibilities are to ensure that ICANN's ethics are managed effectively, that ICANN as a whole (as well as individual Board and staff members) operates pursuant to the highest ethical standards, that ICANN complies with applicable laws, and that ICANN considers adherence to best practices in all areas of operation. In overseeing the development of ICANN's strategy, the Board has a responsibility to assure that strategic work and business plans do not give rise to risks that have not been assessed by ICANN's executive management. To that end, the Board has a role in overseeing executive management in the assessment and governance of enterprise risk management and sound

information technology planning to meet the long-term needs of ICANN.

Directors are individuals who have the duty to act in what they reasonably believe are the best interests of ICANN and are not representatives of the entity that selected them, their employers, or any other organizations or constituencies. (See Bylaws, Article VI, Section 7.)

Board Composition and Selection; Independent Directors

1. **Board Size.** The Board has 16 voting members ("Directors") and five non-voting liaisons ("Liaisons") (collectively Directors and Liaisons referred to as "Board Members"). The Board periodically evaluates whether a larger or smaller Board would be preferable.
2. **Selection of Board Members.** Board Members are selected in accordance with the procedures set forth in Article VI, Section 2 of ICANN's Bylaws.
3. **Board Membership Criteria.** The Nominating Committee, Supporting Organizations and the At-Large Community (as these terms are used in ICANN's Bylaws) seek to ensure that the Board is composed of members who in the aggregate display diversity in geography, culture, skills, experience and perspective. In accordance with Article VI, Section 3 of ICANN's Bylaws, the Board is to be comprised of individuals that meet the following requirements:
 - Persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and a demonstrated capacity for thoughtful group decision-making.
 - Persons with an understanding of ICANN's mission and the potential impact of ICANN decisions on the global Internet community, and committed to the success of ICANN.
 - Persons who will produce the broadest cultural and geographic diversity on the Board.
 - Persons who, in the aggregate, have personal familiarity with the operation of gTLD registries and registrars, with ccTLD registries, with IP address registries, with Internet technical standards and protocols, with policy-development procedures, legal traditions, and the public interest and with the broad range of business, individual, academic, and non-commercial users of the Internet.
 - Persons who are able to work and communicate in written and spoken English.

No official of a national government or a multinational entity established by treaty or other agreement between national governments may serve as a Director, and no person who serves in any capacity (including as a liaison) on any Supporting Organization council will simultaneously serve as a Director or Liaison. In addition, persons serving in any capacity on the Nominating Committee will be ineligible for selection to positions on the Board. (See Bylaws, Article VI, Section 4.)

4. **Board Composition – Mix of Management and Independent Directors.** Only the President may be both an ICANN employee, or management, and a Board Member. No other Board Member may be an employee of ICANN or serve in a management role. (See Bylaws, Article VI, Section 2.)
5. **Removal.** Any Director may be removed, following notice to that Director, by a three-fourths (3/4) majority vote of all Directors; provided, however, that the Director who is the subject of the removal action will not be entitled to vote on such an action or be counted as a voting Director when calculating the required three-fourths (3/4) vote; and provided further, that each vote to remove a Director will be a separate vote on the sole question of the removal of that particular Director. If the Director was selected by a Supporting Organization, notice must be provided to that

Supporting Organization at the same time notice is provided to the Director. If the Director was selected by the At-Large Community, notice must be provided to the At-Large Advisory Committee at the same time notice is provided to the Director.

With the exception of the Liaison appointed by the Governmental Advisory Committee, any Liaison may be removed, following notice to that Liaison and to the organization by which that Liaison was selected, by a three-fourths (3/4) majority vote of all Directors if the selecting organization fails to promptly remove that Liaison following such notice. The Board may request the Governmental Advisory Committee to consider the replacement of the Liaison appointed by that Committee if the Directors, by a three-fourths (3/4) majority vote of all Directors, determines that such an action is appropriate. (See Bylaws, Article VI, Section 11.)

6. **Term Limits.** The Board has determined that it is in the best interest of ICANN and its stakeholders to strike a balance between Board continuity and Board evolution. Board Members who serve on the Board for an extended period of time are able to provide valuable insight into the operations and future of ICANN based on their experience with, and understanding of, ICANN's mission, history, policies and objectives. However, term limits ensure that the Board will continue to evolve with the infusion of fresh ideas and new perspectives. At present, Board Members are not allowed to serve more than three consecutive, three-year terms on the Board, other than the President. A person selected to fill a vacancy in a term shall not be deemed to have served that term. The term as Director of the person holding the office of President and CEO will be for as long as, and only for as long as, such person holds the office of President. (See Bylaws, Article VI, Section 8.)
7. **President; Board Chair and Vice-Chair.** The Board selects ICANN's President and CEO, Chair and Vice-Chair in the manner that it determines to be in the best interests of ICANN. The Board shall annually elect a Chairman and a Vice-Chairman from among the Directors. The President and CEO, who serves as an ex officio Director, is not eligible to be the Chair or Vice-Chair of the Board. (See Bylaws, Article VI, Section 2.)
8. **Post-Service Limitation.** The Board has resolved that any and all Board members who approve any new gTLD application shall not take a contracted or employment position with any company sponsoring or in any way involved with that new gTLD for 12 months after the Board made the decision on the application. (See Resolution 2011.12.08.19.)

Following a Board Member's service on the Board, such Board Member will not disclose or otherwise use any confidential information of ICANN or confidential information of any third party obtained through the Board Member's service on the Board. In addition, a former Board Member should not benefit, directly or indirectly, from the knowledge gained or decisions taken while a Board member after ceasing to be on the Board.

Board Meetings; Involvement of Senior Management and Independent Advisors

9. **Board Meetings – Frequency.** The Board will generally hold regularly scheduled meetings throughout the year and will hold additional special meetings as necessary, subject to a minimum of four Board meetings per year. In addition, the Board generally has informal meetings from time to time to review and discuss ICANN's operations and policy matters. Each Board Member is expected to attend both scheduled and special meetings, except if unusual circumstances make attendance impractical
10. **Board Meetings – Agenda.** At least seven days in advance of each Board meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and, to the extent known, an agenda for the meeting will be posted on the ICANN website. Board meeting agendas will be

set by the Chair of the Board, following consultation with ICANN management and taking into account suggestions from other members of the Board.

11. **Advance Distribution of Materials.** All information relevant to the Board's understanding of matters to be discussed at an upcoming Board meeting should be distributed in writing or electronically to all members in advance, whenever feasible and appropriate. Each Board Member is expected to review this information in advance of the meeting to facilitate the efficient use of meeting time. Each Board Member is expected to be prepared for Board meetings and provide appropriate and constructive input on matters set forth in the agenda. The Board recognizes that certain items to be discussed at Board meetings are of an extremely sensitive nature and that the distribution of materials on these matters prior to Board meetings may not be appropriate.
12. **Board Meetings – Attendance.** Board members must attend all scheduled meetings of the Board, including meetings called on an *ad hoc* basis for special matters, unless prior apology has been submitted to the Chair or the Secretary. Meetings require the minimum quorum as specified in the ICANN Bylaws. Subject to ICANN's Bylaws, Board Members may participate in a meeting of the Board or any committee of the Board through use of: (i) conference telephone or similar communications equipment, provided that all Board Members participating in such a meeting can speak to and hear one another; or (ii) electronic video screen communication or other communication equipment. Management is encouraged to invite ICANN personnel to any Board meeting at which their presence and expertise would help the Board have a full understanding of matters being considered, however invited attendees do not count toward the required quorum. Invited attendees are not permitted to vote.
13. **Implementation of Decisions.** Board decisions that are to be implemented by ICANN should be communicated in a clear and understandable manner and, when determined appropriate by the Board, with implementation timelines. The Board will monitor and oversee management's implementation of such Board decisions.
14. **Board Meetings – Minutes.** The minutes of each Board meeting shall be prepared by or under the direction of the Secretary as soon as practicable following the meeting, for approval by the Board at its next Board meeting.
15. **Access to Employees.** The Board should have access to ICANN officers and management to ensure that Board Members can ask all questions and glean all information necessary to fulfill their duties. The President and CEO, together with the Board, have developed a protocol for making such inquiries.
16. **Access to Independent Advisors.** The Board and its committees have the right at any time to retain independent outside auditors and financial, legal or other advisors. Individual Directors may not retain outside advisors without prior Board or committee approval, as applicable. ICANN will provide appropriate funding, as determined by the Board or any committee, to compensate those independent outside auditors or advisors, as well as to cover the ordinary administrative expenses incurred by the Board and its committees in carrying out their duties. It is expected that ICANN staff will assist the Board and committees in retaining outside advisors.
17. **Compensation Consultant Independence.** The Compensation Committee has sole authority to retain and terminate compensation consultants that advise the Compensation Committee, as it deems appropriate. It is the policy of the Compensation Committee that any compensation consultant retained by the Compensation Committee must be independent of ICANN management. It is expected that ICANN staff will assist the Compensation Committee in retaining outside advisors.

18. **Executive Sessions of Non-Management Directors.** The non-management Board Members will meet regularly in executive session, i.e., without management present. These executive sessions will be called and chaired by the Chair of the Board and, in the absence of the Chair, by the Vice-Chair of the Board. These executive session discussions may include such topics as the Chair (or Vice-Chair, as applicable) determines.

Accountability and Review; Public Meetings

19. **Annual Report.** The Board shall publish, at least annually, a report describing its activities including an audited financial statement and a description of any payments made by ICANN to Directors (including reimbursements of expenses). This report will be prepared and sent to each member of the Board and to such other persons as the Board may designate, no later than one hundred twenty (120) days after the close of ICANN's fiscal year. (See Bylaws, Article XVI, Section 3.) The Board will oversee and ensure the integrity of this annual audited financial statement report. In doing so, the Board will ensure that it has an effective Audit Committee, made up of independent Directors.
20. **Ombudsman.** Pursuant to Article V of the Bylaws, ICANN maintains an Office of Ombudsman, to be managed by an Ombudsman and to include such staff support as the Board determines is appropriate and feasible. The principal function of the Ombudsman is to provide an independent internal evaluation of complaints by members of the ICANN community who believe that the ICANN staff, the Board or an ICANN constituent body has treated them unfairly. The Ombudsman shall serve as an objective advocate for fairness, and shall seek to evaluate and where possible resolve complaints about unfair or inappropriate treatment by ICANN staff, the Board, or ICANN constituent bodies, clarifying the issues and using conflict resolution tools such as negotiation, facilitation and "shuttle diplomacy" to achieve these results. The Office of Ombudsman shall publish on an annual basis a consolidated analysis of the year's complaints and resolutions, appropriately dealing with confidentiality obligations and concerns. The annual report will be posted on ICANN's website. (See Bylaws, Article V.)
21. **Requests for Reconsideration.** Subject to the provisions of ICANN's Bylaws, any person or entity materially affected by any ICANN staff action or inaction if such affected person or entity believes the action contradicts established ICANN policies, or by actions or inactions of the Board that such affected person or entity believes has been taken without consideration of material information, may request review or reconsideration of that action or inaction. (See Bylaws, Article IV, Section 2.)
22. **Independent Review.** Any person or entity materially affected by a Board decision or action may submit a request for independent review of any such decision or action alleged to be inconsistent with ICANN's Articles of Incorporation or Bylaws. (See Bylaws, Article IV, Section 3.)

Performance Evaluation; Development and Succession Planning

23. **Annual CEO Evaluation.** The Chair of the Compensation Committee leads the Compensation Committee in conducting a review of the performance of the President and CEO at least annually. The Compensation Committee establishes the evaluation process for the review of the President and CEO's performance. The evaluation results are reviewed and discussed with the non-management Board Members, and the results are communicated to the President and CEO. The Board Governance Committee, from time to time, is to review and advise on the effectiveness of the relationship between the President and CEO and the Board.
24. **Development and Succession Planning.** A primary responsibility of the Board is planning for President and CEO succession and overseeing the identification and development of executive

talent. The Board, with the assistance of the Compensation Committee and working with the President and CEO and the human resources department, oversees executive officer development and corporate succession plans for the President and CEO and other executive officers to provide for continuity in senior management.

The Board will maintain an emergency succession contingency plan should an unforeseen event such as death or disability occur that prevents the President and CEO from continuing to serve. The plan will identify the individuals who would act in an emergency and their responsibilities. The contingency plan is to be reviewed by the Board annually and revised as appropriate.

The Board may review development and succession planning more frequently as it deems necessary or desirable.

25. **Board and Committee Self-Evaluation.** The Board Governance Committee is responsible for the conducting of periodic evaluations of the performance of the Board and each of its members. To assist in the process, the Board should maintain an annual work plan that shows the required annual activities. This work plan also guides the number and timing of meetings as well as agenda formation.

Each Board committee is responsible for conducting an annual review of its charter, as well as an annual performance evaluation. Evaluation results are reported to the Board. Each committee's report generally should include an assessment of the committee's compliance with the principles set forth in these Guidelines, the committee's charter and identification of areas in which the committee could improve its performance, including an assessment of whether the committee is constituted with Board members with the required skills necessary for that committee.

26. **Reviews of Supporting Organizations and Advisory Committees.** The Board will cause a periodic review of the performance and operation of each Supporting Organization, each Supporting Organization council, each Advisory Committee (other than the Governmental Advisory Committee), and the Nominating Committee by an entity or entities independent of the organization under review. The goal of the review, to be undertaken pursuant to such criteria and standards as the Board directs, will be to determine: (i) whether that organization has a continuing purpose in the ICANN structure; and (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness. These periodic reviews will be conducted no less frequently than every five years, based on feasibility as determined by the Board. (See Bylaws, Article IV, Section 4.)

Board Compensation

27. **Board Compensation Review.** The Board will periodically review the compensation paid to Directors, and whether it is in the best interest of ICANN to increase or decrease the amount of such compensation. In doing so, the Board will follow a process that is calculated to pay an amount for service as a Director that is in its entirety reasonable compensation for such service under the standards set forth in §53.4958-4(b) of the Treasury Regulations. As part of the process, the Board will retain an independent compensation expert to consult with and to advise the Board regarding Director compensation arrangements and to issue to the Board a reasoned written opinion from such expert regarding the ranges of reasonable compensation for any such services by a Director. After having reviewed the expert's written opinion, the Board will meet with the expert to discuss the expert's opinion and to ask questions of the expert regarding the expert's opinion, the comparability data obtained and relied upon, and the conclusions reached by the expert. The Board will adequately document the basis for any determination the Board makes regarding a Director compensation arrangement concurrently with making that determination. (See Bylaws, Article VI, Section 22.)

Board Committees

28. **Number, Type and Composition of Committees.** The Board may establish or eliminate Board committees as it deems appropriate, except as required or prohibited by law. Each committee will perform its duties as assigned by the Board in compliance with ICANN's Bylaws and the committee's charter.

Also as the Board deems appropriate, the Board may delegate certain functions to committees, except for those matters specifically reserved by law or by the Bylaws to be handled by the Board. Any delegation must be specifically included in the committee charter approved by the Board.

The composition of each committee will be determined from time to time by the Board with due regard to the relevant experience, expertise and skills of committee members, provided that only Directors may be appointed to a committee of the Board as voting members. If a person appointed to a committee of the Board ceases to be a Board Member, such person will also cease to be a member of any committee of the Board. The Board may designate one or more Directors as alternate members of any such committee, who may replace any absent member at any meeting of the committee. Committee members may be removed from a committee at any time pursuant to the provisions of ICANN's Bylaws. Unless appointed by the Board, the selection process for each committee chair will be set forth in each committee charter. (See Bylaws, Article XII.)

29. **Committee Meetings and Agenda.** The chair of each committee is responsible for developing, together with relevant ICANN managers, the committee's general agenda and objectives and for setting the specific agenda for committee meetings. The chair and committee members will determine the frequency and length of committee meetings consistent with the committee fulfilling its obligations as set forth in the committee's charter.

Board Education

30. **Board Member Orientation and Continuing Education.** The Board Governance Committee and management are responsible for Board Member orientation programs and for Board Member continuing education programs to assist Board Members in maintaining skills necessary or appropriate for the performance of their responsibilities.

- a. A formal induction and orientation programs are designed to familiarize new Board Members with ICANN's businesses, strategies and policies (including these Guidelines) and to assist new Board Members in developing the skills and knowledge required for their service.
- b. Continuing education programs for Board Members may include a combination of internally developed materials and presentations, programs presented by third parties, and financial and administrative support for attendance at qualifying university or other independent programs. These programs should include training on Conflicts of Interest and Confidentiality.

Board Workshops

31. **Purpose of Workshop.** The Board will periodically hold workshops in conjunction with management to, among other things, facilitate discussion about ICANN's overall strategic focus.
- a. At each workshop, or as often as reasonably feasible, the Board should set aside time to discuss legitimate needs, interests and expectations of ICANN's stakeholders.
 - b. Once every two years the Board should, in conjunction with management, ensure that the strategic focus aligns with ICANN's stated purpose, discuss and agree on ICANN's main

value drivers, and assess continued engagement with all stakeholders.

Board Policies

32. **Compliance with Existing Policies.** Each Board Member must comply with the terms and conditions of these Guidelines and policies adopted by the Board, including the Board Conflicts of Interest Policy and Code of Conduct.

A Board Member who knowingly violates these Guidelines, the Board Conflicts of Interest Policy or Code of Conduct may be subject to a system of graded sanctions, commencing with a formally recorded warning, leading to a written reprimand, and as a result of repeated offenses leading to removal from the Board. Nothing in these Guidelines will limit the ability of the Board to remove a Board Member pursuant to ICANN's Bylaws and to the extent permitted by applicable law.

Review

33. **Review of Governance Guidelines.** The policies and practices memorialized in these Guidelines have developed over a period of years. The Board expects to review these Guidelines at least every two years, as appropriate. Such a review should generally include an assessment of the Board's compliance with these Guidelines, as well as identification of areas in which the Board could improve its performance.

¹ This version of the Governance Guidelines is largely based on existing ICANN policies, procedures and processes. Counsel is recommending that the Board discuss potential additional provisions, including: (i) Director independence standards; (ii) limitations on the number of boards (other than ICANN) on which a Director may serve; (iii) a notification and conflict evaluation process if a Director experiences a change of employment; and (iv) consideration of expansion of the policy adopted by the ICANN Board of Directors in December 2011 relating to ICANN's New gTLD Program and a Director's subsequent employment opportunities.

[You Tube](#)

[Twitter](#)

[LinkedIn](#)

[Flickr](#)

[Facebook](#)

[RSS Feeds](#)

[Community Wiki](#)

[ICANN Blog](#)

[Who We Are](#)

[Contact Us](#)

[Accountability & Transparency](#)

[Governance](#)

[Help](#)

© 2014 Internet Corporation For Assigned Names and Numbers. [Privacy Policy](#) [Terms of Service](#)
[Cookie Policy](#)

March 12th 2012

Statement of Work No:[2]

ICANN New gTLD Program

**Application Evaluation Services – Community Priority Evaluation
and Geographic Names**

March 12th, 2012

Mr. Akram Atallah
Chief Operating Officer
Internet Corporation for Assigned Names & Numbers
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292

Mr. Atallah,

The Economist Intelligence Unit, NA, Incorporated (“**Panel Firm**”) will provide the Internet Corporation for Assigned Names and Numbers (“**ICANN**”) with professional services to assist in the new Generic Top-Level Domain (gTLD) program in relation to the Community Priority and Geographic Names Panels. This Statement of Work (“**SOW**”) outlines the activities to be performed and work product to be provided along with anticipated professional fees and expenses. The engagement team is expected to begin work on or about June 2012 with targeted completion of this SOW within 12 to 20 months from that date. If these dates change due to changes or other circumstances impacting the gTLD program, ICANN and Panel Firm will adjust dates and the start time accordingly (and anticipated professional fees and expenses to the extent applicable) via a Change Request. It is acknowledged that any modification of professional fees and expenses may impact the allocation of applications to Panel Firm.

1. Background

This SOW is entered into pursuant to the *New gTLD Program Consulting Services Agreement* between Panel Firm and ICANN dated 26 July 2011 (“**Master Agreement**”).

Unless expressly defined in this SOW, any capitalized terms will have the meaning given to them in the Master Agreement. In this SOW, “Panelist” has the same meaning as “Panelist” or “Evaluation Panelist” in Section 2.4.3 of the Applicant Guidebook.

2. Scope and Objectives

The objectives of this SOW are to outline the scope, approach, activities and deliverables related to providing panel evaluation assistance to ascertain whether each application assigned to Panel Firm (subject to any conflict handling) has successfully met the criteria set forth in the *19 September 2011 New gTLD Applicant Guidebook* ("**Applicant Guidebook**"). Panel evaluation services will be conducted by applying scoring or other criteria in the Applicant Guidebook as well as the guidance provided in the mandatory evaluator training and the gTLD Evaluation Principles Guide provided by ICANN and developed for evaluation panels. Panel Firm will provide evaluation panel services to ICANN during the opening round¹("round one") of the new gTLD application program for the following appointed panel(s):

- **Community Priority Evaluation Panel**

This panel will be responsible for reviewing each (subject to conflicts as dealt with below) community-based application in Contention Sets, where community priority evaluation has been elected, to determine if the application fulfils the community priority criteria pursuant to the requirements outlined in Applicant Guidebook Section 4.2 Community Priority Evaluation.

The review will occur during the String Contention resolution period following the end of Initial Evaluation and/or Extended Evaluation, if applicable. The objectives and scope of the community priority evaluation panel will be to score the assigned application on the four criteria described in the Applicant Guidebook. The results of this review will be comprised of individual scoring for each criteria, including rationale, and a panel summary for each application reviewed in a format defined by ICANN and agreed on by Panel Firm. The summary includes an overall pass/fail result. The Panel Firm will consider application information forwarded by ICANN, including Community Priority panel application comments.

Non-Responsive Information Never Disclosed in this IRP

¹ "opening round" is distinct from an application batch. The opening round may be broken-up into multiple batches at ICANN's discretion. This SOW covers services provided in all batches that comprise the first initial application round under the Applicant Guidebook.

Non-Responsive Information Never Disclosed in this IRP

3. Approach, Activities and Deliverables

Panel Evaluation Approach and Activities

As part of the String Contention phase, Panel Firm will perform the panel evaluation services outlined above for assigned applications. ICANN's new gTLD Program Office ("Program Office") will assign applications for evaluation by Panel Firms generally based on a number of factors such as conflicts of interest with a particular applicant, scalability or capacity to complete timely evaluations. ICANN reserves the right to allocate applications to Panel Firm as it deems appropriate to ensure all application processing considerations and requirements are being met.

Note: "Panellist" has the same meaning as "Panelist" or "Evaluation Panelist" in Section 2.4.3 of the Applicant Guidebook.

The approach for evaluating each application is as follows:

String Contention Periods:

Note, the String Contention periods will occur in two separate phases. The first phase will run concurrent with Extended Evaluation and will cover applications that have passed Initial Evaluation and do not have any Objection(s) filed against them or associated GAC Advice presented to the Board. The second phase will run after the Extended Evaluation and Dispute Resolution Periods have closed and the Board has addressed any associated GAC Advice.

Review and Evaluate: Community Priority Evaluation (CPE)

The approach begins with the review and evaluation of the questions, related responses and supporting documentation provided by the applicants for each application. Panellists will perform the evaluation and analysis of the applicant's responses to the Community questions against the established criteria in the Applicant Guidebook and will follow the procedures outlined in the gTLD Evaluation Principles guide.

The detailed activities and analysis for the CPE during the String Contention resolution period are as follows:

1. Review each question, response and supporting documentation (where relevant). Note that ICANN will provide to Panel Firm all relevant and necessary information submitted to it as part of the application as well as supplemental material in support of the application as relates to its community status. Where Panel Firm determines

that additional application information or supporting material that ICANN has received is necessary to conduct the Community Priority Evaluation and requests that material, ICANN will provide it subject to any restrictions.

2. Establish that there is adequate information and supporting documentation to provide a basis for evaluation. If the information and supporting information is inadequate, Panellists will escalate to management according to the established Program Office processes. Adequate information and supporting documentation is defined as follows:
 - a. Complete – the response and supporting documentation provided by the applicant is sufficient for the Panel to perform the review
 - b. Appropriate – the response and supporting documentation provided by the applicant is relevant to the specific question and/or set of questions
3. Determine whether additional subject-matter support is required to interpret the supporting documentation provided by the applicant. For example, if the supporting documentation provided is in a language other than English, Panel Firm may translate the documentation or provide a subject-matter professional who would be similarly capable of reviewing and analysing the documentation. In addition, if the response and/or supporting documentation require additional technical expertise due to additional complexity, uniqueness, etc., Panel Firm will provide the necessary skill sets to review and analyse the documentation.
4. Evaluate the provided response and supporting documentation (where relevant) to each question to ascertain compliance to the Application criteria
5. Provide a recommended score according to the scoring schedule linked to each question or set of questions (i.e., 0 – fails requirement, 1/2- meets requirements, 2/3 – exceeds requirements).

