At-Large's Subsequent Procedures Scorecard: Community Applications

CPWG SubPro Small Team

Revised and shared on At-Large Consolidated Policy Working Group (CPWG) Call
On Wednesday, 23 September 2020, 13:00 UTC

STRING CONTENTION RESOLUTION

Topic/Area:	[34] COMMUNITY APPLICATIONS [2.9.1]	Priority:	HIGH	Settled On:	(22.09.2020)
Related:	• **Community Priority Evaluations (CPE)** • Community Objections distinct from Community Priority Evaluations • Appeals – Accountability Mechanism [2.8.2] • Application Assessed in Rounds [2.2.3] (including Neustar's proposal) – **Priority for next round**				
Key Issues:	• Many of the processes and rules applicable to evaluating community applications through Community Priority Evaluations (CPE) were introduced after the 2012 Program was launched, in some cases, with insufficient notice to or understanding by both applicants and the Community, thereby making it not only difficult, but also unfair to applicants and concerned parties/objectors • Third party service provider appointed to undertake CPE process • Lack of clear details to CPE process led to incidences of determinations without given rationales, inconsistent decisions, eg. Definition of "community" • There was no appeal process for CPE determinations, so no opportunity to test the correctness or inconsistencies in determinations				
Policy Goals:	• Processes and rules related to Community Applications should be clear and transparent • Implementation of processes and rules should be consistent and predictable • In respect evaluation determinations, any research relied on for the decision should be cited and a link provided				
Assigned CCT-RT Rec's:	• Rec. 34: Review of procedures & objectives for community-based applications, improvements made before new round is launched (prerequisite for SubPro)				
References:	• SubPro Draft Final Report, 20 August 2020 • 06. SubPro Community Applications – CPWG consensus building, 10 June 2020 • Working Document_SubPro Draft Final Recommendations, 9 June 2020 • 05. SubPro Community Applications – CPWG consensus building, 2 June 2020 • Working Document_SubPro Draft Final Recommendations, 3 June 2020 • 04. SubPro Community Applications – CPWG consensus building, 20 May 2020 • 03. SubPro CPE – CPWG consensus building, 20 April 2020 • SubPro PDP WG String Contention Resolution_Summary Document, 7 January 2020 • 01. SubPro Community Applications Update to CPWG, 5 Oct 2019				

What has SubPro PDP WG concluded?	**What will/might SubPro PDP WG recommend?**	Is this acceptable? What else needs to be done and by/with whom?
1. Continued use of CPE as a string contention resolution mechanism for Community-based applications	Affirmation 34.1: • WG affirms the continued prioritization of applications in contention sets that have passed Community Priority Evaluation. • WG affirms Implementation Guideline H from 2007, "Where an applicant lays any claim that the TLD is intended to support a particular community such as a sponsored TLD, or any other TLD intended for a specified community, that claim will be taken on trust with the following exceptions: o (i) the claim relates to a string that is also subject to another application and the claim to support a community is being used to gain priority for the application; and o (ii) a formal objection process is initiated. Under these exceptions, Staff Evaluators will devise criteria and procedures to investigate the claim. Under exception (ii), and expert panel will apply the process, guidelines and definitions set forth in IG P."	Yes, ALAC has supported and continues, broadly, to support the use of CPE to resolve string contention sets involving Community-based applications, acknowledging that it is an option for Community-based applicants which must be made available at a reasonable and predictable cost.
2. Lack of transparency and predictability with CPE process caused problems 3. CPE procedures being published post AGB release reinforced lack of transparency and predictability. Therefore, CPE procedures must accompany AGB when AGB is published.	Recommendation 34.2: The Community Priority Evaluation (CPE) process must be as efficient, transparent and predictable as possible. Implementation Guidance 34.3: To support predictability, the CPE guidelines, or as amended, should be considered a part of the policy adopted by the WG. Implementation Guidance 34.4: ICANN org should examine ways to make the CPE process more efficient in terms of costs and timing. WG's Rationale • WG believes that the 2012 CPE process lacked the appropriate level of transparency and predictability.	Yes. At-Large has considered the key challenges from the implementation of CPE in the 2012 round and has as at 11 June 2020, proposed a number of reforms for handling Community-based applications and CPE in subsequent procedures. These proposed reforms are detailed in 2 documents: ▪ "**At-Large Interventions on Community Applications &**