Non-Responsive Information Never Disclosed in this IRP

Non-Responsive Information Never Disclosed in this IRP

Document and Summarize

As part of the overall panel evaluation approach, Panel Firm will document their evaluation activities and results and provide a summary of the analysis performed to reach the recommended result—⁴ Non-Responsive Information Never Disclosed in this IRP or a score, for Community Priority applicants—by question or area in the application. Documentation of the evaluation activities and results will be prepared and a summary of the rationale for each score will be documented in the TLD Application System (TAS) according to guidelines established by the Program Office and agreed on by Panel Firm.

The detailed activities to document and summarize the Community Priority evaluation and analysis are as follows:

1. Document the evaluation and analysis for each question to demonstrate how the Panellist determined a score for each question based on the established criteria
2. Provide a summary of the rationale and recommended score for each question.

Non-Responsive Information Never Disclosed in this IRP

Complete and Support

As part of the overall panel evaluation approach, Panel Firm will perform an internal management/quality control review of the completed evaluation activities and approve the rationale and recommended result—^{Non-Responsive Information Never Disclosed in this IRP} or a score, for Community Priority applicants—prior to submitting to ICANN. In addition, Panellists and/or Panel Firm management will also provide ad-hoc support and documentation as requested by ICANN's Quality Control function as part of the overall gTLD evaluation quality control process (see Quality Control below).

The detailed activities to complete and support the Community Priority Evaluation and analysis are as follows:

1. Review the evaluation and analysis performed by the Panellists and the summary of the rationale and recommended scores based on overall reasonableness and adherence to the established criteria in the Applicant Guidebook and the gTLD Evaluation Principles guide.
2. Approve the rationale and recommended scores to finalize and complete the evaluation
3. Provide an overall summary of the evaluation, rationale, and recommended scores to ICANN for final review and approval

Non-Responsive Information Never Disclosed in this IRP

Non-Responsive Information Never Disclosed in this IRP

Quality Control

Panel Firm acknowledges that consistency of application processing is a key success factor for the new gTLD program. As such, ICANN is requiring certain critical phases of application processing be subject to a Quality Control (QC) program.

The QC program will consist of procedural/administrative completeness checks. It is planned that the QC program will review a total of 35% of applications for procedural completeness.

Further details of Panel Firm's obligations under the QC program are described in Section 8 below.

Panel Evaluation Key Deliverables

The key deliverables for panel evaluations are as follows:

- A completed Evaluator Template (from the New gTLD Evaluation Principles guide) for each application reviewed;
- A summary of the rationale and recommended score for each question for CPE applicants; and
- Non-Responsive Information Never Disclosed in this IRP

In general, the above will be captured via TAS or as otherwise reasonably requested in the event of the Contingency Plan in Section 7 below.

A matrix outlining the program responsibilities for the above steps and deliverables is contained in Exhibit C of this SOW.

** Note: While the detailed documentation of the evaluation analysis is not a key deliverable to ICANN, Panel Firm will provide copies of application evaluation work paper documentation to ICANN if requested. Refer to Section 9(B). Retention Requirements.

Project Management Approach

Panel Firm will provide on-going project management support in an effort to facilitate the completion of evaluation activities to be on time and within budget (to the extent within Panel Firm's control). As part of the overall gTLD program, Panel Firm's project management team will work with the Program Office to ensure that the evaluations are completed consistently and completely in adherence to the Applicant Guidebook and in accordance with processes established by the Program Office.

Panel Firm will establish a project management approach to manage, coordinate and monitor the evaluation activities based on Panel Firm's proprietary engagement management standards and ICANN's gTLD Program Governance requirements. Panel Firm will tailor certain project management processes to directly support the Program Office governance processes. These include:

- Status reporting – Panel Firm will manage evaluation activities progress for each application and provide reasonable on-going status updates to the Program Office as defined in the governance procedures and agreed on by Panel Firm. Panel Firm will manage resources and overall capacity for its evaluation services and provide status update reports to the Program Office as reasonably requested.
- Conflict check - Panel Firm will implement a process to identify and communicate potential conflicts of interest to support Program Office application allocation process
- Other support – Panel Firm will provide support, as reasonably requested by the Program Office, as it relates to its appointed evaluation panels including:
 - Issue management – the processes to ensure program level issues are identified and resolved in a timely manner to minimize the impact to the execution of the gTLD Program.
 - Vendor management – the processes necessary to manage all aspects of the vendor relationship including contract administration and performance.
 - Resource and budgeting – the processes to manage scheduling (scalability & capacity) of resources and program budget across all phases of the gTLD program.

- Communication – the processes to manage communication between various key stakeholders to ensure accurate and timely flow of information as reasonably required
- Continuous Improvement – the processes to identify and implement improvements to the overall gTLD program. Panel firms, during status reporting, will provide feedback on process improvement opportunities as they are identified

Project Management Reporting

- Provide on-going status reports to Program Office to monitor progress, capacity, budget, and other areas as highlighted above.

An overview matrix summarizing the program responsibilities and deliverables is contained in Exhibit C of this SOW.

4. Conflict of Interest and Code of Conduct

Note: “Panellist” has the same meaning as “Panelist” or “Evaluation Panelist” in Section 2.4.3 of the Applicant Guidebook.

Panel Firm will ensure that its Panellists are advised and made aware of their obligation to comply with the Conflict of Interest Guidelines and Code of Conduct Guidelines (as set out in Section 2.4.3 of the Applicant Guidebook).

Each Panellist assigned is expected to have read and perform services in compliance with Conflict of Interest Guidelines and Code of Conduct Guidelines. ICANN may require Panellists to submit a signed acknowledgement in the format set out in Exhibit B of this SOW. ICANN may alternatively permit Panel Firm to collect and manage individual Panellists’ signed acknowledgement consistent with Exhibit B of this SOW within its own consolidated and documented central register which ICANN (or its nominated QC service provider) may request to inspect and verify compliance.

In accordance with the Conflict of Interest Guidelines, Panel Firm will confirm its implementation of a satisfactory Conflict of Interest monitoring and disclosure protocol with ICANN.

Panel Firm will require that it and each Panellist working under this Statement of Work during the Compliance Period (as defined in the Applicant Guidebook) must:

- (a) Not engage in any direct or indirect communication with any Applicant regarding the gTLD application process; and
- (b) Obtain ICANN’s prior written approval (which will not be unreasonably withheld or delayed) in relation to the content of any proposed press release or other public communication concerning the evaluation services, reference to ICANN as a

customer of the Panel Firm or any other subject matter under this SOW prior to any release or publication.

Panel Firm shall be entitled to decline any assigned application or applications it considers, in good faith, will raise the prospect of a conflict of interest or is inconsistent with its professional obligations or requirements. Panel Firm will promptly notify ICANN where it wishes to excuse itself from an assigned application or applications due to conflict or professional obligations. ICANN will re-assign any such application or applications to be evaluated by another panel firm.

ICANN understands that Panel Firm may discuss confidential information regarding gTLD application process handling, co-ordination and process improvements with other panel firms. Confidential information that specifically identifies an applicant or the commercial terms and conditions of the Master Agreement or this SOW must not be disclosed or shared with other panels firms.

5. Personnel and Contractors

Panel Firm will notify ICANN of any Panellists or project management personnel, including sub-contractors, being removed from this engagement within a commercially reasonable time frame after such event (e.g. no less than 30 days where practical, otherwise as soon practical) unless such removal is part of Panel Firm's ordinary resource management and scaling activities. In addition, ICANN reserves the right to:

- a. Direct the prompt removal of any Panellist or sub-contractor from the performance of evaluation services by written notice due to any material or ongoing breach of either the Code of Conduct or Conflict of Interest Guidelines by that individual;
- (b) By written notice for any other reasonable grounds in the interests of the new gTLD Program as determined by ICANN; and
- (c) Interview and reasonably reject/approve replacement candidates.

Panel Firm must:

- (a) Ensure that Panellists assigned to conduct evaluations have successfully completed the relevant new gTLD panellist training developed by ICANN;
- (b) Agree to be bound by the TLD Application System (TAS) Terms of Use (in the form set out in Exhibit A to this SOW and as may be generally amended by ICANN from time to time) in connection with any use of the TAS to perform the evaluation services under this SOW; and
- (c) Comply with the confidentiality obligations under the Master Agreement with ICANN.

Where Panel Firm engages independent third party sub-contractors to assist with the evaluation services, Panel Firm will ensure that each contractor is contractually bound by an obligation of confidentiality broadly consistent with the confidentiality obligations of the Panel Firm under the Master Agreement.

6. Service-Level Agreements

Unless otherwise indicated, to ensure ICANN is able to meet all published timelines in the Applicant Guidebook, Panel firm will comply with the following service level metrics:

- The initial set of Panellists for round one must successfully complete the gTLD Training Program
- Any subsequent Panellist joining at a later date must successfully complete the gTLD training program prior to commencing evaluation analysis
- A Conflict of Interest report (format and detail as determined by ICANN and agreed by Panel Firm) must be completed and submitted to ICANN within four weeks after the close of the Application Window, which is expected to be 12 April 2012
- Community Priority Panel -final evaluation results for an application will be provided to ICANN within 15 business days from being assigned. Note: time extensions as agreed will be allowed to address permitted exceptions such as clarifications by ICANN or from the Applicant.
- Non-Responsive Information Never Disclosed in this IRP

7. gTLD Program Contingencies

In addition to the termination provisions set forth in the Master Agreement, ICANN reserves the right, without prejudice to Panel Firm's rights in respect of fees and costs, to notify the Panel Firm that evaluation services under this SOW will be suspended or terminated (as the case may be) where ICANN determines that the New gTLD Program is being suspended or terminated due to external contingencies impacting the continuation of the New gTLD Program. This includes, but is not limited to, litigation initiated by a governmental authority or regulatory agency, a determination or directive from a court, governmental authority or regulatory agency with competent jurisdiction, or a threat to the security or stability of the Internet or the Domain Name System (DNS).

As noted in the Applicant Guidebook, if a significant number of applications are received beyond stated processing capacity, ICANN will invoke a batching process. Under these circumstances the processes and timelines outlined in this SOW (along, potentially, with the fees) will be impacted. ICANN will work with Panel Firm to determine the impact and agree upon a mutually acceptable approach.

In the event that the TLD Application System is or becomes unavailable for an unscheduled or extended period (including due to unauthorized security intrusions, hacking or denial of service attacks), ICANN will invoke its processing contingency plan and work with panels to receive evaluation results via an alternate, secure mechanism. Under these circumstances the processes and timelines outlined in this SOW may be impacted.

8. gTLD Program Quality Control (QC)

Panel Firm will reasonably co-operate and provide reasonably requested documentation to ICANN and its appointed independent Quality Control service provider for the purposes of helping it to verify that Panel Firm's evaluation services have been and are performed in accordance with QC Guidelines. ICANN agrees that its appointed independent Quality Control service provider will be bound by at least the same confidentiality undertakings as Panel Firm.

Reasonable written notice will be given to Panel Firm prior to any QC request.

The detailed activities to provide support to on-going gTLD evaluation process Quality Control requirements include the following:

1. For each completed application review, Panel Firm will complete an ICANN provided Application Evaluation Process Log (AEP Log) to confirm that all activities in the evaluation process have been properly completed. ICANN will agree upon the contents of the AEP Log with Panel Firm prior to commencement of evaluations.
2. For each application selected for procedural completeness review, the Panel Firm will provide evidence that all steps described above in "Panel Evaluation Approach and Activities" have been completed.
3. Access to working papers as required verifying Panel Firm's compliance.

Panellists and managers shall be available to participate in a resolution process in the event a discrepancy is found during QC. The above tasks are subject to change. Notification of any change will be communicated by ICANN and agreed to with Panel Firm.

9. Advisories and ICANN policies

(A) Security

Panel Firm will access ICANN's TLD Application System ("TAS") from a secure device (to an agreed level of security), and take reasonable security precautions within Panel Firm's networks and devices that are used to connect to TAS.

Panel Firm will either comply with reasonable written data security requirements that ICANN may provide from time to time in connection with performing the evaluation services or provide an explanation of why it is unable or unwilling to do so.

To the extent compliance with data security requirements results in a material change to the scope of services, schedule and/or fees/expenses for such services, ICANN will work with the Panel Firm to discuss the impact and agree a revision of costs and time schedules to reflect such circumstances, and formalise such changes via a Change Request

(B) Retention Requirements

All source documents created by Panel Firm or a Panellist in connection with any evaluation services (including Panel Firm and Panellist working papers and notes) must be retained for a minimum of 5 years from the completion of application reviews for the opening round. Panel Firm will provide copies of application evaluation working paper documentation to ICANN if requested.

(C) Advisories and Compliance

To the extent ICANN publishes or updates reasonable advisories and/or policies and notifies such advisories/policies/updates from time to time to evaluation panellists and the Panel Firm in relation to the performance of Evaluation Services, the Panel Firm will either comply with such advisories and/or policies or provide an explanation of why it is unable or unwilling so to do. Panel firm acknowledges that non-compliance with updates to reasonable advisories and/or policies may impact the allocation of applications for evaluation.

To the extent compliance with any new advisory or ICANN policy results in a material change to the scope of services, schedule and/or fees/expenses for such services, ICANN will work with the Panel Firm to discuss the impact and agree a revision of costs and time schedules to reflect such circumstances, and formalise such changes via a Change Request.

10. Terms and Conditions

This SOW is governed by the terms and conditions of the Master Agreement which are incorporated by reference.

The following provisions are agreed to be supplemental to the terms and conditions of the Master Agreement (“**Supplemental SOW Terms**”). To the extent of any inconsistency between the Supplemental SOW Terms and the Master Agreement, the Supplemental SOW Terms will prevail.

(a) Fees

In the event that Panel Firm evaluation services under this SOW are suspended or terminated by ICANN for any reason other than for breach by Panel Firm of the SOW or Master Agreement terms, Panel Firm will be entitled to full payment for services performed under this SOW up to the time of notification of suspension or termination of services.

(b) Panel Firm’s role and use of the Panel Firm’s name

The parties acknowledge and agree the following in relation to Panel Firm’s role under this SOW:-

- (i) the Panel Firm acts as a service provider to ICANN, assessing applications and recommending an outcome, as well as to provide (as applicable) a written explanation setting out its rationale;
- (ii) ICANN will be free in its complete discretion to decide whether to follow Panel Firm’s determination and to issue a decision on that basis or not;
- (iii) ICANN will be solely responsible to applicants and other interested parties for the decisions it decides to issue and the Panel Firm shall have no responsibility nor liability to ICANN for any decision issued by ICANN except to the extent the Panel Firm’s evaluation and recommendation of a relevant application constitutes wilful misconduct or is fraudulent, negligent or in breach of any of the Panel Firm obligations under this SOW;
- (iv) each decision and all associated materials must be issued by ICANN in its own name only, without any reference to the Panel Firm unless agreed in writing in advance;
- (v) ICANN will make no use of the Panel Firm’s name, brand or logo without its prior approval in writing, and where so approved, ICANN shall refer to EIU as an “Appointed Evaluation Panel Firm”; and
- (vi) ICANN will not identify Panel Firm evaluation services with any individual or specific applicants, applications or results of the evaluation except in accordance with this SOW and the Master Agreement.
- (vii) ICANN shall procure that each applicant agrees in advance that it will accept ICANN’s final decision and waives any rights it may have to take any action against ICANN and its service providers (including, for the avoidance of any doubt, the Panel Firm).

11. Professional Fees

Confidential Information Never Disclosed in this IRP

Fees

Confidential Information Never Disclosed in this IRP

Confidential Information Never Disclosed in this IRP

12. Change Control

(a) A "Change Request" is a request to amend this SOW or any document attached to it or referred to in this SOW. Either party may initiate a Change Request in writing. A Change Request will document details of the impact that the proposed change will have on any of the terms of this SOW and include, if relevant, any additional costs or timing changes.

(b) On receipt of a Change Request either party will use reasonable commercial efforts to respond within 5 business days (or other agreed extended period) of receipt as to their acceptance or otherwise of the Change Request.

(c) A Change Request shall become a "SOW Amendment" when the Change Request is agreed and signed by authorized representatives of both parties. An agreed SOW Amendment will be incorporated into this SOW and will amend this SOW as documented and agreed. The reasonable costs of implementing a SOW Amendment and any

amendments to the Professional Fees (if any) will be borne as set out in the SOW Amendment.

(d) If either party is unwilling to accept a Change Request suggested by the other (or any term of any Change Request) then this SOW will continue unchanged.

For Economist Intelligence Unit (Panel Firm)

For ICANN



Name: Vinay Shah

Name: AKRAM ATALLAH

Title: Finance Director

Title: COO

Date: March 16, 2012

Date: 3/19/12

[Exhibit A]

TLD Application System (TAS) Terms of Use & Privacy Statement

TLD APPLICATION SYSTEM (TAS) – TERMS OF USE – PANEL FIRM

THE FOLLOWING TERMS OF USE GOVERN ANY ACCESS OR USE OF THE INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS' ("ICANN") TLD APPLICATION SYSTEM ("TAS") BY EVALUATION PANEL FIRMS. PANEL FIRM AGREES TO BE BOUND BY AND COMPLY WITH THESE TERMS OF USE.

1. DEFINITIONS

"Commencement Date" means the date that the User receives a user name and password to access the TAS.

"Panel Firm" or "You" means an evaluation panel firm appointed by ICANN to evaluate assigned TLD application(s) under ICANN's new gTLD Program.

"User" means an authorized employee or contractor of a Panel Firm who has been provided access to the TAS.

2. AUTHORITY

You represent and warrant that Users are an employee or contractor of Panel Firm and have been authorized to access TAS on behalf of Panel Firm.

3. USE LICENSE

3.1 License Grant. Subject to complying with these Terms of Use, ICANN grants to You from the Commencement Date, a limited, non-sublicenseable, non-exclusive, non-transferable license to use the TAS ("License") for the sole purpose of reviewing and evaluating TLD application(s) assigned to Panel Firm.

3.2 Username and Password. You agree that any User TAS log-in and password must not be shared. You are responsible for maintaining the confidentiality of User account log-in and password information, and for the security of User's computer to access the TAS. In the event of a breach of security, You agree to immediately instruct Users to change their password and to promptly (and in any event, within one business day) notify ICANN of such breach in writing. You will remain liable for compliance with these Terms of Use and any use or activity of the TAS under your Users' log-in access (including any violations of these Terms of Use or if You allow another individual or organization to access or use the TAS using your Users' log-in credentials).

3.3 Restrictions. You must not: (a) reverse engineer, disassemble, decompile or otherwise attempt to access or determine TAS source code, (b) re-distribute or sublicense access to the TAS, or any part thereof, to any third party; (c) engage in any malicious or illegal behavior in connection with access or use of the TAS (including without limitation, submitting malicious code or engaging in other activity designed to compromise the availability, security or data of the TAS); (d) remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on software accessed under this License; or (e) allow, assist or permit a third party to do any of the foregoing.

3.4 Technical Support. ICANN or a third party on ICANN's behalf will provide technical support for TAS services.

4. INTELLECTUAL PROPERTY RIGHTS

The TAS and all intellectual property rights therein, is licensed to You, not sold. All rights in the TAS not provided to You under these Terms of Use are expressly retained by ICANN and its licensors.

5. PERSONAL INFORMATION

You acknowledge that any personal or identifying information You consent to submit to the TAS is collected, stored and used for the purposes of processing and evaluating an application under ICANN's new gTLD Program. ICANN will handle personal information collected in accordance with its gTLD Program privacy statement at <http://newgtlds.icann.org/en/applicants/agb/program-privacy>, which is incorporated herein by this reference.

6. TERMINATION

6.1 ICANN may terminate the License if You commit a breach of any of the Terms of Use and if capable of remedy, fail to remedy the breach within fourteen (14) calendar days of receiving written notice from ICANN. Notwithstanding the foregoing, ICANN may immediately terminate the License if (a) You commit a breach of Section 3.3 or Section 8 of the Terms of Use, or (b) the contract between Panel Firm and ICANN with respect to the provision of evaluation services is terminated.

6.2 You may terminate the License and your personal login by written or email notification to ICANN via ICANN's customer support contact address.

6.3 In the event of termination, You must cease using the TAS. You further acknowledge that ICANN may terminate your Users' password, account and use of the TAS immediately upon the effective date of termination.

7. DISCLAIMER & LIMITATION OF LIABILITY

7.1 USE OF THE TAS AND THIS LICENSE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE FULLEST EXTENT PERMITTED BY LAW, ICANN, ITS OFFICERS, DIRECTORS, EMPLOYEES, LICENSORS AND AGENTS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE TAS AND AN APPLICANT'S OR USER'S USE OF THE TAS. ICANN MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE FITNESS FOR USE, NON-INFRINGEMENT, AVAILABILITY OR RELIABILITY OF THE TAS OR THAT THE TAS IS ERROR-FREE.

7.2 IN NO EVENT SHALL ICANN, ITS OFFICERS, DIRECTORS, EMPLOYEES, LICENSORS OR AGENTS, BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER RESULTING FROM ANY (I) ERRORS, MISTAKES, OR INACCURACIES IN THE TAS OR TAS DATA, (II) INJURY OR DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM ACCESS TO AND USE OF THE TAS, (III) INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE TAS, (IV) BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE, WHICH MAY BE TRANSMITTED TO OR THROUGH THE TAS BY ANY THIRD PARTY, (V) DENIAL OF SERVICE OR ANY MALICIOUS SECURITY EXPLOIT INVOLVING THE TAS, AND/OR (VI) LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF ANY USE, COMPROMISE OR LOSS OF PERSONAL DATA AND CONTENT POSTED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE TAS, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT APPLICANT OR USER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN ANY APPLICABLE JURISDICTION.

8. THIRD PARTY PROVIDER SUBLICENSE TERMS

The TAS incorporates software licensed from Microsoft Corporation. You agree to the following terms and conditions in relation to use of these Microsoft products in accessing or using the TAS:

8.1 High Risk Use. You must not use the software under this License in any application or situation where the software failure could lead to death or serious bodily injury of any person, or to severe physical or environmental damage.

8.2 You must not remove any copyright, trademark, or patent notices contained in or on the software products under this License. You have no right under this agreement to use any Microsoft logos in any manner whatsoever. You must use the appropriate trademark, product descriptor, and trademark symbol (either "™" or "®") and clearly indicate Microsoft's (or Microsoft's suppliers') ownership of such marks whenever a Microsoft product is first referenced in any written or visual communication. A listing of Microsoft's trademarks can be found at <http://www.microsoft.com/trademarks>. You must not undertake any action that will interfere with or diminish Microsoft's (or Microsoft's suppliers') right, title and/or interest in the trademark(s) or trade name(s). At Microsoft's request, You must provide samples of all your written or visual materials that use a Microsoft product name.

8.3 You acknowledge that your name, address, and country in which you are located may be provided to Microsoft in monthly end use reports under Microsoft sublicensing requirements.

9. GENERAL

9.1 ICANN may modify these Terms of Use via written or electronic notice to You. Any access or use of the TAS by You, following such notification, will be treated as your acceptance of the revised Terms of Use.

9.2 Sections 4 to 9 survive any termination or expiry of the License.

9.3 Any non-English translation of these Terms of Use that ICANN may make available are for convenience only. In the event of any inconsistency between the translated version and the English version, the English version of these Terms of Use will prevail.

9.4 These Terms of Use are governed by the laws of the State of California.

New gTLD Program

Personal Data Privacy Statement

The Internet Corporation for Assigned Names and Numbers' ("ICANN") respects and is committed to ensuring the protection of personal information collected from the Applicant and new gTLD Program participants, including users of the TLD Application System ("User"), and used in connection with new gTLD Program application process (the "Program"). ICANN will handle all personal information provided under the Program as described in this Personal Data Privacy Statement ("Privacy Statement").

By participating in the Program, including using the TLD Application System ("TAS"), the User and the Applicant accept the practices described in this Privacy Statement. In addition to this Privacy Statement, ICANN has established Terms of Use that set forth the general rules and policies governing the use of the TAS. You can review the Terms of Use by visiting www.ICANN.org/.

1. International Transfers

The Program may be operated and administered entirely outside the jurisdiction where the User and/or Applicant are domiciled. Please note that any personal information provided to ICANN in connection with the Program will be transferred to and processed in the United States. On his/her own behalf, and on behalf of the Applicant and each of its relevant personnel, the User hereby consents to these transfers, and is solely responsible for ensuring that the personal information provided to ICANN and its designees complies with the laws of the User's and Applicant's jurisdiction(s).

2. Personal Information Collection and Use

Application submission. The Program application submission generally involves the collection and use of minimal personal information. The types of personal information ICANN collects will be: name, postal address, telephone phone number, and email address. This personal information is used to initially process and administer the Program application, including background checks of certain Applicant's personnel. This information will also be used by ICANN, its service providers, and agents to provide general support services and to process TLD applications for the Program.

Application administration: As part of the application process, ICANN may request certain personal information about the Applicant's directors and officers, and other relevant personnel, such as full name, date of birth, city and country of primary residence and country of birth. ICANN and its service providers use this information to conduct necessary background checks and other evaluations as part of the Program's application process, in accordance with the requirements of the <Applicant Guidebook Terms and Conditions>. This use is based on consent provided by agreeing to the <TAS Terms of Use > and the <Applicant Guidebook Terms and Conditions>. In certain circumstances, the results of initial background checks may require ICANN to request additional personal information to conclude necessary background checks or other Program application evaluations.

Support information. ICANN receives personal information as part of general support queries, email, feedback, comment or other communications with our Customer Service Center or other ICANN staff regarding the Program. ICANN may retain those communications in order to process inquiries, respond to requests and improve the TAS. ICANN may include your personal information in publishing your comments or feedback on the ICANN website for the benefit of others or to comply with ICANN's accountability and transparency principles located at <http://www.icann.org/en/accountability/overview-en.htm> and disclosure policies located at <http://www.icann.org/en/transparency/didp-en.htm>. ICANN may monitor or record your call or communication sessions with the Applicant Support Center for quality assurance and staff training purposes, or as a record of communication.

Sensitive personal information. ICANN does not collect sensitive personal information (e.g. personal medical or health information, racial or ethnic origin, or political opinions, etc.) in connection with the Program. You will be notified if such sensitive personal information is necessary in connection with the Program, such as to conduct further background checks.

In addition, when using the TAS, ICANN may collect the following types of non-identifying information:

Automatically logged information: The TAS automatically records information that the browser sends whenever the TAS is used. This information may include information such as IP address, browser type, internet service provider (ISP), date/time stamp, page viewed, and other similar data. ICANN uses this information to administer the TAS, general web page analytics, track the use of TAS and to develop Program support. This information is not linked to personally identifiable information.

Cookies: Cookies and other user tracking devices (e.g., local shared objects) may be stored on the User's computer when using TAS. A cookie is a small text file that is stored on a user's computer for record-keeping purposes. ICANN uses session ID cookies to confirm that a User is logged in. These cookies terminate once the User closes the browser. ICANN may also deploy persistent cookies to improve TAS, including by storing user preferences and tracking user trends. While most browsers are set to accept cookies and other tracking devices by default, Users are always free to decline cookies if the browser permits, but some parts of TAS may not work properly. The browser manufacturer has information on changing the default setting for that specific browser. The User acknowledges the use of such tracking devices as noted in this Privacy Statement, and hereby consents to having such tracking devices stored on the User's computer.

3. Sharing of Personal Information

ICANN will share personal information with Program evaluation panels, contractors and other agents for the purpose of processing TLD applications on ICANN's behalf, and providing other services for the Program. ICANN requires that these parties agree to handle this information in compliance with appropriate confidentiality obligations and security measures.

ICANN will provide personal information to third parties, government authorities and agencies as and when required to: (i) comply with applicable laws, regulations, legal process or enforceable governmental request; (ii) protect ICANN's or a third party's legal rights; (iii) receive contracted services or use of licensed products from third party providers; (iv) comply with any court order or legal proceeding; (v) comply with ICANN's accountability and transparency principles and disclosure policy; (vi) detect, prevent or otherwise address fraud or other criminal activity or errors, security or technical issues; or (vii) protect against imminent harm to the rights, property or safety of ICANN, our users or the public as required or permitted by law.

ICANN will not sell or otherwise share any personal information with third parties for marketing purposes. ICANN will not provide any personal information to third parties for commercial services in relation to the Program unless the User and/or the relevant Applicant personnel have given specific permission or direction.

4. Information Security and Integrity

ICANN will use industry standard safeguards, including firewalls, security patches and anti-virus programs to protect the confidentiality of personal information collected as part of the Program. When using TAS, personal information will be encrypted using secure socket layer technology ("SSL").

Access to personal information is restricted to ICANN staff, contractors and agents who need to know this information to manage the Program activities on behalf of ICANN. ICANN staff, contractors and agents will be bound by confidentiality obligations and, where appropriate, they may be subject to discipline, including termination and prosecution, if they breach these confidentiality obligations.

ICANN will take reasonable steps to ensure that personal information collected is relevant to its intended use and is complete.

ICANN's Program website contain links to other third party websites which are subject to the respective privacy policies of those third parties. ICANN is not responsible for the privacy practices of such linked third party sites, and their owners and operators.

Due to the open communication nature of the Internet, ICANN cannot represent, warrant or guarantee that communications stored on ICANN servers will be free from unauthorized access by third parties, loss, misuse or alterations. While ICANN will take reasonable and appropriate security measures noted above to protect against unauthorized access, disclosure, alteration or destruction of personal information received, ICANN DISCLAIMS ANY AND ALL LIABILITY FOR UNAUTHORIZED ACCESS OR USE OR COMPROMISE OF YOUR PERSONAL INFORMATION SUBMITTED THROUGH THE TAS. USERS AND APPLICANTS ARE HEREBY ADVISED THAT THEY SUBMIT SUCH PERSONAL INFORMATION AT THEIR OWN RISK.

5. Accessing and Updating Personal Information

The User and other authorized Applicant personnel may view stored personal information in relation to the Applicant and User profile, or a TLD application by accessing the relevant information screens within the TAS. As submitted information is used in evaluation checks and processes, submitted information cannot be modified without contacting our Customer Service Center. ICANN will endeavor to respond to requests to access, correct or update any other personal information ICANN retain in connection with the Program. Requests may be sent by email to our Customer Service Center at newgtld@icann.org.

ICANN will retain personal information stored on our servers in accordance with our general archival practices.

6. Changes to this Privacy Statement

Please note that ICANN may revise this Privacy Statement from time to time throughout the Program. ICANN will post any Privacy Statement changes on the Program's website. If the changes are material, ICANN may also provide notification via email according to the registered TAS log-in email for the Applicant. The Applicant's continued participation in the Program application process, including the User's use of TAS, after such change will be deemed acceptance by the User and the Applicant of the revised Privacy Statement.

7. Questions or Contacting ICANN

If you have any questions about this Privacy Statement, please feel free to contact ICANN at newgtld@icann.org or write to:

Att: Customer Service Center
ICANN
4676 Admiralty Way, Suite 330

Marina del Rey, CA 90292-6601
USA

Last revision: December 30, 2011 [to view archived versions, click <here>]

Exhibit B

Panelist Acknowledgement Form

I acknowledge and confirm that:

- (a) I have read and understand the Guidelines listed below; and
- (b) I must always comply with these Guidelines in connection with my performance of any Panellist evaluation work for ICANN's new gTLD Program.

Guidelines

Initials

Code of Conduct (Applicant Guidebook Section 2.4.3)	_____
Conflict of Interest (Applicant Guidebook Section 2.4.3)	_____
TAS Terms of Use	_____

Name: _____

Signature: _____

Panel Firm: _____

Date: _____

Instructions:

1. A completed and signed form must be received and maintained by Panel Firm before a personal login for the TAS will be issued to a Panellist.
2. On request, Panel Firm will provide a copy of this form to ICANN's new gTLD Program Office.

If you have any questions in regards to this Form, please contact ICANN's new gTLD Program Office.

Exhibit C

Program Responsibilities

The following table is intended to be a general summary of key program responsibilities outlined in this SOW. This table is not intended to be an exhaustive list or replace other responsibilities set out in this SOW.

Evaluation Process Task		ICANN	Panel
0 Pre-Evaluation			
0.1	Agree to Code of Conduct		✓
0.2	Training participation and certification of evaluation panelists		✓
	Conflict of Interest		
0.3	Agree to conflict of interest policy		✓
0.4	Provide list of Applicants	✓	
0.5	Complete conflict of interest check against Applicant listing		✓
1 String Contention Procedures and Evaluation (Initial and Extended Evaluation, as applicable)			
1.1	Assign Application(s) to Panels	✓	
1.2	Collect & Provide Application Comments	✓	
1.3	Read & Consider Application Comments in Evaluation		✓
1.4	Request Clarifications to Applicant as Necessary		✓
1.5	Provide Clarifications to Applicant & Obtain Response	✓	
1.6	Consider Clarification Responses in Evaluation		✓
1.7	Evaluate & Score Question, Provide Summary		✓
1.8	Complete all Required Evaluation Templates		✓
1.9	Maintain evaluation documentation per ICANN retention policies		✓
1.10	Provide Evaluation Results, Summaries & Templates to ICANN		✓
2 Program Management			
2.1	Manage/Scale Resources based on application volume	✓	✓
2.2	Report Status (using required templates)		✓
2.3	Attend status & ad hoc meetings	✓	✓
	Quality Control		
2.4	Perform Issue Management	✓	✓
2.5	Document Issues (using required templates)	✓	✓
2.6	Attend issue tracking meetings	✓	✓
2.7	Perform QC Process Reviews	✓	
2.8	Respond to QC Info Requests		✓
2.9	Participate in QC Reconciliation as Applicable		✓
	Continuous Improvement (CI)		
2.10	Manage CI Processes/Implement Changes	✓	
2.11	Adopt & Integrate Changes	✓	✓
2.12	Participate in CI Meetings	✓	✓

Exhibit D

Confidential Information Never Disclosed in this IRP

Confidential Information Never Disclosed in this IRP

New gTLD Program Consulting Agreement

This Consulting Master Services Agreement (together with the Exhibits and Attachments hereto, this "Agreement") is effective as of July 26, 2011 (the "Effective Date"), by and between the Internet Corporation for Assigned Names and Numbers ("ICANN"), a California nonprofit public benefit corporation, with its principal offices located at 4676 Admiralty Way, Suite 330, Marina del Rey, CA, USA 90292 and The Economist Intelligence Unit, NA, Incorporated, with its principal offices located at 750 Third Avenue, 5th Floor, New York, NY 10017, hereinafter referred to as "Contractor".

WHEREAS, Contractor and ICANN desire to enter into an agreement for the performance by Contractor of certain professional consulting services in connection with activities being conducted by ICANN.

NOW THEREFORE, in consideration of the foregoing, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. SERVICES: Contractor shall provide to ICANN such professional consulting services as are set forth in statements of work (each a "Statement of Work") signed by and in a form acceptable to both parties, which shall set forth the manner of the work which will be provided to ICANN pursuant to this Agreement (the "Services") and the products and materials to be produced by Contractor pursuant to the Services (the "Products"). Any Services provided hereunder shall be rendered by Contractor in a manner consistent with industry standards, and shall be provided in accordance with all applicable laws. Contractor's Services shall not be exclusive to ICANN, provided that during the term of Contractor's engagement hereunder, Contractor will not render services that prevent, interfere or conflict with, or delay the prompt performance of the Services.

2. TERM: Contractor shall render the Services on the date or dates set forth on any Statements of Work entered into hereunder.

3. COMPENSATION: Subject to all the provisions of this Agreement, including, but not limited to, the "Supplemental Terms" (attached hereto as Exhibit A) and any and all Statements of Work, ICANN agrees to pay Contractor as full and complete consideration for Contractor's services hereunder, and Contractor agrees to accept, the sum as set out in the applicable Statement of Work, payable in US Dollars for the Services, which shall be paid in accordance with the payment schedule set forth in such Statement of Work.

4. RIGHTS:

(a) In consideration of the amounts payable by ICANN pursuant to Section 3, and subject to Section 4(b), Contractor assigns to ICANN exclusive ownership rights, in perpetuity of all copyright in and to the Products.

ICANN Contractor Consulting Agreement
Page 2 of 11

(b) Notwithstanding any provision of this Agreement, any and all rights (including without limitation copyright, trademarks and rights in data) in and to any content, data, brands and materials included in the Products that are in existence prior to the commencement of the Services to be provided under any and all Statements of Work (the "Pre-Existing Materials") shall not be transferred to ICANN and shall remain the exclusive property of Contractor or its licensors. Contractor grants to ICANN a non-exclusive, perpetual, royalty free license (including the right to sublicense to other parties) to use, reproduce, modify and distribute any Pre-Existing Materials on condition that: (i) such Pre-Existing Materials are used as part of the Products they are provided within and only as required in order to use the Products; and (ii) no modification shall be made that misrepresents or distorts the content or meaning of such Pre-Existing Materials.

(c) The transfer in Section 4(a) shall, subject to Section 4(b), include the right to apply for any and all patents arising from the Products and to register any copyright subsisting therein (collectively, the "Legal Rights")

(d) Save as set out in any applicable Statement of Work, Contractor will not be entitled to any royalty, commission or other payment with respect to the Products or Legal Rights in addition to the fees payable for the services to be provided under such Statement of Work.

(e) Contractor warrants that all Products will be Contractor's original work and do not infringe any copyrights, trade secrets, trademarks, patents or other proprietary rights of any third party.

5. **INDEPENDENT CONTRACTOR STATUS:** Contractor acknowledges and agrees that Contractor is an Independent Contractor and that Contractor's employees or agents, if any, are not employees or agents of ICANN for any purpose, including but not limited to national or local withholding or employer taxation obligations. Contractor agrees to indemnify and hold ICANN harmless (including attorney's fees and costs incurred by ICANN) should Contractor fail to meet Contractor's obligations with respect to its employees with regard to the payment or withholding of social security and other taxes, federal and state (or other such political or governmental subdivision) income taxes, unemployment insurance, and similar items should ICANN be held liable or responsible therefore. Contractor retains the sole right to control or direct the manner in which the Services are to be performed. Without limiting the foregoing, ICANN retains the right to inspect, to stop work, to prescribe alterations, and generally supervise Contractor's work to insure its conformity with the applicable Statement of Work. Contractor acknowledges that Contractor has no authority for or on behalf of ICANN to make, enter into or amend any contracts or agreements or to take any action which would impose liability on ICANN, without the express written consent of an authorized officer of ICANN. Contractor represents to ICANN that Contractor is engaged in an independent calling and will comply with all laws regarding business permits and licenses that may be required to carry out Contractor's obligations under this Agreement.

ICANN Contractor Consulting Agreement
Page 3 of 11

6. IMMIGRATION LAW: With respect to each of Contractor's employees who render services to ICANN hereunder, Contractor shall be responsible for compliance with all applicable immigration laws, including the U.S. Immigration Reform and Control Act of 1986, and with all employment eligibility verification provisions required by law.

7. INTERPRETATION: In the event of a conflict between: (i) this Agreement; and (ii) any Statement(s) of Work, the terms of the applicable Statement of Work shall prevail.

[signature page follows]

ICANN Contractor Consulting Agreement
Page 4 of 11

The parties shall indicate their acceptance of this Agreement by signing in the appropriate space provided below.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: AKRAM ATALLAH
Signature

AKRAM ATALLAH, COO
Print Name and Title

Date: 8/9/11

THE ECONOMIST INTELLIGENCE UNIT, NA, INCORPORATED

By: [Signature]
Signature

J. Mast Dir. Operations
Print Name and Title

Date: 7/20/2011

EXHIBIT A
SUPPLEMENTAL TERMS

1. **RIGHTS OBLIGATIONS:** Except as set forth in the applicable Statement of Work, Contractor agrees that ICANN shall have the exclusive right, but not the obligation, to register copyright and file applications for patents throughout the world to protect ICANN's Legal Rights in and to the Products and that Contractor shall, upon the request of ICANN, perform (at no cost to Contractor) such legal acts and execute and deliver to ICANN, any such documents, applications and assignments reasonably requested by ICANN to register ICANN's Legal Rights in and to the Products.

2. **FORCE MAJEURE:** In the event of an occurrence of an event of force majeure, as the term is generally understood, ICANN shall have the right to suspend this Agreement and shall have the right, but not the obligation, to extend this Agreement by the length of any such suspension. If an event of force majeure continues for eight (8) consecutive weeks, ICANN shall have the right to terminate this Agreement.

3. **WARRANTIES:** Contractor represents and warrants to ICANN as follows:

(a) Contractor is fully authorized to enter into, and perform its obligations under this Agreement. This Agreement creates lawful, valid, and binding obligations, enforceable against Contractor in accordance with its terms.

(b) Contractor has the right to grant all rights granted herein, including but not limited to all necessary literary, artistic, musical and/or intellectual property rights, and is free to enter into and fully perform this Agreement.

(c) The exercise of rights granted herein, the performance of the Services and the delivery of the Products will not infringe on any of the following rights of any third party: copyright, trademark, or other intellectual property rights.

(d) Contractor has not entered and shall not enter into any arrangement or agreement that will interfere or conflict with the rights granted to ICANN hereunder.

4. **INDEMNITY**

(a) **Indemnification of Contractor.** To the fullest extent permitted by applicable law, ICANN shall indemnify Contractor, its members, directors, officers, partners, principals, agents and employees against all claims by third parties (including ICANN affiliates) and resulting liabilities, losses, damages, costs and expenses (including reasonable external and internal legal costs) ("Liabilities") arising out of: (i) the third party's use of or reliance on any Product; and/or (ii) any objection the third party may have to its content, reasoning and/or conclusions; provided,

however, that there shall be excluded from any such indemnification any such Liabilities that arise out of or are based upon any fraud, bad faith, willful misconduct or gross negligence of Contractor or any of Contractor's members, directors, officers, partners, principals, agents and employees provided, further, that Contractor shall not make any admission of liability, agreement or compromise with respect to such claims and shall promptly notify ICANN in writing of such claim and give full and complete authority, information and assistance for the defense of same. ICANN shall not be responsible for any compromise of such claim made by Contractor or Contractor's agents without the ICANN's consent.

(b) Indemnification of ICANN. To the fullest extent permitted by applicable law, Contractor shall indemnify ICANN and ICANN's members, directors, officers, partners, principals, agents and employees against all claims by third parties (including Contractor affiliates) and resulting Liabilities that arise out of or are based upon any fraud, bad faith, willful misconduct or gross negligence of Contractor or any of Contractor's members, directors, officers, partners, principals, agents and employees, provided that ICANN shall not make any admission of liability, agreement or compromise with respect to such claims and shall promptly notify Contractor in writing of such claim and give full and complete authority, information and assistance for the defense of same. Contractor shall not be responsible for any compromise of such claim made by ICANN or ICANN's agents without the Contractor's consent.

(c) Notice and Acknowledgement. ICANN will ensure that whenever a Product prepared by the Contractor is disclosed to a third party, ICANN has provided written notice to the third party in substantially the form of Appendix 1 hereto (the "Notice"), and ensure that such Notice has been acknowledged in writing by such third party and returned to Contractor and ICANN prior to disclosure of the Product.

5. CONFIDENTIALITY

(a) Each party acknowledges that it may disclose Confidential Information (as defined below) to the other in connection with this Agreement. The party receiving the Confidential Information will: (i) maintain it in confidence, except to the extent necessary to carry out the purposes of this Agreement, in which event confidentiality and use restrictions will be imposed upon the parties to whom such disclosures are made; (ii) use at least the same degree of care in maintaining its secrecy as it uses in maintaining the secrecy of its own Confidential Information, but in no event less than a reasonable degree of care; (iii) at the disclosing party's option, destroy or return all copies, notes, packages, diagrams, computer memory media and all other materials containing any portion of the Confidential Information to the disclosing party promptly following the earlier of (A) such party's request, (B) completion of the intended use of the Confidential Information, or (C) termination of this Agreement; and (iv) not use the Confidential Information other than for purposes of fulfilling its obligations under this Agreement. "Confidential Information" means all proprietary, secret or confidential information or data relating to either of the parties and its operations, employees, products or services, and any Personal Information. "Personal Information" means personally identifiable information relating to such party's employees, consumers and potential consumers. Each party will notify

the other party immediately upon discovery of any lost or altered Confidential Information.

(b) Information will not be considered Confidential Information to the extent, but only to the extent, that such information: (i) is already known to the receiving party free of any restriction at the time it is obtained from the other party; (ii) is subsequently learned from an independent third party free of any restriction and without breach of this Agreement; (iii) becomes publicly available through no wrongful act of either party; (iv) is independently developed by one party without reference to any Confidential Information of the other; or (v) is required to be disclosed by law, regulation, court order or subpoena, provided that the disclosing party will exercise reasonable efforts to notify the other party prior to disclosure. The parties agree also that the existence and terms of this Agreement are confidential and shall not be disclosed by either party without prior consent in writing by the other party.

6. SURVIVING OBLIGATIONS: The parties' representations, warranties, and indemnity obligations shall remain in effect following the termination or expiration of this Agreement.

7. ASSIGNMENT: Neither party may without prior consent in writing assign this Agreement or any of its rights or obligations hereunder.

8. REMEDIES: In recognition of the relative risks and benefits of this Agreement to both ICANN and Contractor, ICANN agrees that, to the fullest extent permitted by law, except for claims for indemnification under Section 4, any liability of Contractor (including its consultants, employees, and agents) for damages to ICANN shall be limited to an amount equal to the total amount paid to Contractor pursuant to this Agreement. EXCEPT FOR CLAIMS FOR INDEMNIFICATION UNDER SECTION 4, IN NO EVENT SHALL ANY PARTY TO THIS AGREEMENT OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS BE LIABLE TO THE OTHER PARTY UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR LOST PROFITS, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL DAMAGES OR THE LIKE, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER EITHER PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. TERMINATION:

(a) Each Party shall have the right to terminate this Agreement or any Statement of Work for convenience. Termination under this provision will be effective thirty (30) days after written notice by one party to the other; provided, that ICANN will be required to make payment for all work in progress and Products actually delivered under any active Statement of Work in the event of a termination of this Agreement or the applicable Statement of Work pursuant to this Section 9(a); and, provided, further, that, without prejudice to the generality of Section 7 of the Agreement to which these Supplemental Terms are attached, the termination provisions of each Statement of Work, if any, will supersede this Section 9(a).

(b) Each party shall have the right to terminate this Agreement if such party has a good faith belief, based on the facts then available, that the other party has engaged in any of the following conduct: fraud, misappropriation or embezzlement of funds, or gross misconduct. Termination under this provision shall be effective immediately upon receipt of notice by the relevant party.

(c) Other Provisions: Either party shall have the right to terminate this Agreement pursuant to other provisions contained throughout this Agreement, including but not limited to Section 2 (if ICANN) of these Supplemental Terms. Nothing contained within this provision shall negate or override its rights to terminate contained within other provisions herein, and it may elect at its option the most favorable applicable termination provision or provisions contained within this Agreement.

10. DEFAULT:

(a) If either party fails, refuses or neglects to perform any of its material obligations hereunder, for any reason other than incapacity, such party shall be in "default" of this Agreement. If either party refuses or states that it will refuse to comply with any of its material obligations hereunder, such refusal or statement may be treated by the other party as an immediate default, regardless of whether the time for performance of such obligation or obligations has arrived. Further, a party may, at any time, make a written request for the other party to confirm in writing its intentions and willingness to comply with its obligations hereunder, either generally or with respect to any particular matter. If, within five (5) days from delivery of such request at the address for notices set forth herein (exclusive of Saturdays, Sundays and federal holidays), the recipient of the request fails to deliver the requested information to the other party, such failure may be treated by such other party as an immediate default.

(b) Either party may suspend this Agreement with respect to performance of its obligations while any default of the other party continues.

11. CURING PROVISION: Neither party shall bring or make any claim that the other party has breached any of the provisions hereunder unless such party has first made a written demand to cure such failure, and the other party has not satisfied the obligations within ten (10) business days of receipt of such demand. The written demand shall specify the provision claimed to be breached, the date such obligation or performance was to have been satisfied and any other identifying specifics.

12. MISCELLANEOUS:

ICANN Contractor Consulting Agreement
Page 9 of 11

(a) No Implied Waiver: No failure on the part of ICANN or Contractor to exercise and no delay in exercising, and no course of dealing with respect to any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude the exercise of any other right, power or privilege.

(b) Counterparts: This Agreement may be executed in two or more counterparts (and by different parties on separate counterparts) each of which shall be an original, but all of which together shall constitute one and the same instrument.

(c) No Violation of Law: If any provision of this Agreement shall be deemed invalid or unenforceable as written, it shall be construed, to the greatest extent possible, in a manner which shall render it valid and enforceable, and any limitations on the scope or duration of any such provision necessary to make it valid and enforceable shall be deemed to a part hereof; no invalidity or unenforceability shall affect any other portion of this Agreement.

(d) Choice of Law and Submission to Jurisdiction: This Agreement shall be governed by applicable U.S. federal law and by the laws of the State of California applicable to contracts entered into and to be wholly performed within the State of California. Contractor and ICANN hereby submit and consent to the jurisdiction of the State and Federal Courts located in Los Angeles County, California, USA.

(e) Paragraph Headings: Paragraph headings contained in this Agreement are for convenience and shall not be considered for any purpose in construing this Agreement.