	• WG believes that transparency and predictability are essential objectives in the implementation of CPE and recommends that ICANN org seek opportunities to improve the evaluation process to ensure that evaluation criteria and the application of these criteria are transparent and predictable to all parties. • WG has provided specific suggestions in this regard through Implementation Guidance. • In further support of transparency and predictability WG has recommended that evaluation procedures (including any supplemental dispute provider rules) are widely available before the opening of the application submission period. <u>Recommendation 34.5</u>: All CPE procedures (including any supplemental dispute provider rules) must be developed and published before the opening of the application submission period and must be readily and publicly available. <u>WG's Rationale</u> • Believes that the CPE process was too costly for applicants, considering that the actual cost incurred by applicants was essentially double compared to what was predicted in AGB. • Further believes that the process took too long to complete. • Believes that drawing on lessons learned from the 2012 round, the CPE process should be able to realize efficiencies in both costs and time in subsequent rounds.	**Community Priority Evaluation (CPE)"**; and ▪ "**Revised Community Priority Evaluation Guidelines – A Proposal by At-Large**" which is our proposed revision of the CPE Guidelines of 27 Sep 2013. For more details, please 'Main Points of Concern' below.
4. CPE panellists/evaluators should be allowed and encouraged to obtain clarifications from applicants and opposers as needed.	<u>Recommendation 34.6</u>: Evaluators must continue to be able to send clarifying questions to CPE applicants but further, must be able to engage in written dialogue with them as well. <u>Recommendation 34.7</u>: Evaluators must be able to issue clarifying questions, or utilize similar methods to address potential issues, to those who submit letters of opposition to community-based applications.	Yes to Recs 34.6 and 34.7 but subject to our response to Rec 34.2 and IGs 34.3 and 34.4.

5.	Imbalance in evaluator's use of documents of support vs opposition.	Recommendation 34.8: Letters of opposition to a community-based application, if any, must be considered in balance with documented support for the application. WG's Rationale • WG believes that the 2012 CPE Guidelines were not sufficiently clear in defining "relevance" under Criterion 4-B Opposition, which may have resulted in panelists evaluating letters of opposition in isolation without also considering the level of support for an application. • WG therefore recommends amending the Guidelines to make clear that any letters of opposition should be considered in balance with documented support for an application.	Yes. At-Large has in fact proposed for clearer guidelines to prevent this imbalance.
6.	Clarity and consistency in determinations of CPE - If there was research relied on for the decision, it should be cited and a link should be provided	Recommendation 34.9: • If the Community Priority Evaluation Panel conducts independent research while evaluating an application, limitations on this research and additional requirements must apply. • WG recommends including the following text in the Applicant Guidebook: "The Community Priority Evaluation Panel may perform independent research deemed necessary to evaluate the application (the "Limited Research"), provided, however, that the evaluator shall disclose the results of such Limited Research to the applicant and the applicant shall be provided 30 days to respond before the evaluation decision is rendered. When conducting any such Limited Research, panelists are cautioned not to assume an advocacy role either for or against the applicant or application." Implementation Guidance 34.10: To support transparency, if the CPE Panel relied on research for the decision, it should be cited and a link to the information provided.	Yes.