13. NOTICES: Any notice given under this Agreement will be in writing and will be effective (a) upon receipt if (i) delivered by hand or (ii) sent via overnight mail by a nationally recognized express delivery service; or (b) three (3) days after deposit in the U.S. mail, postage prepaid, certified mail return receipt requested, when addressed as follows:

To ICANN:
Internet Corporation for Assigned Names
and Numbers
4676 Admiralty Way, Suite 330
Marina del Rey, California 90292

Attn: General Counsel

To Contractor:
The Economist Intelligence Unit, NA,
Incorporated
750 Third Avenue, 5th Floor, New York,
NY 10017

Attn: Contracts Manager, Americas

with a copy to:

Group General Counsel, The Economist
Group, 25 St James's Street, London
SW1 A 1HG

ICANN Contractor Consulting Agreement
Page 10 of 11

14. ENTIRE AGREEMENT: This Agreement cancels and supersedes all prior negotiations and understandings between ICANN and Contractor relating hereto. This Agreement is not valid or binding unless and until in writing and signed by a duly authorized officer of ICANN and Contractor. No amendment, modification, extension, release, discharge or waiver of this Agreement, or any provision hereof, shall be valid or binding unless in writing and signed by a duly authorized officer of ICANN and Contractor. No oral agreement shall be binding on ICANN or Contractor unless and until reduced to writing and signed by a duly authorized officer of ICANN and Contractor.

ICANN Contractor Consulting Agreement
Page 11 of 11

Appendix 1
Form of Notice and Acknowledgement

[Name of Third Party]
Address Attention:

The advice, recommendations and information in the document included with this notice were prepared for the sole benefit of the Internet Corporation for Assigned Names and Numbers (ICANN), based on the specific facts and circumstances of ICANN, and its use is limited to the scope of The Economist Intelligence Unit, NA, Incorporated's ("EIU") engagement for ICANN. It has been provided to you for informational purposes only and you are not authorized by EIU to rely upon it and any such reliance by you or anyone else shall be at your or their own risk. You acknowledge and agree that EIU accepts no responsibility or liability in respect of the advice, recommendations or other information in such document to any person or organization other than ICANN. You shall have no right to disclose the advice, recommendations or other information in such document to anyone else without including a copy of this notice and, unless disclosure is required by law or to fulfill a professional obligation required under applicable professional standards, obtaining a signed acknowledgement of this notice from the party to whom disclosure is made and you provide a copy thereof to ICANN and EIU. You acknowledge and agree that you will be responsible for any damages suffered by EIU as a result of your failure to comply with the terms of this notice.

Please acknowledge your acceptance of the foregoing by signing and returning to us a copy of this letter.

Very truly yours,

ICANN

By: _____
Name:
Title:

Accepted and Agreed to on this ____ day of ____, 20__ by:
[Name of Third Party]

By: _____
Name:
Title:

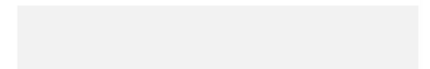
From: Christopher Bare <christopher.bare@icann.org>
Sent: Friday, May 30, 2014 2:33 PM
To: Russ Weinstein
Subject: CPE results discussion
Attachments: Draft CPE Result GMBH 04_RW_CB.docx; Draft CPE Result LLP 04_CB.docx; Draft CPE Result LLC 04_RW_CB.docx
Signed By: christopher.bare@icann.org

Here are the ones I had comments on for our discussion.

Chris

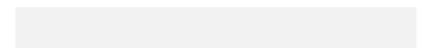
Confidential Third Party Information

Confidential Third Party Information



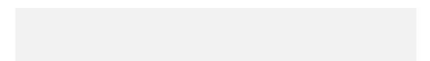
Confidential Third Party Information

Confidential Third Party Information



Confidential Third Party Information

Confidential Third Party Information



Confidential Third Party Information



New gTLD Program
Community Priority Evaluation Report
 Report Date: 19 May 2014

Application ID:	1-880-17627
Applied-for String:	LLC
Applicant Name:	Dot Registry LLC

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Did Not Prevail
<p>Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation.</p> <p>Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.</p>	

Panel Summary

Overall Scoring	5 Point(s)	
	Earned	Achievable
#1: Community Establishment	0	4
#2: Nexus between Proposed String and Community	0	4
#3: Registration Policies	3	4
#4: Community Endorsement	2	4
Total	5	16
Minimum Required Total Score to Pass 14		

Criterion #1: Community Establishment	0/4 Point(s)
1-A Delineation	0/2 Point(s)
<p>The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community demonstrates insufficient delineation, organization and pre-existence. The application received a score of 0 out of 2 points under criterion 1-A: Delineation.</p> <p><u>Delineation</u> Two conditions must be met to fulfill the requirements for delineation: there must be a clear straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.</p>	

The community defined in the application ("LLC") is:

Members of the community are defined as businesses registered as limited liability companies with the United States or its territories. Limited Liability Companies or (LLC's) as they are commonly abbreviated, represent one of the most popular business entity structures in the US. LLC's commonly participate in acts of commerce, public services, and product creation...

An LLC is defined as a flexible form of enterprise that blends elements of partnership and corporate structures. It is a legal form of company that provides limited liability to its owners in the vast majority of United States jurisdictions. LLC's are a unique entity type because they are considered a hybrid, having certain characteristics of both a corporation and a partnership or sole proprietorship. LLC's are closely related to corporations in the sense that they participate in similar activities and provide limited liability to their partners. Additionally, LLC's share a key characteristic with partnerships through the availability of pass-through income taxation. LLC's are a more flexible entity type than a corporation and are often well suited for businesses owned by a single owner.

This community definition shows a clear and straightforward membership. While broad, the community is clearly delineated, as membership requires formal registration as a limited liability company with the relevant US state. In addition, limited liability companies must comply with US state law and show proof of best practice in commercial dealings to the relevant state authorities.

However, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability companies operate in vastly different sectors, which sometimes have little or no association with one another. Having the same legal business structure is not sufficient to forge a sense of community between limited liability companies operating in different sectors of the economy. These limited liability companies would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

The community as defined in the application does not have at least one entity mainly dedicated to the community. Although responsibility for corporate registrations and the regulations pertaining to corporate formation are vested in each individual US state, these government agencies are fulfilling a function, rather than representing the community. In addition, the US states are not mainly dedicated to the community as they have other roles/functions beyond processing corporate registrations. According to the application:

LLC's can be formed through any jurisdiction of the United States. Therefore members of this community exist in all 50 US states and its territories. LLC formation guidelines are dictated by state law and can vary based on each state's regulations. Persons form an LLC by filing required documents with the appropriate state authority, usually the Secretary of State. Most states require the filing of Articles of Organization. These are considered public documents and are similar to articles of incorporation, which establish a corporation as a legal entity. At minimum, the articles of organization give a brief description of the intended business purposes, the registered agent, and registered business address. LLC's are expected to conduct business in conjunction with the policies of the state in which they are formed, and the Secretary of State periodically evaluates a LLC's level of good standing based on their commercial interactions with both the state and consumers.

The community as defined in the application does not have documented evidence of community activities. As there is no entity that is mainly dedicated to the community as defined in the LLC application, there is no

Comment [A1]: To Russ' point, use of a different word than community would cause less confusion. Perhaps 'defined group'.

Comment [A2]: I dont think we should say the community is clearly delineated here, We go on to say that the application does not satisfy the requirements for delineation. Probably just need a different word, like defined or broad.

Comment [A3]: I think we need to restructure or add a few words to this sentence. awareness and recognition of what?

Comment [A4]: This makes sense but is a subjective statement and will likely be challenged. Can we add a bit more to express the research and reasoning that went into this statement? For example, 'While several LLC organizations do exist, these are not organized around the legal business structure but are typically organized around specific industries, locales, other criteria not related to the entities structure as an LLC. No evidence of a broad organization spanning the full breadth of the potential membership pool was found.' That may be too specific, especially the 'no evidence...' part.

Comment [A5]: While i agree, i'd like to see some substantiation. something like... "based on our research we could not find any widespread evidence of LLCs from different sectors acting as a community" maybe that belongs in the organization section.

Comment [A6]: I like this point

Comment [A7]: State agencies? The office of secretary of state

documented evidence of community activities.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for organization.

Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed).

The community as defined in the application was not active prior to September 2007. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to a get a sought-after generic word as a gTLD string, and therefore could not have been active prior to the above date (although its constituent parts were active).

The Community Priority Evaluation panel determined that the community as defined in the application does not fulfill the requirements for pre-existence.

Comment [A8]: should we mention that you are considering the filing of these forms to be documented community activities and why?

Comment [A9]: Think we cover the forms issue 2 paragraphs up when we talk about ‘fulfilling a function’

Comment [A10]: Do we need this word? I know it’s from the AGB but does it substantially impact interpretation of the statement to lose it? While the comment seems true, the word itself seems a bit belittling

1-B Extension

0/2 Point(s)

The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not demonstrate considerable size or longevity for the community. The application received a score of 0 out of 2 points under criterion 1-B: Extension.

Size

Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.

The community as defined in the application is of a considerable size. The community for .LLC as defined in the application is large in terms of number of members. According to the application:

With the number of registered LLC’s in the United States totaling over five million in 2010 (as reported by the International Association of Commercial Administrators) it is hard for the average consumer to not conduct business with an LLC.

However, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability companies operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.

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

Longevity

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application does not demonstrate longevity. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to a get a sought-after generic word

Comment [A11]: same comment as above...also should we add something to the effect of, “as previously stated”

as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to a get a sought-after generic word as a gTLD string and, therefore, the pursuits of the .LLC community are not of a lasting, non-transient nature.

Comment [A12]: Not sure we need to repeat this, but i understand why you did, for consistency to other repeated sections.

Comment [A13]: Same as above

Additionally, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability companies operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.

Comment [A14]: same comment as above

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for longevity.

Criterion #2: Nexus between Proposed String and Community **0/4 Point(s)**

2-A Nexus **0/3 Point(s)**

The Community Priority Evaluation panel determined that the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the community, but over-reaches substantially beyond the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.

To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. “Identify” means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.

The applied-for string (.LLC) over-reaches substantially, as the string indicates a wider or related community of which the applicant is a part but is not specific to the applicant’s community. According to the application documentation:

“LLC” was chosen as our gTLD string because it is the commonly used abbreviation for the entity type that makes up the membership of our community. In the English language Limited Liability Company is primarily shortened to LLC when used to delineate business entity types. Since all of our community members are limited liability companies we believed that “.LLC” would be the simplest, most straight forward way to accurately represent our community.

LLC is a recognized abbreviation in all 50 states and US territories denoting the registration type of a business entity. Our research indicates that while other jurisdictions use LLC as a corporate identifier, their definitions are quite different and there are no other known associations or definitions of LLC in the English language.

While the string identifies the name of the community, it captures a wider geographical remit than the community has, as the corporate identifier is used in other jurisdictions (outside the US). Therefore, there is a substantial over-reach between the proposed string and community as defined by the applicant.

The Community Priority Evaluation panel determined that the applied-for string over-reaches substantially beyond the community. It therefore does not meet the requirements for Nexus.

Comment [A15]: Question: if they had gotten letters of non-objection or support from something like the equivalent of the secretaries of state of other countries saying they can use this string, would that have changed this assessment? if so, maybe we should mention it.

2-B Uniqueness **0/1 Point(s)**

The Community Priority Evaluation panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant

Guidebook as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1 point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application does not demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus and is therefore ineligible for a score of 1 for Uniqueness. The Community Priority Evaluation panel determined that the applied-for string does not satisfy the condition to fulfill the requirements for Uniqueness.

Criterion #3: Registration Policies

3/4 Point(s)

3-A Eligibility

1/1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.

To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by limiting eligibility to registered limited liability companies and by cross-referencing their documentation against the applicable US state's registration records in order to verify the accuracy of their application. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.

3-B Name Selection

1/1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.

To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining a comprehensive list of name selection rules, such as requirements that second level domain names should match or include a substantial part of the registrant's legal name, and specifying that registrants will not be able to register product line registrations, amongst other requirements. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.

3-C Content and Use

1/1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.

To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by noting that all registrants must adhere to the content restrictions outlined in the applicant's abuse policies. (Comprehensive details are provided in

Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Content and Use.	
3-D Enforcement	<i>0/1 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the application provided specific enforcement measures but did not include appropriate appeal mechanisms. The application received a score of 0 out of 1 point under criterion 3-D: Enforcement.</p> <p>Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. For example, if a registrant wrongfully applied for and was awarded a second level domain name, the right to hold this domain name will be immediately forfeited. (Comprehensive details are provided in Section 20e of the applicant documentation). However, the application did not outline an appeals process. The Community Priority Evaluation panel determined that the application satisfies only one of the two conditions to fulfill the requirements for Enforcement.</p>	

Criterion #4: Community Endorsement	2/4 Point(s)
4-A Support	<i>1/2 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.</p> <p>To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. "Relevance" refers to the communities explicitly and implicitly addressed.</p> <p>The application included letters from a number of Secretaries of State of US states, which were considered to constitute support from groups with relevance, as each Secretary of State has responsibility for corporate registrations and the regulations pertaining to corporate formation in its jurisdiction. These entities are not the recognized community institution(s)/member organization(s), as these government agencies are fulfilling a function, rather than representing the community. The viewpoints expressed in these letters were not consistent across states. While several US states expressed clear support for the applicant during the Letters of Support verification process, others either provided qualified support, refrained from endorsing one particular applicant over another, or did not respond to the verification request. Letters of support from other entities did not meet the requirement for relevance based on the Applicant Guidebook criteria, as they were not from the recognized community institutions/member organizations. The Community Priority Evaluation Panel determined that the applicant partially satisfies the requirements for Support.</p>	
4-B Opposition	<i>1/2 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received relevant opposition from one group of non-negligible size. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.</p>	

Comment [A16]: i think this is good

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.

The application received several letters of opposition, one of which was determined to be relevant opposition from an organization of non-negligible size. This opposition was from a community that was not identified in the application but which has an association to the applied-for string. Opposition was on the grounds that limiting registration to US registered corporations only would unfairly exclude non-US businesses. The remaining letters were either from groups/individuals of negligible size, or were not from communities which were not mentioned in the application but which have an association to the applied for string. The Community Priority Evaluation Panel determined that the applicant partially satisfied the requirements for Opposition.

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.

Comment [A17]: The way i read this, is that its relevant because its from an organization of non-negligible size. I dont think that is the intention. Can we rephrase to say something to effect of a an orgnization with standing and of non-negligible size. and perhaps even define the standing it has.

CONFIDENTIAL DRAFT



New gTLD Program
Community Priority Evaluation Report
 Report Date: 19 May 2014

Application ID:	1-880-35508
Applied-for String:	LLP
Applicant Name:	Dot Registry LLC

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Did Not Prevail
<p>Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation.</p> <p>Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.</p>	

Panel Summary

Overall Scoring	5 Point(s)	
	Earned	Achievable
#1: Community Establishment	0	4
#2: Nexus between Proposed String and Community	0	4
#3: Registration Policies	3	4
#4: Community Endorsement	2	4
Total	5	16
Minimum Required Total Score to Pass 14		

Criterion #1: Community Establishment	0/4 Point(s)
1-A Delineation	0/2 Point(s)
<p>The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community demonstrates insufficient delineation, organization and pre-existence. The application received a score of 0 out of 2 points under criterion 1-A: Delineation.</p> <p><u>Delineation</u> Two conditions must be met to fulfill the requirements for delineation: there must be a clear straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.</p>	

The community defined in the application ("LLP") is:

Members of the community are defined as businesses registered as Limited Liability Partnerships with the United States or its territories. Limited Liability Partnerships or (LLP's) as they are commonly abbreviated, are specifically designed to represent professional service businesses in the US . Limited Liability Partnerships are commonly adopted by businesses which focus on: accounting, attorneys, architects, dentists, doctors and other fields treated as professionals under each state's law....

A Limited Liability Partnership is defined as a partnership in which some or all partners (depending on jurisdiction) have limited liability. LLP's therefore exhibit qualities of both partnerships and corporations. In an LLP, one partner is not responsible or liable for another partner's misconduct or negligence. This distinction is why the LLP is a popular business entity amongst accountants, doctors, and lawyers; which deal heavily with issues that could inspire mal-practice lawsuits.

This community definition shows a clear and straightforward membership. While broad, the community is clearly delineated, as membership requires formal registration as a limited liability partnership with the relevant US state (LLPs operate in about 40 US states). In addition, limited liability partnerships must comply with US state law and show proof of best practice in commercial dealings to the relevant state authorities.

However, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability partnerships operate in vastly different sectors, which sometimes have little or no association with one another. Having the same legal business structure is not sufficient to forge a sense of community between limited liability partnerships operating in different sectors of the economy. These limited liability partnerships would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

The community as defined in the application does not have at least one entity mainly dedicated to the community. Although responsibility for corporate registrations and the regulations pertaining to corporate formation are vested in each individual US state, these government agencies are fulfilling a function, rather than representing the community. In addition, the US states are not mainly dedicated to the community as they have other roles / functions beyond processing corporate registrations. According to the application:

Limited Liability Partnerships can be formed through all but ten states in the United States. Therefore members of this community exist in close to forty US states. LLP formation guidelines are dictated by state law and can vary based on each state's regulations. Persons form an LLP by filing required documents with the appropriate state authority, usually the Secretary of State.

The community as defined in the application does not have documented evidence of community activities. As there is no entity that is mainly dedicated to the community as defined in the .LLP application, there is no documented evidence of community activities.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for organization.

Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007

(when the new gTLD policy recommendations were completed).

The community as defined in the application was not active prior to September 2007. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to a get a sought-after generic word as a gTLD string, and therefore could not have been active prior to the above date (although its constituent parts were active).

The Community Priority Evaluation panel determined that the community as defined in the application does not fulfill the requirements for pre-existence.

1-B Extension

0/2 Point(s)

The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not demonstrate considerable size or longevity for the community. The application received a score of 0 out of 2 points under criterion 1-B: Extension.

Size

Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.

The community as defined in the application is of a considerable size. The community for .LLP as defined in the application is large in terms of number of members. According to the application, “LLP’s represent a small but prestigious sector of business in the United States.”

However, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability partnerships operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.

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

Longevity

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application does not demonstrate longevity. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to a get a sought-after generic word as a gTLD string and, therefore, the pursuits of the .LLP community are not of a lasting, non-transient nature.

Additionally, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability partnerships operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for longevity.

Criterion #2: Nexus between Proposed String and Community	0/4 Point(s)
2-A Nexus	0/3 Point(s)
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the community, but over-reaches substantially beyond the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.</p> <p>To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. "Identify" means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.</p> <p>The applied-for string (.LLP) over-reaches substantially, as the string indicates a wider or related community of which the applicant is a part but is not specific to the applicant's community. According to the application documentation:</p> <p style="padding-left: 40px;">"LLP" was chosen as our gTLD string because it is the commonly used abbreviation for the entity type that makes up the membership of our community. In the English language Limited Liability Partnership is primarily shortened to LLP when used to delineate business entity types...</p> <p style="padding-left: 40px;">LLP is a recognized abbreviation in all 50 states and US territories denoting the registration type of a business entity. Our research indicates that LLP, as corporate identifier is used in eleven other jurisdictions (Canada, China, Germany, Greece, India, Japan, Kazakhstan, Poland, Romania, Singapore, and the United Kingdom) though their formation regulations are different from the United States and their entity designations would not fall within the boundaries of our community definition.</p> <p>While the string identifies the name of the community, it captures a wider geographical remit than the community has, as the corporate identifier is used in Poland, the UK, Canada and Japan, amongst others. Therefore, there is a substantial over-reach between the proposed string and community as defined by the applicant.</p> <p>The Community Priority Evaluation panel determined that the applied-for string over-reaches substantially beyond the community. It therefore does not meet the requirements for Nexus.</p>	
2-B Uniqueness	0/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1 point under criterion 2-B: Uniqueness.</p> <p>To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application does not demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus and is therefore ineligible for a score of 1 for Uniqueness. The Community Priority Evaluation panel determined that the applied-for string does not satisfy the condition to fulfill the requirements for Uniqueness.</p>	

--

Criterion #3: Registration Policies	3/4 Point(s)
3-A Eligibility	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.</p> <p>To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by limiting eligibility to registered limited liability partnerships and by cross-referencing their documentation against the applicable US state's registration records in order to verify the accuracy of their application. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.</p>	
3-B Name Selection	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.</p> <p>To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining a comprehensive list of name selection rules, such as requirements that second level domain names should match or include a substantial part of the registrant's legal name, and specifying that registrants will not be able to register product line registrations, amongst other requirements. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.</p>	
3-C Content and Use	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.</p> <p>To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by noting that all registrants must adhere to the content restrictions outlined in the applicant's abuse policies. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Content and Use.</p>	
3-D Enforcement	0/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant</p>	

Guidebook as the application provided specific enforcement measures but did not include appropriate appeal mechanisms. The application received a score of 0 out of 1 point under criterion 3-D: Enforcement.

Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. For example, if a registrant wrongfully applied for and was awarded a second level domain name, the right to hold this domain name will be immediately forfeited. (Comprehensive details are provided in Section 20e of the applicant documentation). However, the application did not outline an appeals process. The Community Priority Evaluation panel determined that the application satisfies only one of the two conditions to fulfill the requirements for Enforcement.

Criterion #4: Community Endorsement **2/4 Point(s)**

4-A Support **1/2 Point(s)**

The Community Priority Evaluation panel determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.

To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. "Relevance" refers to the communities explicitly and implicitly addressed.

The Community Priority Evaluation panel determined that the applicant was not the recognized community institution(s)/member organization(s), nor did it have documented authority to represent the community, or documented support from a majority of the recognized community institution(s)/member organization(s). However, the applicant possesses documented support from at least one group with relevance and this documentation contained a description of the process and rationale used in arriving at the expression of support.

The application included letters from a number of Secretaries of State of US states, which were considered to constitute support from groups with relevance, as each Secretary of State has responsibility for corporate registrations and the regulations pertaining to corporate formation in its jurisdiction. These entities are not the recognized community institution(s)/member organization(s), as these government agencies are fulfilling a function, rather than representing the community. The viewpoints expressed in these letters were not consistent across states. While several US states expressed clear support for the applicant during the Letters of Support verification process, others either provided qualified support, refrained from endorsing one particular applicant over another, or did not respond to the verification request. Letters of support from other entities did not meet the requirement for relevance based on the Applicant Guidebook criteria, as they were not from the recognized community institutions/member organizations. The Community Priority Evaluation Panel determined that the applicant partially satisfies the requirements for Support.

4-B Opposition **1/2 Point(s)**

The Community Priority Evaluation panel determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received relevant opposition from one group of non-negligible size. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.

Comment [A1]: This paragraph is not in the other 2 related reports. What is the difference here?

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.

The application received several letters of opposition, one of which was determined to be relevant opposition from an organization of non-negligible size. This opposition was from a community that was not identified in the application but which has an association to the applied-for string. Opposition was on the grounds that limiting registration to US registered corporations only would unfairly exclude non-US businesses. The remaining letters were either from groups/individuals of negligible size, or were not from communities which were not mentioned in the application but which have an association to the applied for string. The Community Priority Evaluation Panel determined that the applicant partially satisfied the requirements for Opposition.

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.

From: Christopher Bare <christopher.bare@icann.org>
EIU Contact Information Redacted Russ Weinstein<russ.weinstein@icann.org>
EIU Contact Information Redacted Daniel Halloran<daniel.halloran@icann.org>
Subject: Re: Updated draft results (4)
Received(Date): Fri, 30 May 2014 17:34:40 -0700
[Draft CPE Result LLP 04_CB.docx](#)
[Draft CPE Result LLC 04_RW_CB.v2.docx](#)
[Draft CPE Result GMBH 04_RW_CB.v2.docx](#)
[smime.p7s](#)

Privileged and Confidential.

Hj; EIU Contact Information Redacted

Russ and I reviewed the first 4 drafts (GMBH, LLC, LLP, INC) and had a few more comments. We really like several of the additional details you updated.

I've attached 3 documents with track changes on so you can see our comments.

- **Many comments apply across reports. We tried not to repeat comments on each report.**
- **We are not sure all comments need to be addressed in the reports, but we should make sure that we are prepared to discuss at next week's briefing as we would expect similar questions to come up.**
- **You will see that there are a couple areas where we still are unsure about how best to capture the research and reasoning that led to the conclusion. We can expect that some of the subjective decisions will be questioned and we want to try to alleviate some of that by detailing some of what was done.**
- **We were also discussing how best to message the issue of clarifying construed community. Several applicants seem to have had trouble defining the community they are intending to serve and have instead defined a large group that includes members that are only peripherally relevant.**

Confidential Third Party Information

Thanks

Chris

From: EIU Contact Information Redacted
Date: Thursday, May 29, 2014 4:48 PM
To: Christopher Bare <christopher.bare@icann.org>, Russ Weinstein <russ.weinstein@icann.org>
Cc: EIU Contact Information Redacted
Subject: Updated draft results (4)

Hi Chris and Russ,

I have attached the revised set of four corporate designation results (draft). We addressed most of your comments.

1. The term 'construed community' was not well received by the applicant community. We suggest a change to the term itself as well as additional explanation as to what is meant. Perhaps acknowledgement that while a group appears to exist/has existed for some time, the lack of an organizing or governing bodydoes not meet requirements for the group to be considered a community.....

Added in language from the AGB. Second paragraph under 4.2.3.

2. Criterion 1A- Delineation: Reference is made to the lack of at least one major entity dedicated to the community. Would a large number of smaller entities qualify as a majority. A reference to that effect and the fact that this was not represented in the application might help.

We will keep an open mind about fragmented communities.

3. Criterion 1A: Delineation: The report cites that lack of a dedicated entity leads to the lack of organized activities. Can we elaborate? What constitutes an organized activity. Does the registering of a company with the Secretaries of State count as an activity?

EIU feedback: too difficult to define such activities because of how they would vary across community. Moreover, it's not defined in the AGB, so the EIU decided not to add any clarification on this.

4. Criterion 2B- Uniqueness: There is reference to the string having other significant meaning. Can we have an example (such as was provided in MLS) as to what other meanings might exist?

Added examples where appropriate. If the applicant did not score a 2 or a 3 on Nexus, then they are ineligible for a score of 1 on Uniqueness and this is the explanation that we provided.

5. Criterion 3c- Content and Use: can we have an example or explanation as to how the applications Content and Use policies fall short of the requirements (reference to GMBH)?

Yes, we added in more information on this.

6. Criterion 4- Community Endorsement: We expect this section to get a lot of attention. More detail explaining the difference in the relevance of the letters of support would be helpful. For example an explanation that the letters from the SoS while somewhat relevant did carry as much weight due to the fact that they are not dedicated to the community but act as a regulator....etc.

We used the definitions provided in the AGB to add clarity on this section.

7. The term 'does not have awareness and recognition among its members' appears many times. Can we do something to highlight this theme to bring it to the forefront. This seems to be a critical part of every evaluation.

Already discussed-- likely difficult to add this.

Once you have the opportunity to take a second look, please feel free to provide feedback via phone or email that we can incorporate ahead of the meeting next week.

Best wishes,

EIU Contact Information
Redacted

Economist Intelligence Unit
Custom Research
EIU Contact Information Redacted

Website: research.eiu.com

This e-mail may contain confidential material. If you are not an intended recipient, please notify the sender and delete all copies. It may also contain personal views which are not the views of The Economist Group. We may monitor e-mail to and from our network.

Sent by a member of The Economist Group. The Group's parent company is The Economist Newspaper Limited, registered in England with company number 236383 and registered office at 25 St James's Street, London, SW1A 1HG. For Group company registration details go to <http://legal.economistgroup.com>

New gTLD Program
Community Priority Evaluation Report
 Report Date: 19 May 2014

Application ID:	1-880-35508
Applied-for String:	LLP
Applicant Name:	Dot Registry LLC

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Did Not Prevail
<p>Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation.</p> <p>Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.</p>	

Panel Summary

Overall Scoring	5 Point(s)	
Criteria	Earned	Achievable
#1: Community Establishment	0	4
#2: Nexus between Proposed String and Community	0	4
#3: Registration Policies	3	4
#4: Community Endorsement	2	4
Total	5	16
Minimum Required Total Score to Pass 14		

Criterion #1: Community Establishment	0/4 Point(s)
1-A Delineation	0/2 Point(s)
<p>The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community demonstrates insufficient delineation, organization and pre-existence. The application received a score of 0 out of 2 points under criterion 1-A: Delineation.</p> <p>Delineation</p> <p>Two conditions must be met to fulfill the requirements for delineation: there must be a clear straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.</p>	

The community defined in the application ("LLP") is:

Members of the community are defined as businesses registered as Limited Liability Partnerships with the United States or its territories. Limited Liability Partnerships or (LLP's) as they are commonly abbreviated, are specifically designed to represent professional service businesses in the US . Limited Liability Partnerships are commonly adopted by businesses which focus on: accounting, attorneys, architects, dentists, doctors and other fields treated as professionals under each state's law....

A Limited Liability Partnership is defined as a partnership in which some or all partners (depending on jurisdiction) have limited liability. LLP's therefore exhibit qualities of both partnerships and corporations. In an LLP, one partner is not responsible or liable for another partner's misconduct or negligence. This distinction is why the LLP is a popular business entity amongst accountants, doctors, and lawyers; which deal heavily with issues that could inspire mal-practice lawsuits.

This community definition shows a clear and straightforward membership. While broad, the community is clearly delineated, as membership requires formal registration as a limited liability partnership with the relevant US state (LLPs operate in about 40 US states). In addition, limited liability partnerships must comply with US state law and show proof of best practice in commercial dealings to the relevant state authorities.

However, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability partnerships operate in vastly different sectors, which sometimes have little or no association with one another. Having the same legal business structure is not sufficient to forge a sense of community between limited liability partnerships operating in different sectors of the economy. These limited liability partnerships would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

The community as defined in the application does not have at least one entity mainly dedicated to the community. Although responsibility for corporate registrations and the regulations pertaining to corporate formation are vested in each individual US state, these government agencies are fulfilling a function, rather than representing the community. In addition, the US states are not mainly dedicated to the community as they have other roles/functions beyond processing corporate registrations. According to the application:

Limited Liability Partnerships can be formed through all but ten states in the United States. Therefore members of this community exist in close to forty US states. LLP formation guidelines are dictated by state law and can vary based on each state's regulations. Persons form an LLP by filing required documents with the appropriate state authority, usually the Secretary of State.

The community as defined in the application does not have documented evidence of community activities. As there is no entity that is mainly dedicated to the community as defined in the .LLP application, there is no documented evidence of community activities.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for organization.

Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007

(when the new gTLD policy recommendations were completed).

The community as defined in the application was not active prior to September 2007. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to a get a sought-after generic word as a gTLD string, and therefore could not have been active prior to the above date (although its constituent parts were active).

The Community Priority Evaluation panel determined that the community as defined in the application does not fulfill the requirements for pre-existence.

1-B Extension

0/2 Point(s)

The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not demonstrate considerable size or longevity for the community. The application received a score of 0 out of 2 points under criterion 1-B: Extension.

Size

Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.

The community as defined in the application is of a considerable size. The community for .LLP as defined in the application is large in terms of number of members. According to the application, “LLP’s represent a small but prestigious sector of business in the United States.”

However, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability partnerships operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.

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

Longevity

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application does not demonstrate longevity. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to a get a sought-after generic word as a gTLD string and, therefore, the pursuits of the .LLP community are not of a lasting, non-transient nature.

Additionally, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability partnerships operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for longevity.

Criterion #2: Nexus between Proposed String and Community

0/4 Point(s)

2-A Nexus

0/3 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the community, but over-reaches substantially beyond the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.

To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. "Identify" means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.

The applied-for string (.LLP) over-reaches substantially, as the string indicates a wider or related community of which the applicant is a part but is not specific to the applicant's community. According to the application documentation:

"LLP" was chosen as our gTLD string because it is the commonly used abbreviation for the entity type that makes up the membership of our community. In the English language Limited Liability Partnership is primarily shortened to LLP when used to delineate business entity types...

LLP is a recognized abbreviation in all 50 states and US territories denoting the registration type of a business entity. Our research indicates that LLP, as corporate identifier is used in eleven other jurisdictions (Canada, China, Germany, Greece, India, Japan, Kazakhstan, Poland, Romania, Singapore, and the United Kingdom) though their formation regulations are different from the United States and their entity designations would not fall within the boundaries of our community definition.

While the string identifies the name of the community, it captures a wider geographical remit than the community has, as the corporate identifier is used in Poland, the UK, Canada and Japan, amongst others. Therefore, there is a substantial over-reach between the proposed string and community as defined by the applicant.

The Community Priority Evaluation panel determined that the applied-for string over-reaches substantially beyond the community. It therefore does not meet the requirements for Nexus.

2-B Uniqueness

0/1 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1 point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application does not demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus and is therefore ineligible for a score of 1 for Uniqueness. The Community Priority Evaluation panel determined that the applied-for string does not satisfy the condition to fulfill the requirements for Uniqueness.

--

Criterion #3: Registration Policies	3/4 Point(s)
3-A Eligibility	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.</p> <p>To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by limiting eligibility to registered limited liability partnerships and by cross-referencing their documentation against the applicable US state's registration records in order to verify the accuracy of their application. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.</p>	
3-B Name Selection	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.</p> <p>To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining a comprehensive list of name selection rules, such as requirements that second level domain names should match or include a substantial part of the registrant's legal name, and specifying that registrants will not be able to register product line registrations, amongst other requirements. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.</p>	
3-C Content and Use	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.</p> <p>To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by noting that all registrants must adhere to the content restrictions outlined in the applicant's abuse policies. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Content and Use.</p>	
3-D Enforcement	0/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant</p>	

Guidebook as the application provided specific enforcement measures but did not include appropriate appeal mechanisms. The application received a score of 0 out of 1 point under criterion 3-D: Enforcement.

Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. For example, if a registrant wrongfully applied for and was awarded a second level domain name, the right to hold this domain name will be immediately forfeited. (Comprehensive details are provided in Section 20e of the applicant documentation). However, the application did not outline an appeals process. The Community Priority Evaluation panel determined that the application satisfies only one of the two conditions to fulfill the requirements for Enforcement.

Criterion #4: Community Endorsement **2/4 Point(s)**

4-A Support **1/2 Point(s)**

The Community Priority Evaluation panel determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.

To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. “Recognized” means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. “Relevance” refers to the communities explicitly and implicitly addressed.

The Community Priority Evaluation panel determined that the applicant was not the recognized community institution(s)/member organization(s), nor did it have documented authority to represent the community, or documented support from a majority of the recognized community institution(s)/member organization(s). However, the applicant possesses documented support from at least one group with relevance and this documentation contained a description of the process and rationale used in arriving at the expression of support.

Comment [A1]: This paragraph is not in the other 2 related reports. What is the difference here?

The application included letters from a number of Secretaries of State of US states, which were considered to constitute support from groups with relevance, as each Secretary of State has responsibility for corporate registrations and the regulations pertaining to corporate formation in its jurisdiction. These entities are not the recognized community institution(s)/member organization(s), as these government agencies are fulfilling a function, rather than representing the community. The viewpoints expressed in these letters were not consistent across states. While several US states expressed clear support for the applicant during the Letters of Support verification process, others either provided qualified support, refrained from endorsing one particular applicant over another, or did not respond to the verification request. Letters of support from other entities did not meet the requirement for relevance based on the Applicant Guidebook criteria, as they were not from the recognized community institutions/member organizations. The Community Priority Evaluation Panel determined that the applicant partially satisfies the requirements for Support.

4-B Opposition **1/2 Point(s)**

The Community Priority Evaluation panel determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received relevant opposition from one group of non-negligible size. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.

The application received several letters of opposition, one of which was determined to be relevant opposition from an organization of non-negligible size. This opposition was from a community that was not identified in the application but which has an association to the applied-for string. Opposition was on the grounds that limiting registration to US registered corporations only would unfairly exclude non-US businesses. The remaining letters were either from groups/individuals of negligible size, or were not from communities which were not mentioned in the application but which have an association to the applied for string. The Community Priority Evaluation Panel determined that the applicant partially satisfied the requirements for Opposition.

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.

[CPE](#)

New gTLD Program
Community Priority Evaluation Report
 Report Date: 19 May 2014

Application ID:	1-880-17627
Applied-for String:	LLC
Applicant Name:	Dot Registry LLC

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Did Not Prevail
<p>Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation.</p> <p>Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.</p>	

Panel Summary

Overall Scoring	5 Point(s)	
<u>Criteria</u>	<u>Earned</u>	<u>Achievable</u>
#1: Community Establishment	0	4
#2: Nexus between Proposed String and Community	0	4
#3: Registration Policies	3	4
#4: Community Endorsement	2	4
Total	5	16
Minimum Required Total Score to Pass <u>14</u>		

Criterion #1: Community Establishment	0/4 Point(s)
1-A Delineation	0/2 Point(s)
<p>The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community demonstrates insufficient delineation, organization and pre-existence. The application received a score of 0 out of 2 points under criterion 1-A: Delineation.</p> <p><u>Delineation</u> Two conditions must be met to fulfill the requirements for delineation: there must be a clear straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.</p>	

The community defined in the application (“LLC”) is:

Members of the community are defined as businesses registered as limited liability companies with the United States or its territories. Limited Liability Companies or (LLC’s) as they are commonly abbreviated, represent one of the most popular business entity structures in the US. LLC’s commonly participate in acts of commerce, public services, and product creation....

An LLC is defined as a flexible form of enterprise that blends elements of partnership and corporate structures. It is a legal form of company that provides limited liability to its owners in the vast majority of United States jurisdictions. LLC’s are a unique entity type because they are considered a hybrid, having certain characteristics of both a corporation and a partnership or sole proprietorship. LLC’s are closely related to corporations in the sense that they participate in similar activities and provide limited liability to their partners. Additionally, LLC’s share a key characteristic with partnerships through the availability of pass-through income taxation. LLC’s are a more flexible entity type than a corporation and are often well suited for businesses owned by a single owner.

This community definition shows a clear and straightforward membership. While broad, the community is clearly delineated, as membership requires formal registration as a limited liability company with the relevant US state. In addition, limited liability companies must comply with US state law and show proof of best practice in commercial dealings to the relevant state authorities.

However, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability companies operate in vastly different sectors, which sometimes have little or no association with one another. Having the same legal business structure is not sufficient to forge a sense of community between limited liability companies operating in different sectors of the economy. These limited liability companies would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

The community as defined in the application does not have at least one entity mainly dedicated to the community. Although responsibility for corporate registrations and the regulations pertaining to corporate formation are vested in each individual US state, these government agencies are fulfilling a function, rather than representing the community. In addition, the US states are not mainly dedicated to the community as they have other roles/functions beyond processing corporate registrations. According to the application:

LLC’s can be formed through any jurisdiction of the United States. Therefore members of this community exist in all 50 US states and its territories. LLC formation guidelines are dictated by state law and can vary based on each state’s regulations. Persons form an LLC by filing required documents with the appropriate state authority, usually the Secretary of State. Most states require the filing of Articles of Organization. These are considered public documents and are similar to articles of incorporation, which establish a corporation as a legal entity. At minimum, the articles of organization give a brief description of the intended business purposes, the registered agent, and registered business address. LLC’s are expected to conduct business in conjunction with the policies of the state in which they are formed, and the Secretary of State periodically evaluates a LLC’s level of good standing based on their commercial interactions with both the state and consumers.

The community as defined in the application does not have documented evidence of community activities. As there is no entity that is mainly dedicated to the community as defined in the .LLC application, there is no

Comment [A1]: I don't think we should say the community is clearly delineated here, We go on to say that the application does not satisfy the requirements for delineation. Probably just need a different word, like defined or broad. We may need to stay away from the delineation word since it has a meaning in the scoring as well. Perhaps something like 'While broad, the proposed community is clearly defined....'?

Comment [A2]: I think we need to restructure or add a few words to this sentence. "...awareness and recognition..." of what?

Comment [A3]: This makes sense but is a subjective statement and will likely be challenged. Can we add a bit more to express the research and reasoning that went into this statement? For example, 'While several LLC organizations do exist, these are not organized around the legal business structure but are typically organized around specific industries, locales, other criteria not related to the entities structure as an LLC. No evidence of a broad organization spanning the full breadth of the potential membership pool was found.'

That may be too specific, especially the 'no evidence...' part.

Possibly something like... "based on our research we could not find any widespread evidence of LLCs from different sectors acting as a community".

Maybe that belongs in the organization section.

Comment [A4]: We like this point

Comment [A5]: State agencies? The office of secretary of state? We should clarify.

documented evidence of community activities.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for organization.

Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed).

The community as defined in the application was not active prior to September 2007. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to a get a sought-after generic word as a gTLD string, and therefore could not have been active prior to the above date (although its constituent parts were active).

The Community Priority Evaluation panel determined that the community as defined in the application does not fulfill the requirements for pre-existence.

1-B Extension

0/2 Point(s)

The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not demonstrate considerable size or longevity for the community. The application received a score of 0 out of 2 points under criterion 1-B: Extension.

Size

Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.

The community as defined in the application is of a considerable size. The community for .LLC as defined in the application is large in terms of number of members. According to the application:

With the number of registered LLC's in the United States totaling over five million in 2010 (as reported by the International Association of Commercial Administrators) it is hard for the average consumer to not conduct business with an LLC.

However, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability companies operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.

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

Longevity

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application does not demonstrate longevity. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to a get a sought-after generic word

Comment [A6]: Can we remove this word from this sentence? I know it's from the AGB but does it substantially impact interpretation of the statement to lose it? The word itself seems a bit belittling on top of the sentence content.

Comment [A7]: Same as above. Also we should probably add something to the effect of, "as previously stated". By acknowledging that it was already stated earlier it would help to avoid sounding sterile and machine like.

as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to a get a sought-after generic word as a gTLD string and, therefore, the pursuits of the .LLC community are not of a lasting, non-transient nature.

Additionally, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability companies operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for longevity.

Comment [A8]: Similar to the comment above, a few words like ‘as mentioned above’, ‘as previously stated’.

Comment [A9]: Same as above

Comment [A10]: Same as above

Criterion #2: Nexus between Proposed String and Community 0/4 Point(s)

2-A Nexus 0/3 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the community, but over-reaches substantially beyond the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.

To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. “Identify” means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.

The applied-for string (.LLC) over-reaches substantially, as the string indicates a wider or related community of which the applicant is a part but is not specific to the applicant’s community. According to the application documentation:

“LLC” was chosen as our gTLD string because it is the commonly used abbreviation for the entity type that makes up the membership of our community. In the English language Limited Liability Company is primarily shortened to LLC when used to delineate business entity types. Since all of our community members are limited liability companies we believed that “.LLC” would be the simplest, most straight forward way to accurately represent our community.

LLC is a recognized abbreviation in all 50 states and US territories denoting the registration type of a business entity. Our research indicates that while other jurisdictions use LLC as a corporate identifier, their definitions are quite different and there are no other known associations or definitions of LLC in the English language.

While the string identifies the name of the community, it captures a wider geographical remit than the community has, as the corporate identifier is used in other jurisdictions (outside the US). Therefore, there is a substantial over-reach between the proposed string and community as defined by the applicant.

The Community Priority Evaluation panel determined that the applied-for string over-reaches substantially beyond the community. It therefore does not meet the requirements for Nexus.

Comment [A11]: Question: if they had gotten letters of non-objection or support from the equivalent of the secretaries of state of other countries saying they can use this string, would that have changed this assessment? If so, maybe we can mention it.

2-B Uniqueness 0/1 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant

Guidebook as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1 point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application does not demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus and is therefore ineligible for a score of 1 for Uniqueness. The Community Priority Evaluation panel determined that the applied-for string does not satisfy the condition to fulfill the requirements for Uniqueness.

Criterion #3: Registration Policies

3/4 Point(s)

3-A Eligibility

1/1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.

To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by limiting eligibility to registered limited liability companies and by cross-referencing their documentation against the applicable US state's registration records in order to verify the accuracy of their application. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.

3-B Name Selection

1/1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.

To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining a comprehensive list of name selection rules, such as requirements that second level domain names should match or include a substantial part of the registrant's legal name, and specifying that registrants will not be able to register product line registrations, amongst other requirements. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.

3-C Content and Use

1/1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.

To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by noting that all registrants must adhere to the content restrictions outlined in the applicant's abuse policies. (Comprehensive details are provided in

Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Content and Use.	
3-D Enforcement	<i>0/1 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the application provided specific enforcement measures but did not include appropriate appeal mechanisms. The application received a score of 0 out of 1 point under criterion 3-D: Enforcement.</p> <p>Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. For example, if a registrant wrongfully applied for and was awarded a second level domain name, the right to hold this domain name will be immediately forfeited. (Comprehensive details are provided in Section 20e of the applicant documentation). However, the application did not outline an appeals process. The Community Priority Evaluation panel determined that the application satisfies only one of the two conditions to fulfill the requirements for Enforcement.</p>	

Criterion #4: Community Endorsement		2/4 Point(s)
4-A Support		<i>1/2 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.</p> <p>To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. "Relevance" refers to the communities explicitly and implicitly addressed.</p> <p>The application included letters from a number of Secretaries of State of US states, which were considered to constitute support from groups with relevance, as each Secretary of State has responsibility for corporate registrations and the regulations pertaining to corporate formation in its jurisdiction. These entities are not the recognized community institution(s)/member organization(s), as these government agencies are fulfilling a function, rather than representing the community. The viewpoints expressed in these letters were not consistent across states. While several US states expressed clear support for the applicant during the Letters of Support verification process, others either provided qualified support, refrained from endorsing one particular applicant over another, or did not respond to the verification request. Letters of support from other entities did not meet the requirement for relevance based on the Applicant Guidebook criteria, as they were not from the recognized community institutions/member organizations. The Community Priority Evaluation Panel determined that the applicant partially satisfies the requirements for Support.</p>		
4-B Opposition		<i>1/2 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received relevant opposition from one group of non-negligible size. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.</p>		

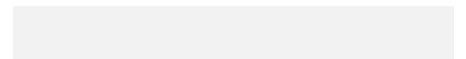
Comment [A12]: This is good

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.

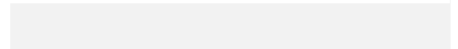
The application received several letters of opposition, one of which was determined to be relevant opposition from an organization of non-negligible size. This opposition was from a community that was not identified in the application but which has an association to the applied-for string. Opposition was on the grounds that limiting registration to US registered corporations only would unfairly exclude non-US businesses. The remaining letters were either from groups/individuals of negligible size, or were not from communities which were not mentioned in the application but which have an association to the applied for string. The Community Priority Evaluation Panel determined that the applicant partially satisfied the requirements for Opposition.

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.

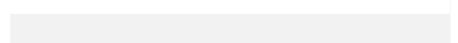
Confidential Third Party Information



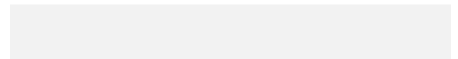
Confidential Third Party Information



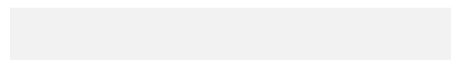
Confidential Third Party Information



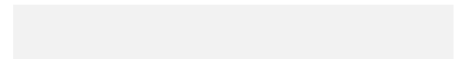
Confidential Third Party Information



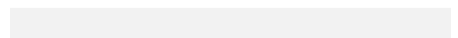
Confidential Third Party Information



Confidential Third Party Information



Confidential Third Party Information



From: Russ Weinstein <russ.weinstein@icann.org>
Sent: Tuesday, June 03, 2014 6:41 PM
To: EIU Contact Information Redacted Christopher Bare
Cc: EIU Contact Information Redacted Daniel Halloran
Subject: Re: Updated draft results (4)
Signed By: russ.weinstein@icann.org

Hi EIU Contact Information Redacted

Thanks for these. On my initial review they looked very good. We will discuss the rationale in the presentation tomorrow. I would ask we make one change to all of the reports prior to final version, when discussing the research conducted related to organizing around sectors rather than corporate identifiers, there is a phrase that says "our research..." can this be modified to the "the Panel's research" or something to that effect. Since the report is on ICANN logo and we try and differentiate the CPE Panel determined, I think the term "our" could create be less than precise.

Thanks, talk to you tomorrow.

Russ Weinstein
Sr. Manager gTLD Operations
ICANN
Contact Information Redacted

Russ.Weinstein@icann.org

From: EIU Contact Information Redacted
Date: Tuesday, June 3, 2014 10:33 AM
To: Chris Bare <christopher.bare@icann.org>
Cc: Russ Weinstein <russ.weinstein@icann.org>, EIU Contact Information Daniel Halloran <daniel.halloran@icann.org>
Subject: Re: Updated draft results (4)

Hi Chris,

Back to you. All changes were made in track changes so that you can easily review. We've also responded to some of your comments in comment boxes.

Best wishes,

Hilary

On 2 June 2014 21:23, Christopher Bare <christopher.bare@icann.org> wrote:
EIU Contact Information Redacted

For INC, the changes should be the same as the others. The only reason we didn't mark up that document was that the recommendations were identical.

Thanks
Chris

From: EIU Contact Information Redacted
Date: Monday, June 2, 2014 5:58 PM
To: Christopher Bare <christopher.bare@icann.org>
Cc: Russ Weinstein <russ.weinstein@icann.org>, EIU Contact Information Redacted Daniel Halloran <daniel.halloran@icann.org>
Subject: Re: Updated draft results (4)

Hi Chris,

I've made the suggested changes and sent along to Leila for a review to make sure I captured everything. Quick question: is there a reason why you didn't send back .INC? Should we make the same changes for that evaluation?