7. CPE determinations should be appealable	The recommendation for this is captured within the section/topic on Limited Challenge/Appeal Mechanism.	Yes. To monitor work of the IRT and provide inputs through IRT (if possible); in particular monitor cost of filing, losing appeals
What has SubPro PDP WG concluded?	**What SubPro PDP WG will omit?**	Is this acceptable? What else needs to be done and by/with whom?
8. In order to maintain independence in evaluation outcomes, best for CPE to be conducted by third-party professional entity, subject to determinations being appealable	Any reference to CPE evaluation team to include representatives from grassroots community organization or ICANN community volunteers to serve as panel members or advisors.	Our first preference is for grassroots community participation in panel(s). As a secondary measure, we have proposed allowing a broader, more flexible interpretation of "community" and also to provide for in the revised CPE Guidelines, consultation with relevant International Organizations specialized in the specific/relevant fields or a relevant subject matter or community expert with regional or international standing especially if a panel does not have community expertise.
PENDING ISSUES:	SubPro PDP WG reaction	What else needs to be done and by/with whom?
9. Any preferential treatment for community applications beyond ability to participate in CPE, in event of string contention?	No consensus to accord such preferential treatment	NB. ALAC's comment to provide experts to assist Community Applicants from underserved regions in preparing applications (eg. ASP applicants) or first-time applicants has been noted, likely to be addressed in other sections

		including Application Support Program.
10. Priority in application round?	No consensus	See Applications Assessed in Rounds

Main Positions of Concern:

On CCT recommendation #34

- WG said it notes that CCT-RT Recommendation 34 is directed at SubPro PDP WG, and passed to it by ICANN Board and that WG has extensively discussed this in the CPE process and put forward the above recommendations to address concerns raised about CPE in the 2012 round, and so believes that the work it has completed is in line with that CCT recommendation. The SubPro recommendations are at a policy level and does not include a comfortable level of specificity.

On SubPro recommendations

- ALAC has supported and continues, broadly, to support the use of CPE to resolve string contention sets involving Community-based applications, acknowledging that it is an option for Community-based applicants which must be made available at a reasonable and predictable cost.
- The SubPro recommendations are in principle not objectionable to At-Large, although there is broad agreement for a number of improvements to be implemented before the next round of applications begins. The improvements proposed by At-Large deal with the following areas:

  (1) A need for greater community participation in ICANN's engagement of a CPE service provider/panellists, namely in 4 aspects:

  - (i) the development of criteria by which ICANN Org is to evaluate and select candidates;
  - (ii) the shortlisting of identified candidates;
  - (iii) the final selection process; and
  - (iv) the terms for inclusion into the contract between ICANN Org and the selected candidate;

  (2) Changes to the CPE Process including access to recourse, namely in 3 aspects:

  - (i) introducing a mechanism for handling conflict of interest of the part of panellist(s);
  - (ii) elimination of a supplementary call for documented support or opposition by the CPE service provider/panellist; and
  - (iii) introducing a limited challenge/appeal mechanism to challenge the evaluation determination by the panel/panellist;

  (3) Changes to the CPE Criteria and Guidelines, key of which include:

  - (i) allowing a broader, more flexible interpretation of "community" so as to not disadvantage Minority communities, marginalized groups, linguistic, cultural, ethnic groupings, "traditional knowledge" and "Indigenous Communities" (eg. First Nation, Native American tribal communities, Roma community), even loosely organized but reasonably well-

	known groups or segments of society and civil-society advocacy groups (Community Human Rights based - CHR), as well as consultation with relevant International Organizations specialized in the specific/relevant fields or a relevant subject matter or community expert with regional or international standing especially if a panel does not have community expertise; ▪ (ii) adjusting Criteria, Sub-criteria and scoring guidelines such that scoring for every Criterion as well as Sub-criterion will be wholly independent of each other to eliminate carrying over of any bias across Criteria and Sub-criteria; ▪ (iii) greater flexibility and clarity in applying Criteria and Sub-criteria; ▪ (iv) preventing imbalance in considering opposition versus support; and ▪ (v) lowering the threshold to prevail in CPE. (4) Greater awareness in the availability and use of Dispute Resolution Procedures Details of the above can be found in 2 documents: (i) "**At-Large Interventions on Community Applications & Community Priority Evaluation (CPE)"**; and (ii) "**Revised Community Priority Evaluation Guidelines – A Proposal by At-Large**" which is our proposed revision of the CPE Guidelines of 27 Sep 2013.