Best wishes,

EIU Contact Information Redacted

On 2 June 2014 12:07, EIU Contact Information Redacted wrote:
Thanks, Chris. I will look through and let you know of any questions and next steps.

On 30 May 2014 17:34, Christopher Bare <christopher.bare@icann.org> wrote:

Privileged and Confidential.

Hi EIU Contact Information Redacted

Russ and I reviewed the first 4 drafts (GMBH, LLC, LLP, INC) and had a few more comments. We really like several of the additional details you updated.

I've attached 3 documents with track changes on so you can see our comments.

- Many comments apply across reports. We tried not to repeat comments on each report.
- We are not sure all comments need to be addressed in the reports, but we should make sure that we are prepared to discuss at next week's briefing as we would expect similar questions to come up.
- You will see that there are a couple areas where we still are unsure about how best to capture the research and reasoning that led to the conclusion. We can expect that some of the subjective decisions will be questioned and we want to try to alleviate some of that by detailing some of what was done.
- We were also discussing how best to message the issue of clarifying construed community. Several applicants seem to have had trouble defining the community they are intending to serve and have instead defined a large group that includes members that are only peripherally relevant.

Confidential Third Party Information

Thanks

Chris

From: EIU Contact Information Redacted
Date: Thursday, May 29, 2014 4:48 PM
To: Christopher Bare <christopher.bare@icann.org>, Russ Weinstein <russ.weinstein@icann.org>
Cc: EIU Contact Information Redacted
Subject: Updated draft results (4)

Hi Chris and Russ,

I have attached the revised set of four corporate designation results (draft). We addressed most of your comments.

1. The term 'construed community' was not well received by the applicant community. We suggest a change to the term itself as well as additional explanation as to what is meant. Perhaps acknowledgement that while a group appears to exist/has existed for some time, the lack of an organizing or governing bodydoes not meet requirements for the group to be considered a community.....

Added in language from the AGB. Second paragraph under 4.2.3.

2. Criterion 1A- Delineation: Reference is made to the lack of at least one major entity dedicated to the community. Would a large number of smaller entities qualify as a majority. A reference to that effect and the fact that this was not represented in the application might help.

We will keep an open mind about fragmented communities.

3. Criterion 1A: Delineation: The report cites that lack of a dedicated entity leads to the lack of organized activities. Can we elaborate? What constitutes an organized activity. Does the registering of a company with the Secretaries of State count as an activity?

EIU feedback: too difficult to define such activities because of how they would vary across community. Moreover, it's not defined in the AGB, so the EIU decided not to add any clarification on this.

4. Criterion 2B- Uniqueness: There is reference to the string having other significant meaning. Can we have an example (such as was provided in MLS) as to what other meanings might exist?

Added examples where appropriate. If the applicant did not score a 2 or a 3 on Nexus, then they are ineligible for a score of 1 on Uniqueness and this is the explanation that we provided.

5. Criterion 3c- Content and Use: can we have an example or explanation as to how the applications Content and Use policies fall short of the requirements (reference to GMBH)?

Yes, we added in more information on this.

6. Criterion 4- Community Endorsement: We expect this section to get a lot of attention. More detail explaining the difference in the relevance of the letters of support would be helpful. For example an explanation that the letters from the SoS while somewhat relevant did carry as much weight due to the fact that they are not dedicated to the community but act as a regulator....etc.

We used the definitions provided in the AGB to add clarity on this section.

7. The term 'does not have awareness and recognition among its members' appears many times. Can we do something to highlight this theme to bring it to the forefront. This seems to be a critical part of every evaluation.

Already discussed-- likely difficult to add this.

Once you have the opportunity to take a second look, please feel free to provide feedback via phone or email that we can incorporate ahead of the meeting next week.

Best wishes,

EIU Contact
Information
Redacted

Economist Intelligence Unit
Custom Research
EIU Contact Information Redacted

Website: research.eiu.com

This e-mail may contain confidential material. If you are not an intended recipient, please notify the sender and delete all copies. It may also contain personal views which are not the views of The Economist Group. We may monitor e-mail to and from our network.

Sent by a member of The Economist Group. The Group's parent company is The Economist Newspaper Limited, registered in England with company number 236383 and registered office at 25 St James's Street, London, SW1A 1HG. For Group company registration details go to <http://legal.economistgroup.com>

--
EIU Contact Information Redacted
Economist Intelligence Unit
Custom Research
EIU Contact Information Redacted

Website: research.eiu.com

--
EIU Contact Information Redacted
Economist Intelligence Unit
Custom Research
EIU Contact Information Redacted

Website: research.eiu.com

This e-mail may contain confidential material. If you are not an intended recipient, please notify the sender and delete all copies. It may also contain personal views which are not the views of The Economist Group. We may monitor e-mail to and from our network.

Sent by a member of The Economist Group. The Group's parent company is The Economist Newspaper Limited, registered in England with company number 236383 and registered office at 25 St James's Street, London, SW1A 1HG. For Group company registration details go to <http://legal.economistgroup.com>

--
EIU Contact Information Redacted
Economist Intelligence Unit
Custom Research
EIU Contact Information Redacted

Website: research.eiu.com

This e-mail may contain confidential material. If you are not an intended recipient, please notify the sender and delete all copies. It may also contain personal views which are not the views of The Economist Group. We may monitor e-mail to and from our network.

Sent by a member of The Economist Group. The Group's parent company is The Economist Newspaper Limited, registered in England with company number 236383 and registered office at 25 St James's Street, London, SW1A 1HG. For Group company registration details go to <http://legal.economistgroup.com>



New gTLD Program
Community Priority Evaluation Report
 Report Date: 19 May 2014

Application ID:	1-880-17627
Applied-for String:	LLC
Applicant Name:	Dot Registry LLC

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Did Not Prevail
<p>Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation.</p> <p>Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.</p>	

Panel Summary

Overall Scoring	5 Point(s)	
Criteria	Earned	Achievable
#1: Community Establishment	0	4
#2: Nexus between Proposed String and Community	0	4
#3: Registration Policies	3	4
#4: Community Endorsement	2	4
Total	5	16
Minimum Required Total Score to Pass 14		

Criterion #1: Community Establishment	0/4 Point(s)
1-A Delineation	0/2 Point(s)
<p>The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community demonstrates insufficient delineation, organization and pre-existence. The application received a score of 0 out of 2 points under criterion 1-A: Delineation.</p> <p><u>Delineation</u> Two conditions must be met to fulfill the requirements for delineation: there must be a clear straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.</p>	

The community defined in the application (“LLC”) is:

Members of the community are defined as businesses registered as limited liability companies with the United States or its territories. Limited Liability Companies or (LLC’s) as they are commonly abbreviated, represent one of the most popular business entity structures in the US. LLC’s commonly participate in acts of commerce, public services, and product creation....

An LLC is defined as a flexible form of enterprise that blends elements of partnership and corporate structures. It is a legal form of company that provides limited liability to its owners in the vast majority of United States jurisdictions. LLC’s are a unique entity type because they are considered a hybrid, having certain characteristics of both a corporation and a partnership or sole proprietorship. LLC’s are closely related to corporations in the sense that they participate in similar activities and provide limited liability to their partners. Additionally, LLC’s share a key characteristic with partnerships through the availability of pass-through income taxation. LLC’s are a more flexible entity type than a corporation and are often well suited for businesses owned by a single owner.

This community definition shows a clear and straightforward membership. While broad, the community is clearly delineated/defined, as membership requires formal registration as a limited liability company with the relevant US state. In addition, limited liability companies must comply with US state law and show proof of best practice in commercial dealings to the relevant state authorities.

However, the community as defined in the application does not have awareness and recognition of a community among its members. This is because limited liability companies operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an LLC. Based on the Panel’s research, there is no evidence of LLCs from different sectors acting as a community as defined by the Applicant Guidebook. Having the same legal business structure is not sufficient to forge a sense of community between limited liability companies operating in different sectors of the economy. These limited liability companies would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

The community as defined in the application does not have at least one entity mainly dedicated to the community. Although responsibility for corporate registrations and the regulations pertaining to corporate formation are vested in each individual US state, these government agencies are fulfilling a function, rather than representing the community. In addition, the offices of the Secretaries of State of US states are not mainly dedicated to the community as they have other roles/functions beyond processing corporate registrations. According to the application:

LLC’s can be formed through any jurisdiction of the United States. Therefore members of this community exist in all 50 US states and its territories. LLC formation guidelines are dictated by state law and can vary based on each state’s regulations. Persons form an LLC by filing required documents with the appropriate state authority, usually the Secretary of State. Most states require the filing of Articles of Organization. These are considered public documents and are similar to articles of incorporation, which establish a corporation as a legal entity. At minimum, the articles of organization give a brief description of the intended business purposes, the registered agent, and registered business address. LLC’s are expected to conduct business in conjunction with the policies of the state in which they are formed, and the Secretary of State periodically evaluates a LLC’s level

Comment [A1]: I don’t think we should say the community is clearly delineated here, We go on to say that the application does not satisfy the requirements for delineation. Probably just need a different word, like defined or broad. We may need to stay away from the delineation word since it has a meaning in the scoring as well. Perhaps something like ‘While broad, the proposed community is clearly defined....?’

Comment [A2]: Agreed—revised.

Comment [A3]: I think we need to restructure or add a few words to this sentence. “...awareness and recognition...” of what?

Comment [A4]: “of a community”. Revised in documents.

Comment [A5]: This makes sense but is a subjective statement and will likely be challenged. Can we add a bit more to express the research and reasoning that went into this statement? For example, ‘While several LLC organizations do exist, these are not organized around the legal business structure but are typically organized around specific industries, locales, other criteria not related to the entities structure as an LLC. No evidence of a broad organization spanning the full breadth of the potential membership pool was found.’

That may be too specific, especially the ‘no evidence...’ part.

Possibly something like... “based on the Panel’s research we could not find any widespread evidence of LLCs from different sectors acting as a community”.

Maybe that belongs in the organization section.

Comment [A6]: Revised

Comment [A7]: We like this point

Comment [A8]: State agencies? The office of secretary of state? We should clarify.

Comment [A9]: Clarified

<p>of good standing based on their commercial interactions with both the state and consumers.</p> <p>The community as defined in the application does not have documented evidence of community activities. As there is no entity that is mainly dedicated to the community as defined in the .LLC application, there is no documented evidence of community activities.</p> <p>The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for organization.</p> <p><u>Pre-existence</u> To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed).</p> <p>The community as defined in the application was not active prior to September 2007. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to a get a sought-after generic word as a gTLD string, and therefore could not have been active prior to the above date (although its constituent parts were active).</p> <p>The Community Priority Evaluation panel determined that the community as defined in the application does not fulfill the requirements for pre-existence.</p>	
1-B Extension	<i>0/2 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not demonstrate considerable size or longevity for the community. The application received a score of 0 out of 2 points under criterion 1-B: Extension.</p> <p><u>Size</u> Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.</p> <p>The community as defined in the application is of a considerable size. The community for .LLC as defined in the application is large in terms of number of members. According to the application:</p> <p style="padding-left: 40px;">With the number of registered LLC’s in the United States totaling over five million in 2010 (as reported by the International Association of Commercial Administrators) it is hard for the average consumer to not conduct business with an LLC.</p> <p>However, as previously stated the community as defined in the application does not have awareness and recognition of a community among its members. This is because limited liability companies operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an LLC. Based on the Panel’s research, there is no evidence of LLCs from different sectors acting as a community as defined by the Applicant Guidebook. These limited liability companies would therefore not associate themselves with being part of the community as defined by the applicant. This is because limited liability companies operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.</p> <p>The Community Priority Evaluation panel determined that the community as defined in the application only</p>	

Comment [A10]: Can we remove this word from this sentence? I know it's from the AGB but does it substantially impact interpretation of the statement to lose it? The word itself seems a bit belittling on top of the sentence content.

Comment [A11]: Deleted all instances

Comment [A12]: Same as above. Also we should probably add something to the effect of, "as previously stated". By acknowledging that it was already stated earlier it would help to avoid sounding sterile and machine like.

Comment [A13]: Revised

satisfies one of the two conditions to fulfill the requirements for size.

Longevity
Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application does not demonstrate longevity. *As mentioned previously, according to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). [The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to a get a sought-after generic word as a gTLD string and, therefore, the pursuits of the .LLC community are not of a lasting, non-transient nature.*

Additionally, *as previously stated, the community as defined in the application does not have awareness and recognition of a community among its members. [This is because limited liability companies operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an LLC. Based on the Panel’s research, there is no evidence of LLCs from different sectors acting as a community as defined by the AGB. These limited liability companies would therefore not associate themselves with being part of the community as defined by the applicant.*

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for longevity.

Comment [A14]: Similar to the comment above, a few words like 'as mentioned above', 'as previously stated'.

Comment [A15]: Same as above

Comment [A16]: Same as above. Also we should probably add something to the effect of, "as previously stated". By acknowledging that it was already stated earlier it would help to avoid sounding sterile and machine like.

Comment [A17]: Revised

Criterion #2: Nexus between Proposed String and Community	0/4 Point(s)
2-A Nexus	0/3 Point(s)
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the community, but over-reaches substantially beyond the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.</p> <p>To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. “Identify” means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.</p> <p>The applied-for string (.LLC) over-reaches substantially, as the string indicates a wider or related community of which the applicant is a part but is not specific to the applicant’s community. According to the application documentation:</p> <p>“LLC” was chosen as our gTLD string because it is the commonly used abbreviation for the entity type that makes up the membership of our community. In the English language Limited Liability Company is primarily shortened to LLC when used to delineate business entity types. Since all of our community members are limited liability companies we believed that “LLC” would be the simplest, most straight forward way to accurately represent our community.</p> <p>LLC is a recognized abbreviation in all 50 states and US territories denoting the registration type of a business entity. The Panel’s research indicates that while other jurisdictions use LLC as a corporate identifier, their definitions are quite different and there are no other known associations or definitions of LLC in the English language.</p>	

While the string identifies the name of the community, it captures a wider geographical remit than the community has, as the corporate identifier is used in other jurisdictions (outside the US). Therefore, there is a substantial over-reach between the proposed string and community as defined by the applicant.

The Community Priority Evaluation panel determined that the applied-for string over-reaches substantially beyond the community. It therefore does not meet the requirements for Nexus.

Comment [A18]: Question: if they had gotten letters of non-objection or support from the equivalent of the secretaries of state of other countries saying they can use this string, would that have changed this assessment? If so, maybe we can mention it.

2-B Uniqueness *0/1 Point(s)*

The Community Priority Evaluation panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1 point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application does not demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus and is therefore ineligible for a score of 1 for Uniqueness. The Community Priority Evaluation panel determined that the applied-for string does not satisfy the condition to fulfill the requirements for Uniqueness.

Comment [A19]: No, that would not suffice because Nexus only looks at the applied-for string and the community as defined by the applicant. Support or non-objection is considered under criterion 4.

Criterion #3: Registration Policies *3/4 Point(s)*

3-A Eligibility *1/1 Point(s)*

The Community Priority Evaluation panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.

To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by limiting eligibility to registered limited liability companies and by cross-referencing their documentation against the applicable US state's registration records in order to verify the accuracy of their application. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.

3-B Name Selection *1/1 Point(s)*

The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.

To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining a comprehensive list of name selection rules, such as requirements that second level domain names should match or include a substantial part of the registrant's legal name, and specifying that registrants will not be able to register product line registrations, amongst other requirements. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.

3-C Content and Use	<i>1/1 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.</p> <p>To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by noting that all registrants must adhere to the content restrictions outlined in the applicant's abuse policies. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Content and Use.</p>	
3-D Enforcement	<i>0/1 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the application provided specific enforcement measures but did not include appropriate appeal mechanisms. The application received a score of 0 out of 1 point under criterion 3-D: Enforcement.</p> <p>Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. For example, if a registrant wrongfully applied for and was awarded a second level domain name, the right to hold this domain name will be immediately forfeited. (Comprehensive details are provided in Section 20e of the applicant documentation). However, the application did not outline an appeals process. The Community Priority Evaluation panel determined that the application satisfies only one of the two conditions to fulfill the requirements for Enforcement.</p>	
Criterion #4: Community Endorsement	<i>2/4 Point(s)</i>
4-A Support	<i>1/2 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.</p> <p>To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. "Relevance" refers to the communities explicitly and implicitly addressed.</p> <p><u>The Community Priority Evaluation panel determined that the applicant was not the recognized community institution(s)/member organization(s), nor did it have documented authority to represent the community, or</u></p>	

documented support from a majority of the recognized community institution(s)/member organization(s). However, the applicant possesses documented support from at least one group with relevance and this documentation contained a description of the process and rationale used in arriving at the expression of support.

The application included letters from a number of Secretaries of State of US states, which were considered to constitute support from groups with relevance, as each Secretary of State has responsibility for corporate registrations and the regulations pertaining to corporate formation in its jurisdiction. These entities are not the recognized community institution(s)/member organization(s), as these government agencies are fulfilling a function, rather than representing the community. The viewpoints expressed in these letters were not consistent across states. While several US states expressed clear support for the applicant during the Letters of Support verification process, others either provided qualified support, refrained from endorsing one particular applicant over another, or did not respond to the verification request. Letters of support from other entities did not meet the requirement for relevance based on the Applicant Guidebook criteria, as they were not from the recognized community institutions/member organizations. The Community Priority Evaluation Panel determined that the applicant partially satisfies the requirements for Support.

Comment [A20]: This is good

4-B Opposition

1/2 Point(s)

The Community Priority Evaluation panel determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received relevant opposition from one group of non-negligible size. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.

The application received several letters of opposition, one of which was determined to be relevant opposition from an organization of non-negligible size. This opposition was from a community that was not identified in the application but which has an association to the applied-for string. Opposition was on the grounds that limiting registration to US registered corporations only would unfairly exclude non-US businesses. The remaining letters were either from groups/individuals of negligible size, or were not from communities which were not mentioned in the application but which have an association to the applied for string. The Community Priority Evaluation Panel determined that the applicant partially satisfied the requirements for Opposition.

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.



New gTLD Program
Community Priority Evaluation Report
 Report Date: 19 May 2014

Application ID:	1-880-35508
Applied-for String:	LLP
Applicant Name:	Dot Registry LLC

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Did Not Prevail
<p>Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation.</p> <p>Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.</p>	

Panel Summary

Overall Scoring	5 Point(s)	
Criteria	Earned	Achievable
#1: Community Establishment	0	4
#2: Nexus between Proposed String and Community	0	4
#3: Registration Policies	3	4
#4: Community Endorsement	2	4
Total	5	16
Minimum Required Total Score to Pass 14		

Criterion #1: Community Establishment	0/4 Point(s)
1-A Delineation	0/2 Point(s)
<p>The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community demonstrates insufficient delineation, organization and pre-existence. The application received a score of 0 out of 2 points under criterion 1-A: Delineation.</p> <p><u>Delineation</u> Two conditions must be met to fulfill the requirements for delineation: there must be a clear straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.</p>	

The community defined in the application (“LLP”) is:

Members of the community are defined as businesses registered as Limited Liability Partnerships with the United States or its territories. Limited Liability Partnerships or (LLP’s) as they are commonly abbreviated, are specifically designed to represent professional service businesses in the US . Limited Liability Partnerships are commonly adopted by businesses which focus on: accounting, attorneys, architects, dentists, doctors and other fields treated as professionals under each state’s law....

A Limited Liability Partnership is defined as a partnership in which some or all partners (depending on jurisdiction) have limited liability. LLP’s therefore exhibit qualities of both partnerships and corporations. In an LLP, one partner is not responsible or liable for another partner’s misconduct or negligence. This distinction is why the LLP is a popular business entity amongst accountants, doctors, and lawyers; which deal heavily with issues that could inspire mal-practice lawsuits.

This community definition shows a clear and straightforward membership. While broad, the community is clearly ~~delineated~~defined, as membership requires formal registration as a limited liability partnership with the relevant US state (LLPs operate in about 40 US states). In addition, limited liability partnerships must comply with US state law and show proof of best practice in commercial dealings to the relevant state authorities.

However, the community as defined in the application does not have awareness and recognition of a community among its members. [This is because limited liability partnerships operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an LLP. Based on our research the Panel’s research, there is no evidence of LLPs from different sectors acting as a community as defined by the Applicant Guidebook. These limited liability partnerships would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

The community as defined in the application does not have at least one entity mainly dedicated to the community. Although responsibility for corporate registrations and the regulations pertaining to corporate formation are vested in each individual US state, these government agencies are fulfilling a function, rather than representing the community. In addition, the offices of the Secretaries of State of US states are not mainly dedicated to the community as they have other roles /functions beyond processing corporate registrations. According to the application:

Limited Liability Partnerships can be formed through all but ten states in the United States. Therefore members of this community exist in close to forty US states. LLP formation guidelines are dictated by state law and can vary based on each state’s regulations. Persons form an LLP by filing required documents with the appropriate state authority, usually the Secretary of State.

The community as defined in the application does not have documented evidence of community activities. As there is no entity that is mainly dedicated to the community as defined in the .LLP application, there is no documented evidence of community activities.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for organization.

Comment [A1]: I think we need to restructure or add a few words to this sentence. “...awareness and recognition...” of what?

Comment [A2]: “of a community”. Revised in documents.

Comment [A3]: This makes sense but is a subjective statement and will likely be challenged. Can we add a bit more to express the research and reasoning that went into this statement? For example, ‘While several LLC organizations do exist, these are not organized around the legal business structure but are typically organized around specific industries, locales, other criteria not related to the entities structure as an LLC. No evidence of a broad organization spanning the full breadth of the potential membership pool was found.’

That may be too specific, especially the ‘no evidence...’ part.

Possibly something like... “based on the Panel’s research we could not find any widespread evidence of LLCs from different sectors acting as a community”.

Maybe that belongs in the organization section.

Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed).

The community as defined in the application was not active prior to September 2007. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed **merely** to a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed **merely** to a get a sought-after generic word as a gTLD string, and therefore could not have been active prior to the above date (although its constituent parts were active).

The Community Priority Evaluation panel determined that the community as defined in the application does not fulfill the requirements for pre-existence.

1-B Extension

0/2 Point(s)

The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not demonstrate considerable size or longevity for the community. The application received a score of 0 out of 2 points under criterion 1-B: Extension.

Size

Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.

The community as defined in the application is of a considerable size. The community for .LLP as defined in the application is large in terms of number of members. According to the application, “LLP’s represent a small but prestigious sector of business in the United States.”

However, **as previously stated**, the community as defined in the application does not have awareness and recognition of a community among its members. **This is because limited liability partnerships operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an LLP. Based on our research the Panel’s research, there is no evidence of LLPs from different sectors acting as a community as defined by the AGB. These limited liability partnerships would therefore not associate themselves with being part of the community as defined by the applicant.**

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

Longevity

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application does not demonstrate longevity. As mentioned previously, according to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed **merely** to a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed **merely** to a get a sought-after generic word as a gTLD string and, therefore, the pursuits of the .LLP community are not of a lasting, non-transient nature.

Additionally, as previously stated, the community as defined in the application does not have awareness and recognition of a community among its members. This is because limited liability partnerships operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an LLP. Based on our research the Panel's research, there is no evidence of LLPs from different sectors acting as a community as defined by the AGB. These limited liability partnerships would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for longevity.

Criterion #2: Nexus between Proposed String and Community	0/4 Point(s)
--	---------------------

2-A Nexus	0/3 Point(s)
------------------	---------------------

The Community Priority Evaluation panel determined that the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the community, but over-reaches substantially beyond the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.

To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. "Identify" means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.

The applied-for string (.LLP) over-reaches substantially, as the string indicates a wider or related community of which the applicant is a part but is not specific to the applicant's community. According to the application documentation:

"LLP" was chosen as our gTLD string because it is the commonly used abbreviation for the entity type that makes up the membership of our community. In the English language Limited Liability Partnership is primarily shortened to LLP when used to delineate business entity types...

LLP is a recognized abbreviation in all 50 states and US territories denoting the registration type of a business entity. Our research The Panel's research indicates that LLP, as corporate identifier is used in eleven other jurisdictions (Canada, China, Germany, Greece, India, Japan, Kazakhstan, Poland, Romania, Singapore, and the United Kingdom) though their formation regulations are different from the United States and their entity designations would not fall within the boundaries of our community definition.

While the string identifies the name of the community, it captures a wider geographical remit than the community has, as the corporate identifier is used in Poland, the UK, Canada and Japan, amongst others. Therefore, there is a substantial over-reach between the proposed string and community as defined by the applicant.

The Community Priority Evaluation panel determined that the applied-for string over-reaches substantially beyond the community. It therefore does not meet the requirements for Nexus.

2-B Uniqueness	0/1 Point(s)
-----------------------	---------------------

The Community Priority Evaluation panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1

point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application does not demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus and is therefore ineligible for a score of 1 for Uniqueness. The Community Priority Evaluation panel determined that the applied-for string does not satisfy the condition to fulfill the requirements for Uniqueness.

Criterion #3: Registration Policies	3/4 Point(s)
3-A Eligibility	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.</p> <p>To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by limiting eligibility to registered limited liability partnerships and by cross-referencing their documentation against the applicable US state's registration records in order to verify the accuracy of their application. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.</p>	1/1 Point(s)
3-B Name Selection	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.</p> <p>To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining a comprehensive list of name selection rules, such as requirements that second level domain names should match or include a substantial part of the registrant's legal name, and specifying that registrants will not be able to register product line registrations, amongst other requirements. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.</p>	1/1 Point(s)
3-C Content and Use	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.</p> <p>To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by noting that all registrants must adhere to the content restrictions outlined in the applicant's abuse policies. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the</p>	

application satisfies the condition to fulfill the requirements for Content and Use.	
3-D Enforcement	<i>0/1 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the application provided specific enforcement measures but did not include appropriate appeal mechanisms. The application received a score of 0 out of 1 point under criterion 3-D: Enforcement.</p> <p>Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. For example, if a registrant wrongfully applied for and was awarded a second level domain name, the right to hold this domain name will be immediately forfeited. (Comprehensive details are provided in Section 20e of the applicant documentation). However, the application did not outline an appeals process. The Community Priority Evaluation panel determined that the application satisfies only one of the two conditions to fulfill the requirements for Enforcement.</p>	

Criterion #4: Community Endorsement	<i>2/4 Point(s)</i>
4-A Support	<i>1/2 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.</p> <p>To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. “Recognized” means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. “Relevance” refers to the communities explicitly and implicitly addressed.</p> <p>The Community Priority Evaluation panel determined that the applicant was not the recognized community institution(s)/member organization(s), nor did it have documented authority to represent the community, or documented support from a majority of the recognized community institution(s)/member organization(s). However, the applicant possesses documented support from at least one group with relevance and this documentation contained a description of the process and rationale used in arriving at the expression of support.</p> <p>The application included letters from a number of Secretaries of State of US states, which were considered to constitute support from groups with relevance, as each Secretary of State has responsibility for corporate registrations and the regulations pertaining to corporate formation in its jurisdiction. These entities are not the recognized community institution(s)/member organization(s), as these government agencies are fulfilling a function, rather than representing the community. The viewpoints expressed in these letters were not consistent across states. While several US states expressed clear support for the applicant during the Letters of Support verification process, others either provided qualified support, refrained from endorsing one particular applicant over another, or did not respond to the verification request. Letters of support from other entities did not meet the requirement for relevance based on the Applicant Guidebook criteria, as they were not from the recognized community institutions/member organizations. The Community Priority Evaluation Panel determined that the applicant partially satisfies the requirements for Support.</p>	

Comment [A4]: This paragraph is not in the other 2 related reports. What is the difference here?

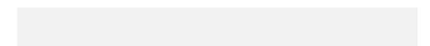
4-B Opposition	1/2 Point(s)
<p>The Community Priority Evaluation panel determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received relevant opposition from one group of non-negligible size. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.</p> <p>To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.</p> <p>The application received several letters of opposition, one of which was determined to be relevant opposition from an organization of non-negligible size. This opposition was from a community that was not identified in the application but which has an association to the applied-for string. Opposition was on the grounds that limiting registration to US registered corporations only would unfairly exclude non-US businesses. The remaining letters were either from groups/individuals of negligible size, or were not from communities which were not mentioned in the application but which have an association to the applied for string. The Community Priority Evaluation Panel determined that the applicant partially satisfied the requirements for Opposition.</p>	

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at newgtlds.icann.org.

Confidential Third Party Information

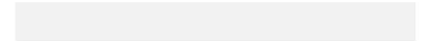
Confidential Third Party Information

Confidential Third Party Information

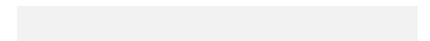


Confidential Third Party Information

Confidential Third Party Information



Confidential Third Party Information



Confidential Third Party Information



Confidential Third Party Information



New gTLD Program
Community Priority Evaluation Report
 Report Date: 19 May 2014

Application ID:	1-880-35979
Applied-for String:	INC
Applicant Name:	Dot Registry LLC

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Did Not Prevail
<p>Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation.</p> <p>Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.</p>	

Panel Summary

Overall Scoring	5 Point(s)	
	Earned	Achievable
#1: Community Establishment	0	4
#2: Nexus between Proposed String and Community	0	4
#3: Registration Policies	3	4
#4: Community Endorsement	2	4
Total	5	16
Minimum Required Total Score to Pass 14		

Criterion #1: Community Establishment	0/4 Point(s)
1-A Delineation	0/2 Point(s)
<p>The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community demonstrates insufficient delineation, organization and pre-existence. The application received a score of 0 out of 2 points under criterion 1-A: Delineation.</p> <p><u>Delineation</u> Two conditions must be met to fulfill the requirements for delineation: there must be a clear straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.</p>	

The community defined in the application (“INC”) is:

Members of the community are defined as businesses registered as corporations within the United States or its territories. This would include Corporations, Incorporated Businesses, Benefit Corporations, Mutual Benefit Corporations and Non-Profit Corporations. Corporations or “INC’s” as they are commonly abbreviated, represent one of the most complex business entity structures in the U.S. Corporations commonly participate in acts of commerce, public services, and product creation....

A corporation is defined as a business created under the laws of a State as a separate legal entity, that has privileges and liabilities that are distinct from those of its members. While corporate law varies in different jurisdictions, there are four characteristics of the business corporation that remain consistent: legal personality, limited liability, transferable shares, and centralized management under a board structure. Corporate statutes typically empower corporations to own property, sign binding contracts, and pay taxes in a capacity separate from that of its shareholders.

This community definition shows a clear and straightforward membership. While broad, the community is clearly defined, as membership requires formal registration as a corporation with the relevant US state. In addition, corporations must comply with US state law and show proof of best practice in commercial dealings to the relevant state authorities.

However, the community as defined in the application does not have awareness and recognition of a community among its members. This is because corporations operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an INC. Based on our research the Panel’s research, there is no evidence of INCs from different sectors acting as a community as defined by the Applicant Guidebook. These incorporated firms would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

The community as defined in the application does not have at least one entity mainly dedicated to the community. Although responsibility for corporate registrations and the regulations pertaining to corporate formation are vested in each individual US state, these government agencies are fulfilling a function, rather than representing the community. In addition, the offices of the Secretaries of State of US states are not mainly dedicated to the community as they have other roles/functions beyond processing corporate registrations. According to the application:

Corporations can be formed through any jurisdiction of the United States. Therefore members of this community exist in all 50 US states and its territories. Corporation formation guidelines are dictated by state law and can vary based on each State’s regulations. Persons form a corporation by filing required documents with the appropriate state authority, usually the Secretary of State. Most states require the filing of Articles of Incorporation. These are considered public documents and are similar to articles of organization, which establish a limited liability company as a legal entity. At minimum, the Articles of Incorporation give a brief description of proposed business activities, shareholders, stock issued and the registered business address.

The community as defined in the application does not have documented evidence of community activities. As there is no entity that is mainly dedicated to the community as defined in the .INC application, there is no

documented evidence of community activities.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for organization.

Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed).

The community as defined in the application was not active prior to September 2007. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed ~~merely~~ to a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed ~~merely~~ to a get a sought-after generic word as a gTLD string, and therefore could not have been active prior to the above date (although its constituent parts were active).

The Community Priority Evaluation panel determined that the community as defined in the application does not fulfill the requirements for pre-existence.

1-B Extension

0/2 Point(s)

The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not demonstrate considerable size or longevity for the community. The application received a score of 0 out of 2 points under criterion 1-B: Extension.

Size

Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.

The community as defined in the application is of a considerable size. The community for .INC as defined in the application is large in terms of number of members. According to the application:

With almost 470,000 new corporations registered in the United States in 2010 (as reported by the International Association of Commercial Administrators) resulting in over 8,000,000 total corporations in the US, it is hard for the average consumer to not conduct business with a corporation.

However, as previously stated, the community as defined in the application does not have awareness and recognition of a community among its members. This is because corporations operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an INC. Based on our research the Panel's research, there is no evidence of INCs from different sectors acting as a community as defined by the Applicant Guidebook. These incorporated firms would therefore not associate themselves with being part of the community as defined by the applicant.

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

Longevity

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application does not demonstrate longevity. As mentioned previously, according to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed ~~merely~~ to a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed ~~merely~~ to a get a sought-after generic word as a gTLD string and, therefore, the pursuits of the .INC community are not of a lasting, non-transient nature.

However, as previously stated, the community as defined in the application does not have awareness and recognition of a community among its members. This is because corporations operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an INC. Based on ~~our research~~the Panel’s research, there is no evidence of INCs from different sectors acting as a community as defined by the Applicant Guidebook. These incorporated firms would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for longevity.

Criterion #2: Nexus between Proposed String and Community	0/4 Point(s)
2-A Nexus	0/3 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the community, but over-reaches substantially beyond the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.

To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. “Identify” means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.

The applied-for string (.INC) over-reaches substantially, as the string indicates a wider or related community of which the applicant is a part but is not specific to the applicant’s community. According to the application documentation:

“INC” was chosen as our gTLD string because it is the commonly used abbreviation for the entity type that makes up the membership of our community. In the English language the word incorporation is primarily shortened to Inc. when used to delineate business entity types. For example, McMillion Incorporated would additionally be referred to as McMillion Inc. Since all of our community members are incorporated businesses we believed that “.INC” would be the simplest, most straightforward way to accurately represent our community.

Inc. is a recognized abbreviation in all 50 states and US Territories denoting the corporate status of an entity. ~~Our research~~The Panel’s research indicates that Inc. as corporate identifier is used in three other jurisdictions (Canada, Australia, and the Philippines) though their formation regulations are different from the United States and their entity designations would not fall within the boundaries of our community definition.

While the string identifies the name of the community, it captures a wider geographical remit than the community has, as the corporate identifier is used in Canada, Australia and the Philippines. Therefore, there is a substantial over-reach between the proposed string and community as defined by the applicant.

The Community Priority Evaluation panel determined that the applied-for string over-reaches substantially beyond the community. It therefore does not meet the requirements for nexus.

2-B Uniqueness

0/1 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1 point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application does not demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus and is therefore ineligible for a score of 1 for Uniqueness. The Community Priority Evaluation panel determined that the applied-for string does not satisfy the condition to fulfill the requirements for Uniqueness.

Criterion #3: Registration Policies

3/4 Point(s)

3-A Eligibility

1/1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.

To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by limiting eligibility to registered corporations and by cross-referencing their documentation against the applicable US state's registration records in order to verify the accuracy of their application, etc. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.

3-B Name Selection

1/1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.

To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining a comprehensive list of name selection rules, such as requirements that second level domain names should match or include a substantial part of the registrant's legal name, and specifying that registrants will not be able to register product line registrations, amongst other requirements. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.

3-C Content and Use

1/1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.

To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by noting that all registrants must adhere to the content restrictions outlined in the applicant's abuse policies. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Content and Use.

3-D Enforcement

0/1 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the application provided specific enforcement measures but did not include appropriate appeal mechanisms. The application received a score of 0 out of 1 point under criterion 3-D: Enforcement.

Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. For example, if a registrant wrongfully applied for and was awarded a second level domain name, the right to hold this domain name will be immediately forfeited. (Comprehensive details are provided in Section 20e of the applicant documentation). However, the application did not outline an appeals process. The Community Priority Evaluation panel determined that the application satisfies only one of the two conditions to fulfill the requirements for Enforcement.

Criterion #4: Community Endorsement

2/4 Point(s)

4-A Support

1/2 Point(s)

The Community Priority Evaluation panel determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.

To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. "Relevance" refers to the communities explicitly and implicitly addressed.

The Community Priority Evaluation panel determined that the applicant was not the recognized community institution(s)/member organization(s), nor did it have documented authority to represent the community, or documented support from a majority of the recognized community institution(s)/member organization(s). However, the applicant possesses documented support from at least one group with relevance and this documentation contained a description of the process and rationale used in arriving at the expression of support.

The application included letters from a number of Secretaries of State of US states, which were considered to constitute support from groups with relevance, as each Secretary of State has responsibility for corporate

registrations and the regulations pertaining to corporate formation in its jurisdiction. These entities are not the recognized community institution(s)/member organization(s), as these government agencies are fulfilling a function, rather than representing the community. The viewpoints expressed in these letters were not consistent across states. While several US states expressed clear support for the applicant during the Letters of Support verification process, others either provided qualified support, refrained from endorsing one particular applicant over another, or did not respond to the verification request. Letters of support from other entities did not meet the requirement for relevance based on the Applicant Guidebook criteria, as they were not from the recognized community institutions/member organizations. The Community Priority Evaluation Panel determined that the applicant partially satisfies the requirements for Support.

4-B Opposition

1/2 Point(s)

The Community Priority Evaluation panel determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received relevant opposition from one group of non-negligible size. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.

The application received several letters of opposition, one of which was determined to be relevant opposition from an organization of non-negligible size. This opposition was from a community that was not identified in the application but which has an association to the applied-for string. Opposition was on the grounds that limiting registration to US registered corporations only would unfairly exclude non-US businesses. The remaining letters were either from groups/individuals of negligible size, or were not from communities which were not mentioned in the application but which have an association to the applied for string. The Community Priority Evaluation Panel determined that the applicant partially satisfied the requirements for Opposition.

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.

From: EIU Contact Information Redacted
To: Christopher Bare <christopher.bare@icann.org>
CC: EIU Contact Information Redacted ;Russ Weinstein
<russ.weinstein@icann.org>
Sent: 7/17/2014 3:25:01 PM
Subject: Re: Response needed: background info on LLC, LLP, INC evaluations

Hi Chris,

We have thoroughly reviewed the evaluations and relevant materials and have provided our responses below.

1. Which organization was the one you identified as relevant and of non-negligible size? Was it one of the two mentioned?

The EIU identified the European Commission as the relevant organization of non-negligible size.

2. Was EIU aware of the application comment and posted correspondence that rescinded the opposition? If so, was this considered in the evaluation?

The EIU was not aware of the second *application comment* from the European Commission. The EIU follows a process once an evaluation is commenced. This process includes receiving *application comments* from ICANN via the external shared drive at the start of each evaluation. The EIU then reviews and evaluates the relevance of each comment. The European Commission's first comment, an objection, was included in the *application comments* documentation provided by ICANN.

The EIU's process has never included the retrieval or review of additional *application comments* posted to the ICANN website, nor was the EIU ever asked or instructed to undertake such a review of *application comments*. As a result, the EIU was not aware of the second comment posted by the European Commission at a later date.

The EIU process does include a weekly review of *correspondence* (*i.e. letters*) posted to ICANN's correspondence page. On a weekly basis, an EIU team member reviews the correspondence section of the website for all new correspondence, and determines whether there are any new letters relevant to CPE.

The EIU was aware of the posted correspondence from the US state of Delaware and reviewed the correspondence during the evaluation process.

3. How did the opposition letter referenced in the evaluation report impact the overall scoring? (e.g. Applicant got 1 point instead of 2 for opposition) Would it have made a material difference to the score?

If the EIU had considered the letter from the European Commission withdrawing its opposition, the score for Opposition would have increased to two (2), up from one (1) previously, for the evaluations in question. However, this would have had no material impact on the final outcome

of the evaluation.

--

Please let me know if you have any follow-up questions.

Best wishes,

EIU Contact Information Redacted

On 16 July 2014 19:20, Christopher Bare <christopher.bare@icann.org> wrote:
EIU Contact Information Redacted

The applicant for LLC, LLP, and INC (Dot Registry, LLC) has filed Reconsideration Requests (RR) with the ICANN board. Our legal team is currently drafting a response to these RRs and need some additional information from EIU.

In the RRs, the applicant is questioning the one opposition letter that 'was determined to be relevant opposition from an organization of non-negligible size'. The applicant is claiming that the 2 opposition letters they were aware of from organizations of non-negligible size (Secretary of State for Delaware, European Commission) were rescinded later by the authors. The State of Delaware was rescinded via application comments on 20 March and the European Commission via correspondence posted on 25 March.

What we need to know from you in order to write our response:

1. Which organization was the one you identified as relevant and of non-negligible size? Was it one of the two mentioned?
2. Was EIU aware of the application comment and posted correspondence that rescinded the opposition? If so, was this considered in the evaluation?
3. How did the opposition letter referenced in the evaluation report impact the overall scoring? (e.g. Applicant got 1 point instead of 2 for opposition) Would it have made a material difference to the score?

We would like the information as soon as possible. Tomorrow would be great. Thursday at the latest as we want to have the response ready for the board meeting later this week.

Here are the links to the RRs for your reference. They make for some interesting reading.

LLC: <https://www.icann.org/resources/pages/14-30-2014-06-25-en>

INC: <https://www.icann.org/resources/pages/14-32-2014-06-26-en>

LLP: <https://www.icann.org/resources/pages/14-33-2014-06-26-en>

Let us know if you have any questions about what we are asking.

Thanks
Chris

This e-mail may contain confidential material. If you are not an intended recipient, please notify the sender and delete all copies. It may also contain personal views which are not the views of The Economist Group. We may monitor e-mail to and from our network.

Sent by a member of The Economist Group. The Group's parent company is The Economist Newspaper Limited, registered in England with company number

236383 and registered office at 25 St James's Street, London, SW1A 1HG. For Group company registration details go to <http://legal.economistgroup.com>

From: Christopher Bare <christopher.bare@icann.org>
To: EIU Contact Information Redacted
Cc: Russ Weinstein <russ.weinstein@icann.org>
Subject: Feedback on draft reports
Received(Date): Tue, 27 May 2014 09:29:09 -0700
[smime.p7s](#)

EIU Contact Information Redacted

Russ and I reviewed the draft reports and have some feedback.

1. The term 'construed community' was not well received by the applicant community. We suggest a change to the term itself as well as additional explanation as to what is meant. Perhaps acknowledgement that while a group appears to exist/has existed for some time, the lack of an organizing or governing bodydoes not meet requirements for the group to be considered a community.....
2. Criterion 1A- Delineation: Reference is made to the lack of at least one major entity dedicated to the community. Would a large number of smaller entities qualify as a majority. A reference to that effect and the fact that this was not represented in the application might help.
3. Criterion 1A: Delineation: The report cites that lack of a dedicated entity leads to the lack of organized activities. Can we elaborate? What constitutes an organized activity. Does the registering of a company with the Secretaries of State count as an activity?
4. Criterion 2B- Uniqueness: There is reference to the string having other significant meaning. Can we have an example (such as was provided in MLS) as to what other meanings might exist?
5. Criterion 3c- Content and Use: can we have an example or explanation as to how the applications Content and Use policies fall short of the requirements (reference to GMBH)?
6. Criterion 4- Community Endorsement: We expect this section to get a lot of attention. More detail explaining the difference in the relevance of the letters of support would be helpful. For example an explanation that the letters from the SoS while somewhat relevant did carry as much weight due to the fact that they are not dedicated to the community but act as a regulator....etc.
7. The term 'does not have awareness and recognition among its members' appears many times. Can we do something to highlight this theme to bring it to the forefront. This seems to be a critical part of every evaluation.

Russ, anything else to add?

Thanks
Chris

From: EIU Contact Information Redacted
To: ChristopherBare <christopher.bare@icann.org>; Russ Weinstein <russ.weinstein@icann.org>
CC: EIU Contact Information Redacted
Sent: 5/29/2014 11:48:47 PM
Subject: Updated draft results (4)
Attachments: Draft CPE Result GMBH 04.docx; Draft CPE Result INC 04.docx; Draft CPE Result LLC 04.docx; Draft CPE Result LLP 04.docx

Hi Chris and Russ,

I have attached the revised set of four corporate designation results (draft). We addressed most of your comments.

1. The term 'construed community' was not well received by the applicant community. We suggest a change to the term itself as well as additional explanation as to what is meant. Perhaps acknowledgement that while a group appears to exist/has existed for some time, the lack of an organizing or governing body \S . does not meet requirements for the group to be considered a community $\S\S$

[Added in language from the AGB. Second paragraph under 4.2.3.](#)

2. Criterion 1A- Delineation: Reference is made to the lack of at least one major entity dedicated to the community. Would a large number of smaller entities qualify as a majority. A reference to that effect and the fact that this was not represented in the application might help.

[We will keep an open mind about fragmented communities.](#)

3. Criterion 1A: Delineation: The report cites that lack of a dedicated entity leads to the lack of organized activities. Can we elaborate? What constitutes an organized activity. Does the registering of a company with the Secretaries of State count as an activity?

[EIU feedback: too difficult to define such activities because of how they would vary across community. Moreover, it's not defined in the AGB, so the EIU decided not to add any clarification on this.](#)

4. Criterion 2B- Uniqueness: There is reference to the string having other significant meaning. Can we have an example (such as was provided in MLS) as to what other meanings might exist?

[Added examples where appropriate. If the applicant did not score a 2 or a 3 on Nexus, then they are ineligible for a score of 1 on Uniqueness and this is the explanation that we provided.](#)

5. Criterion 3c- Content and Use: can we have an example or explanation as to how the applications Content and Use policies fall short of the requirements (reference to GMBH)?

Yes, we added in more information on this.

6. Criterion 4- Community Endorsement: We expect this section to get a lot of attention. More detail explaining the difference in the relevance of the letters of support would be helpful. For example an explanation that the letters form the SoS while somewhat relevant did carry as much weight due to the fact that they are not dedicated to the community but act as a regulatorŠ.etc.

We used the definitions provided in the AGB to add clarity on this section.

7. The term 'does not have awareness and recognition among its members' appears many times. Can we do something to highlight this theme to bring it to the forefront. This seems to be a critical part of every evaluation.

Already discussed-- likely difficult to add this.

Once you have the opportunity to take a second look, please feel free to provide feedback via phone or email that we can incorporate ahead of the meeting next week.

Best wishes,

EIU Contact
Information
Redacted

Economist Intelligence Unit
Custom Research
EIU Contact Information Redacted

Website: research.eiu.com

This e-mail may contain confidential material. If you are not an intended recipient, please notify the sender and delete all copies. It may also contain personal views which are not the views of The Economist Group. We may monitor e-mail to and from our network.

Sent by a member of The Economist Group. The Group's parent company is The Economist Newspaper Limited, registered in England with company number 236383 and registered office at 25 St James's Street, London, SW1A 1HG. For Group company registration details go to <http://legal.economistgroup.com>

Confidential Third Party Information; Nonresponsive Information

Confidential Third Party Information; Nonresponsive Information

Confidential Third Party Information; Nonresponsive Information

Confidential Third Party Information; Nonresponsive Information

Confidential Third Party Information; Nonresponsive Information

Confidential Third Party Information; Nonresponsive Information

Confidential Third Party Information; Nonresponsive Information



New gTLD Program
Community Priority Evaluation Report
 Report Date: 19 May 2014

Application ID:	1-880-35979
Applied-for String:	INC
Applicant Name:	Dot Registry LLC

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Did Not Prevail
<p>Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation.</p> <p>Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.</p>	

Panel Summary

Overall Scoring	5 Point(s)	
	Earned	Achievable
#1: Community Establishment	0	4
#2: Nexus between Proposed String and Community	0	4
#3: Registration Policies	3	4
#4: Community Endorsement	2	4
Total	5	16
Minimum Required Total Score to Pass 14		

Criterion #1: Community Establishment	0/4 Point(s)
1-A Delineation	0/2 Point(s)
<p>The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community demonstrates insufficient delineation, organization and pre-existence. The application received a score of 0 out of 2 points under criterion 1-A: Delineation.</p> <p><u>Delineation</u> Two conditions must be met to fulfill the requirements for delineation: there must be a clear straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.</p>	

The community defined in the application (“INC”) is:

Members of the community are defined as businesses registered as corporations within the United States or its territories. This would include Corporations, Incorporated Businesses, Benefit Corporations, Mutual Benefit Corporations and Non-Profit Corporations. Corporations or “INC’s” as they are commonly abbreviated, represent one of the most complex business entity structures in the U.S. Corporations commonly participate in acts of commerce, public services, and product creation....

A corporation is defined as a business created under the laws of a State as a separate legal entity, that has privileges and liabilities that are distinct from those of its members. While corporate law varies in different jurisdictions, there are four characteristics of the business corporation that remain consistent: legal personality, limited liability, transferable shares, and centralized management under a board structure. Corporate statutes typically empower corporations to own property, sign binding contracts, and pay taxes in a capacity separate from that of its shareholders.

This community definition shows a clear and straightforward membership. While broad, the community is clearly delineated, as membership requires formal registration as a corporation with the relevant US state. In addition, corporations must comply with US state law and show proof of best practice in commercial dealings to the relevant state authorities.

However, the community as defined in the application does not have awareness and recognition among its members. This is because corporations operate in vastly different sectors, which sometimes have little or no association with one another. Having the same corporate legal structure is not sufficient to forge a sense of community between corporations operating in different sectors of the economy. These corporations would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

The community as defined in the application does not have at least one entity mainly dedicated to the community. Although responsibility for corporate registrations and the regulations pertaining to corporate formation are vested in each individual US state, these government agencies are fulfilling a function, rather than representing the community. In addition, the US states are not mainly dedicated to the community as they have other roles/functions beyond processing corporate registrations. According to the application:

Corporations can be formed through any jurisdiction of the United States. Therefore members of this community exist in all 50 US states and its territories. Corporation formation guidelines are dictated by state law and can vary based on each State’s regulations. Persons form a corporation by filing required documents with the appropriate state authority, usually the Secretary of State. Most states require the filing of Articles of Incorporation. These are considered public documents and are similar to articles of organization, which establish a limited liability company as a legal entity. At minimum, the Articles of Incorporation give a brief description of proposed business activities, shareholders, stock issued and the registered business address.

The community as defined in the application does not have documented evidence of community activities. As there is no entity that is mainly dedicated to the community as defined in the application, there is no documented evidence of community activities.

The Community Priority Evaluation panel determined that the community as defined in the application does

not satisfy either of the two conditions to fulfill the requirements for organization.

Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed).

The community as defined in the application was not active prior to September 2007. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to a get a sought-after generic word as a gTLD string, and therefore could not have been active prior to the above date (although its constituent parts were active).

The Community Priority Evaluation panel determined that the community as defined in the application does not fulfill the requirements for pre-existence.

1-B Extension

0/2 Point(s)

The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not demonstrate considerable size or longevity for the community. The application received a score of 0 out of 2 points under criterion 1-B: Extension.

Size

Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.

The community as defined in the application is of a considerable size. The community for .INC as defined in the application is large in terms of number of members. According to the application:

With almost 470,000 new corporations registered in the United States in 2010 (as reported by the International Association of Commercial Administrators) resulting in over 8,000,000 total corporations in the US, it is hard for the average consumer to not conduct business with a corporation.

However, the community as defined in the application does not have awareness and recognition among its members. This is because corporations operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.

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

Longevity

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application does not demonstrate longevity. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to a get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed

merely to get a sought-after generic word as a gTLD string and, therefore, the pursuits of the .INC community are not of a lasting, non-transient nature.

Additionally, the community as defined in the application does not have awareness and recognition among its members. This is because corporations operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for longevity.

Criterion #2: Nexus between Proposed String and Community	0/4 Point(s)
2-A Nexus	0/3 Point(s)
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the community, but over-reaches substantially beyond the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.</p> <p>To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. "Identify" means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.</p> <p>The applied-for string (.INC) over-reaches substantially, as the string indicates a wider or related community of which the applicant is a part but is not specific to the applicant's community. According to the application documentation:</p> <p style="padding-left: 40px;">".INC" was chosen as our gTLD string because it is the commonly used abbreviation for the entity type that makes up the membership of our community. In the English language the word incorporation is primarily shortened to Inc. when used to delineate business entity types. For example, McMillion Incorporated would additionally be referred to as McMillion Inc. Since all of our community members are incorporated businesses we believed that ".INC" would be the simplest, most straightforward way to accurately represent our community.</p> <p style="padding-left: 40px;">Inc. is a recognized abbreviation in all 50 states and US Territories denoting the corporate status of an entity. Our research indicates that Inc. as corporate identifier is used in three other jurisdictions (Canada, Australia, and the Philippines) though their formation regulations are different from the United States and their entity designations would not fall within the boundaries of our community definition.</p> <p>While the string identifies the name of the community, it captures a wider geographical remit than the community has, as the corporate identifier is used in Canada, Australia and the Philippines. Therefore, there is a substantial over-reach between the proposed string and community as defined by the applicant.</p> <p>The Community Priority Evaluation panel determined that the applied-for string over-reaches substantially beyond the community. It therefore does not meet the requirements for nexus.</p>	
2-B Uniqueness	0/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant</p>	

Guidebook as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1 point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application does not demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus and is therefore ineligible for a score of 1 for Uniqueness. The Community Priority Evaluation panel determined that the applied-for string does not satisfy the condition to fulfill the requirements for Uniqueness.

Criterion #3: Registration Policies	3/4 Point(s)
3-A Eligibility	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.</p>	
<p>To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by limiting eligibility to registered corporations and by cross-referencing their documentation against the applicable US state's registration records in order to verify the accuracy of their application, etc. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.</p>	
3-B Name Selection	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.</p>	
<p>To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining a comprehensive list of name selection rules, such as requirements that second level domain names should match or include a substantial part of the registrant's legal name, and specifying that registrants will not be able to register product line registrations, amongst other requirements. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.</p>	
3-C Content and Use	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.</p>	
<p>To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by noting that all registrants must adhere to the content restrictions outlined in the applicant's abuse policies. (Comprehensive details are provided in</p>	

Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Content and Use.	
3-D Enforcement	<i>0/1 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the application provided specific enforcement measures but did not include appropriate appeal mechanisms. The application received a score of 0 out of 1 point under criterion 3-D: Enforcement.</p> <p>Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. For example, if a registrant wrongfully applied for and was awarded a second level domain name, the right to hold this domain name will be immediately forfeited. (Comprehensive details are provided in Section 20e of the applicant documentation). However, the application did not outline an appeals process. The Community Priority Evaluation panel determined that the application satisfies only one of the two conditions to fulfill the requirements for Enforcement.</p>	

Criterion #4: Community Endorsement		2/4 Point(s)
4-A Support		<i>1/2 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.</p> <p>To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. “Recognized” means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. “Relevance” refers to the communities explicitly and implicitly addressed.</p> <p>The application included letters from a number of Secretaries of State of US states, which were considered to constitute support from groups with relevance, as each Secretary of State has responsibility for corporate registrations and the regulations pertaining to corporate formation in its jurisdiction. These entities are not the recognized community institution(s)/member organization(s), as these government agencies are fulfilling a function, rather than representing the community. The viewpoints expressed in these letters were not consistent across states. While several US states expressed clear support for the applicant during the Letters of Support verification process, others either provided qualified support, refrained from endorsing one particular applicant over another, or did not respond to the verification request. Letters of support from other entities did not meet the requirement for relevance based on the Applicant Guidebook criteria, as they were not from the recognized community institutions/member organizations. The Community Priority Evaluation Panel determined that the applicant partially satisfies the requirements for Support.</p>		
4-B Opposition		<i>1/2 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received relevant opposition from one group of non-negligible size. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.</p>		

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.

The application received several letters of opposition, one of which was determined to be relevant opposition from an organization of non-negligible size. This opposition was from a community that was not identified in the application but which has an association to the applied-for string. Opposition was on the grounds that limiting registration to US registered corporations only would unfairly exclude non-US businesses. The remaining letters were either from groups/individuals of negligible size, or were not from communities which were not mentioned in the application but which have an association to the applied for string. The Community Priority Evaluation Panel determined that the applicant partially satisfied the requirements for Opposition.

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.



New gTLD Program
Community Priority Evaluation Report
 Report Date: 19 May 2014

Application ID:	1-880-17627
Applied-for String:	LLC
Applicant Name:	Dot Registry LLC

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Did Not Prevail
<p>Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation.</p> <p>Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.</p>	

Panel Summary

Overall Scoring	5 Point(s)	
	Earned	Achievable
#1: Community Establishment	0	4
#2: Nexus between Proposed String and Community	0	4
#3: Registration Policies	3	4
#4: Community Endorsement	2	4
Total	5	16
Minimum Required Total Score to Pass 14		

Criterion #1: Community Establishment	0/4 Point(s)
1-A Delineation	0/2 Point(s)
<p>The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community demonstrates insufficient delineation, organization and pre-existence. The application received a score of 0 out of 2 points under criterion 1-A: Delineation.</p> <p><u>Delineation</u> Two conditions must be met to fulfill the requirements for delineation: there must be a clear straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.</p>	

The community defined in the application (“LLC”) is:

Members of the community are defined as businesses registered as limited liability companies with the United States or its territories. Limited Liability Companies or (LLC’s) as they are commonly abbreviated, represent one of the most popular business entity structures in the US. LLC’s commonly participate in acts of commerce, public services, and product creation....

An LLC is defined as a flexible form of enterprise that blends elements of partnership and corporate structures. It is a legal form of company that provides limited liability to its owners in the vast majority of United States jurisdictions. LLC’s are a unique entity type because they are considered a hybrid, having certain characteristics of both a corporation and a partnership or sole proprietorship. LLC’s are closely related to corporations in the sense that they participate in similar activities and provide limited liability to their partners. Additionally, LLC’s share a key characteristic with partnerships through the availability of pass-through income taxation. LLC’s are a more flexible entity type than a corporation and are often well suited for businesses owned by a single owner.

This community definition shows a clear and straightforward membership. While broad, the community is clearly delineated, as membership requires formal registration as a limited liability company with the relevant US state. In addition, limited liability companies must comply with US state law and show proof of best practice in commercial dealings to the relevant state authorities.

However, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability companies operate in vastly different sectors, which sometimes have little or no association with one another. Having the same legal business structure is not sufficient to forge a sense of community between limited liability companies operating in different sectors of the economy. These limited liability companies would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

The community as defined in the application does not have at least one entity mainly dedicated to the community. Although responsibility for corporate registrations and the regulations pertaining to corporate formation are vested in each individual US state, these government agencies are fulfilling a function, rather than representing the community. In addition, the US states are not mainly dedicated to the community as they have other roles/functions beyond processing corporate registrations. According to the application:

LLC’s can be formed through any jurisdiction of the United States. Therefore members of this community exist in all 50 US states and its territories. LLC formation guidelines are dictated by state law and can vary based on each state’s regulations. Persons form an LLC by filing required documents with the appropriate state authority, usually the Secretary of State. Most states require the filing of Articles of Organization. These are considered public documents and are similar to articles of incorporation, which establish a corporation as a legal entity. At minimum, the articles of organization give a brief description of the intended business purposes, the registered agent, and registered business address. LLC’s are expected to conduct business in conjunction with the policies of the state in which they are formed, and the Secretary of State periodically evaluates a LLC’s level of good standing based on their commercial interactions with both the state and consumers.

The community as defined in the application does not have documented evidence of community activities. As there is no entity that is mainly dedicated to the community as defined in the .LLC application, there is no

documented evidence of community activities.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for organization.

Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed).

The community as defined in the application was not active prior to September 2007. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to get a sought-after generic word as a gTLD string, and therefore could not have been active prior to the above date (although its constituent parts were active).

The Community Priority Evaluation panel determined that the community as defined in the application does not fulfill the requirements for pre-existence.

1-B Extension

0/2 Point(s)

The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not demonstrate considerable size or longevity for the community. The application received a score of 0 out of 2 points under criterion 1-B: Extension.

Size

Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.

The community as defined in the application is of a considerable size. The community for .LLC as defined in the application is large in terms of number of members. According to the application:

With the number of registered LLC’s in the United States totaling over five million in 2010 (as reported by the International Association of Commercial Administrators) it is hard for the average consumer to not conduct business with an LLC.

However, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability companies operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.

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

Longevity

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application does not demonstrate longevity. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to get a sought-after generic word

as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to get a sought-after generic word as a gTLD string and, therefore, the pursuits of the .LLC community are not of a lasting, non-transient nature.

Additionally, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability companies operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for longevity.

Criterion #2: Nexus between Proposed String and Community

0/4 Point(s)

2-A Nexus

0/3 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the community, but over-reaches substantially beyond the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.

To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. “Identify” means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.

The applied-for string (.LLC) over-reaches substantially, as the string indicates a wider or related community of which the applicant is a part but is not specific to the applicant’s community. According to the application documentation:

“LLC” was chosen as our gTLD string because it is the commonly used abbreviation for the entity type that makes up the membership of our community. In the English language Limited Liability Company is primarily shortened to LLC when used to delineate business entity types. Since all of our community members are limited liability companies we believed that “.LLC” would be the simplest, most straight forward way to accurately represent our community.

LLC is a recognized abbreviation in all 50 states and US territories denoting the registration type of a business entity. Our research indicates that while other jurisdictions use LLC as a corporate identifier, their definitions are quite different and there are no other known associations or definitions of LLC in the English language.

While the string identifies the name of the community, it captures a wider geographical remit than the community has, as the corporate identifier is used in other jurisdictions (outside the US). Therefore, there is a substantial over-reach between the proposed string and community as defined by the applicant.

The Community Priority Evaluation panel determined that the applied-for string over-reaches substantially beyond the community. It therefore does not meet the requirements for Nexus.

2-B Uniqueness

0/1 Point(s)

The Community Priority Evaluation panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant

Guidebook as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1 point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application does not demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus and is therefore ineligible for a score of 1 for Uniqueness. The Community Priority Evaluation panel determined that the applied-for string does not satisfy the condition to fulfill the requirements for Uniqueness.

Criterion #3: Registration Policies	3/4 Point(s)
3-A Eligibility	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.</p>	
<p>To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by limiting eligibility to registered limited liability companies and by cross-referencing their documentation against the applicable US state's registration records in order to verify the accuracy of their application. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.</p>	
3-B Name Selection	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.</p>	
<p>To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining a comprehensive list of name selection rules, such as requirements that second level domain names should match or include a substantial part of the registrant's legal name, and specifying that registrants will not be able to register product line registrations, amongst other requirements. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.</p>	
3-C Content and Use	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.</p>	
<p>To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by noting that all registrants must adhere to the content restrictions outlined in the applicant's abuse policies. (Comprehensive details are provided in</p>	

Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Content and Use.	
3-D Enforcement	<i>0/1 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the application provided specific enforcement measures but did not include appropriate appeal mechanisms. The application received a score of 0 out of 1 point under criterion 3-D: Enforcement.</p> <p>Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. For example, if a registrant wrongfully applied for and was awarded a second level domain name, the right to hold this domain name will be immediately forfeited. (Comprehensive details are provided in Section 20e of the applicant documentation). However, the application did not outline an appeals process. The Community Priority Evaluation panel determined that the application satisfies only one of the two conditions to fulfill the requirements for Enforcement.</p>	

Criterion #4: Community Endorsement	2/4 Point(s)
4-A Support	<i>1/2 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.</p> <p>To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. “Recognized” means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. “Relevance” refers to the communities explicitly and implicitly addressed.</p> <p>The application included letters from a number of Secretaries of State of US states, which were considered to constitute support from groups with relevance, as each Secretary of State has responsibility for corporate registrations and the regulations pertaining to corporate formation in its jurisdiction. These entities are not the recognized community institution(s)/member organization(s), as these government agencies are fulfilling a function, rather than representing the community. The viewpoints expressed in these letters were not consistent across states. While several US states expressed clear support for the applicant during the Letters of Support verification process, others either provided qualified support, refrained from endorsing one particular applicant over another, or did not respond to the verification request. Letters of support from other entities did not meet the requirement for relevance based on the Applicant Guidebook criteria, as they were not from the recognized community institutions/member organizations. The Community Priority Evaluation Panel determined that the applicant partially satisfies the requirements for Support.</p>	
4-B Opposition	<i>1/2 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received relevant opposition from one group of non-negligible size. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.</p>	

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.

The application received several letters of opposition, one of which was determined to be relevant opposition from an organization of non-negligible size. This opposition was from a community that was not identified in the application but which has an association to the applied-for string. Opposition was on the grounds that limiting registration to US registered corporations only would unfairly exclude non-US businesses. The remaining letters were either from groups/individuals of negligible size, or were not from communities which were not mentioned in the application but which have an association to the applied for string. The Community Priority Evaluation Panel determined that the applicant partially satisfied the requirements for Opposition.

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.



New gTLD Program
Community Priority Evaluation Report
 Report Date: 19 May 2014

Application ID:	1-880-35508
Applied-for String:	LLP
Applicant Name:	Dot Registry LLC

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Did Not Prevail
<p>Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation.</p> <p>Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.</p>	

Panel Summary

Overall Scoring	5 Point(s)	
Criteria	Earned	Achievable
#1: Community Establishment	0	4
#2: Nexus between Proposed String and Community	0	4
#3: Registration Policies	3	4
#4: Community Endorsement	2	4
Total	5	16
Minimum Required Total Score to Pass 14		

Criterion #1: Community Establishment	0/4 Point(s)
1-A Delineation	0/2 Point(s)
<p>The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community demonstrates insufficient delineation, organization and pre-existence. The application received a score of 0 out of 2 points under criterion 1-A: Delineation.</p> <p><u>Delineation</u> Two conditions must be met to fulfill the requirements for delineation: there must be a clear straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.</p>	

The community defined in the application (“LLP”) is:

Members of the community are defined as businesses registered as Limited Liability Partnerships with the United States or its territories. Limited Liability Partnerships or (LLP’s) as they are commonly abbreviated, are specifically designed to represent professional service businesses in the US . Limited Liability Partnerships are commonly adopted by businesses which focus on: accounting, attorneys, architects, dentists, doctors and other fields treated as professionals under each state’s law....

A Limited Liability Partnership is defined as a partnership in which some or all partners (depending on jurisdiction) have limited liability. LLP’s therefore exhibit qualities of both partnerships and corporations. In an LLP, one partner is not responsible or liable for another partner’s misconduct or negligence. This distinction is why the LLP is a popular business entity amongst accountants, doctors, and lawyers; which deal heavily with issues that could inspire mal-practice lawsuits.

This community definition shows a clear and straightforward membership. While broad, the community is clearly delineated, as membership requires formal registration as a limited liability partnership with the relevant US state (LLPs operate in about 40 US states). In addition, limited liability partnerships must comply with US state law and show proof of best practice in commercial dealings to the relevant state authorities.

However, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability partnerships operate in vastly different sectors, which sometimes have little or no association with one another. Having the same legal business structure is not sufficient to forge a sense of community between limited liability partnerships operating in different sectors of the economy. These limited liability partnerships would therefore not associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

The community as defined in the application does not have at least one entity mainly dedicated to the community. Although responsibility for corporate registrations and the regulations pertaining to corporate formation are vested in each individual US state, these government agencies are fulfilling a function, rather than representing the community. In addition, the US states are not mainly dedicated to the community as they have other roles/functions beyond processing corporate registrations. According to the application:

Limited Liability Partnerships can be formed through all but ten states in the United States. Therefore members of this community exist in close to forty US states. LLP formation guidelines are dictated by state law and can vary based on each state’s regulations. Persons form an LLP by filing required documents with the appropriate state authority, usually the Secretary of State.

The community as defined in the application does not have documented evidence of community activities. As there is no entity that is mainly dedicated to the community as defined in the .LLP application, there is no documented evidence of community activities.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for organization.

Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007

(when the new gTLD policy recommendations were completed).

The community as defined in the application was not active prior to September 2007. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to get a sought-after generic word as a gTLD string, and therefore could not have been active prior to the above date (although its constituent parts were active).

The Community Priority Evaluation panel determined that the community as defined in the application does not fulfill the requirements for pre-existence.

1-B Extension

0/2 Point(s)

The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not demonstrate considerable size or longevity for the community. The application received a score of 0 out of 2 points under criterion 1-B: Extension.

Size

Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.

The community as defined in the application is of a considerable size. The community for .LLP as defined in the application is large in terms of number of members. According to the application, “LLP’s represent a small but prestigious sector of business in the United States.”

However, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability partnerships operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.

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

Longevity

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application does not demonstrate longevity. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a “community” construed merely to get a sought-after generic word as a gTLD string and, therefore, the pursuits of the .LLP community are not of a lasting, non-transient nature.

Additionally, the community as defined in the application does not have awareness and recognition among its members. This is because limited liability partnerships operate in different sectors, which sometimes have little or no association with one another, and having the same legal structure is not sufficient to forge a sense of community amongst them.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for longevity.

Criterion #2: Nexus between Proposed String and Community	0/4 Point(s)
2-A Nexus	0/3 Point(s)
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the community, but over-reaches substantially beyond the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.</p> <p>To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. “Identify” means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.</p> <p>The applied-for string (.LLP) over-reaches substantially, as the string indicates a wider or related community of which the applicant is a part but is not specific to the applicant’s community. According to the application documentation:</p> <p style="padding-left: 40px;">“.LLP” was chosen as our gTLD string because it is the commonly used abbreviation for the entity type that makes up the membership of our community. In the English language Limited Liability Partnership is primarily shortened to LLP when used to delineate business entity types...</p> <p style="padding-left: 40px;">LLP is a recognized abbreviation in all 50 states and US territories denoting the registration type of a business entity. Our research indicates that LLP, as corporate identifier is used in eleven other jurisdictions (Canada, China, Germany, Greece, India, Japan, Kazakhstan, Poland, Romania, Singapore, and the United Kingdom) though their formation regulations are different from the United States and their entity designations would not fall within the boundaries of our community definition.</p> <p>While the string identifies the name of the community, it captures a wider geographical remit than the community has, as the corporate identifier is used in Poland, the UK, Canada and Japan, amongst others. Therefore, there is a substantial over-reach between the proposed string and community as defined by the applicant.</p> <p>The Community Priority Evaluation panel determined that the applied-for string over-reaches substantially beyond the community. It therefore does not meet the requirements for Nexus.</p>	
2-B Uniqueness	0/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1 point under criterion 2-B: Uniqueness.</p> <p>To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application does not demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus and is therefore ineligible for a score of 1 for Uniqueness. The Community Priority Evaluation panel determined that the applied-for string does not satisfy the condition to fulfill the requirements for Uniqueness.</p>	

--

Criterion #3: Registration Policies	3/4 Point(s)
3-A Eligibility	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.</p> <p>To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by limiting eligibility to registered limited liability partnerships and by cross-referencing their documentation against the applicable US state's registration records in order to verify the accuracy of their application. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.</p>	
3-B Name Selection	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.</p> <p>To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining a comprehensive list of name selection rules, such as requirements that second level domain names should match or include a substantial part of the registrant's legal name, and specifying that registrants will not be able to register product line registrations, amongst other requirements. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.</p>	
3-C Content and Use	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.</p> <p>To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by noting that all registrants must adhere to the content restrictions outlined in the applicant's abuse policies. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Content and Use.</p>	
3-D Enforcement	0/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application did not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant</p>	

Guidebook as the application provided specific enforcement measures but did not include appropriate appeal mechanisms. The application received a score of 0 out of 1 point under criterion 3-D: Enforcement.

Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. For example, if a registrant wrongfully applied for and was awarded a second level domain name, the right to hold this domain name will be immediately forfeited. (Comprehensive details are provided in Section 20e of the applicant documentation). However, the application did not outline an appeals process. The Community Priority Evaluation panel determined that the application satisfies only one of the two conditions to fulfill the requirements for Enforcement.

Criterion #4: Community Endorsement	2/4 Point(s)
4-A Support	1/2 Point(s)
<p>The Community Priority Evaluation panel determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.</p> <p>To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. “Recognized” means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. “Relevance” refers to the communities explicitly and implicitly addressed.</p> <p>The Community Priority Evaluation panel determined that the applicant was not the recognized community institution(s)/member organization(s), nor did it have documented authority to represent the community, or documented support from a majority of the recognized community institution(s)/member organization(s). However, the applicant possesses documented support from at least one group with relevance and this documentation contained a description of the process and rationale used in arriving at the expression of support.</p> <p>The application included letters from a number of Secretaries of State of US states, which were considered to constitute support from groups with relevance, as each Secretary of State has responsibility for corporate registrations and the regulations pertaining to corporate formation in its jurisdiction. These entities are not the recognized community institution(s)/member organization(s), as these government agencies are fulfilling a function, rather than representing the community. The viewpoints expressed in these letters were not consistent across states. While several US states expressed clear support for the applicant during the Letters of Support verification process, others either provided qualified support, refrained from endorsing one particular applicant over another, or did not respond to the verification request. Letters of support from other entities did not meet the requirement for relevance based on the Applicant Guidebook criteria, as they were not from the recognized community institutions/member organizations. The Community Priority Evaluation Panel determined that the applicant partially satisfies the requirements for Support.</p>	
4-B Opposition	1/2 Point(s)
<p>The Community Priority Evaluation panel determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received relevant opposition from one group of non-negligible size. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.</p>	

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.

The application received several letters of opposition, one of which was determined to be relevant opposition from an organization of non-negligible size. This opposition was from a community that was not identified in the application but which has an association to the applied-for string. Opposition was on the grounds that limiting registration to US registered corporations only would unfairly exclude non-US businesses. The remaining letters were either from groups/individuals of negligible size, or were not from communities which were not mentioned in the application but which have an association to the applied for string. The Community Priority Evaluation Panel determined that the applicant partially satisfied the requirements for Opposition.

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.

CONFIDENTIAL DRAFT