Subsequent Procedures Implementation Review Team

Meeting #66

29 August 2024, 19:00-20:00 UTC

ICANN

Agenda

1. Welcome and SOI Update

2. IRT Information and Status

3. **Community Priority Evaluation (Overview)**

4. Upcoming IRT Meetings

5. AOB

# IRT Information and Status

Agenda Item #2

IRT Stats

Project Information	IRT Information	Region	Affiliation
05/16/23	**104**		
1st IRT meeting	# Members		
05/31/25	**65**		
Expected AGB completion	# Full IRT meetings held		
471	**29%**		
Days since 1st IRT meeting	Full IRT attendance		
275	**4**		
Days to expected AGB completion	# Sub-Tracks		
	25		
Project Health	# Sub-Track meetings held		

Region (gauge chart values): 16, 33, 21, 8, 26

Legend:
- Africa
- Asia/Australia/Pacific
- Europe
- Latin America/Caribbean
- North America

Affiliation (gauge chart values): 8, 8, 2, 10, 3, 3, 5, 2, 6, 7, 26, 24

Legend:
- At-Large
- ALAC
- ccNSO
- GAC
- RSSAC
- GNSO | BC
- GNSO | IPC
- GNSO | ISPCP
- GNSO | NCSG
- GNSO | RrSG
- GNSO | RySG
- Non-affiliated
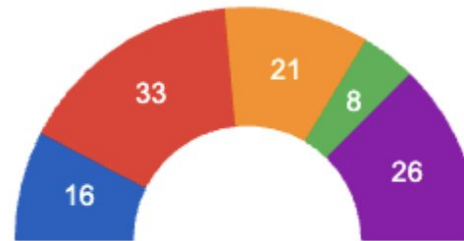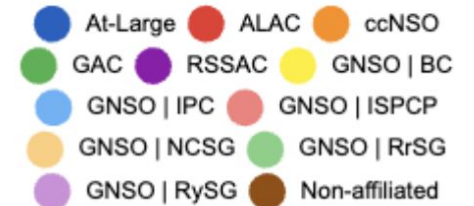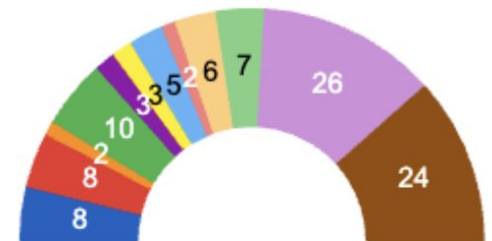
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Outputs & Topics Status

Board Decision on Outputs

- Adopted: 104
- Adopted with Clarifying Statement: 22
- Supplemental Recommendation Adopted: 4
- Acknowledged: 165
- Supplemental Recommendation not Adopted
- Not Adopted: 3

Topics Status

- Org working on draft language: 10
- IRT review: 8
- Draft ready for PC: 8
- Draft finalized: 11
- N/A: 4
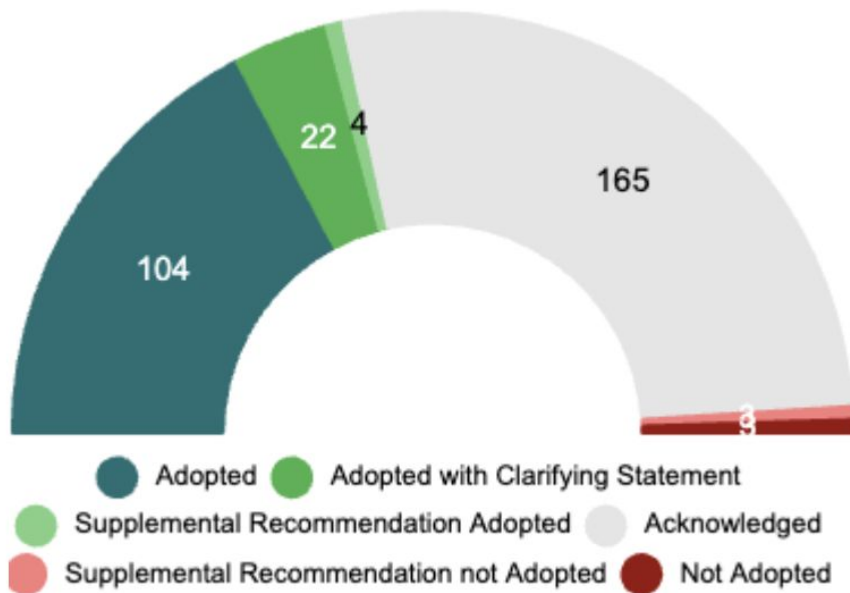
Community Priority Evaluation

Agenda Item #3

Community Priority Evaluation (CPE) Background (1/2)

- ICANN managed a process known as Community Priority Evaluation (CPE) for community-based applications applying to run a generic top-level domain in the 2012 round and plans to do so again in the Next Round

- CPE is a method to resolve contention and was optional for a community applicant that found itself in contention

- CPE was conducted by a panel appointed by ICANN and had separate evaluation criteria from other contention resolution mechanisms

- An applicant found to meet the criteria prevailed in the community priority evaluation and could proceed to the next stage of their application process

Community Priority Evaluation (CPE) Background (2/2)

- The panel scored the community-based applications against four criteria:

    1. Community Establishment
    2. Nexus between Proposed String and Community
    3. Registration Policies, and
    4. Community Endorsement

    - Additional information regarding the scoring criteria can be found in Section 4.2.3 of the 2012 AGB: https://newgtlds.icann.org/en/applicants/agb
    - See also the panel guidelines: https://newgtlds.icann.org/sites/default/files/guidelines-27sep13-en.pdf

- 5 applicants earned a passing score in the 2012 round.

- The New gTLD Subsequent Procedures Final Report indicated that the evaluation was too stringent, did not allow diverse permutations of communities to qualify, and that the evaluation results were inconsistent by allowing some communities to gain priority and others not.

Criteria

1. **Community Establishment** (4 points)
   a. **Delineation** ("Clearly delineated, organized, and pre-existing community") (2 points)
   b. **Extension** ("Community of considerable size and longevity") (2 points)
2. **Nexus between Proposed String and Community** (4 points)
   a. **Nexus** ("The string matches the name of the community or is a well-known short-form or abbreviation of the community") (3 points)
   b. **Uniqueness** ("String has no other significant meaning beyond identifying the community described in the application") (1 point)
3. **Registration Policies** (4 points)
   a. **Eligibility** ("Eligibility restricted to community members") (1 point)
   b. **Name Selection** ("Policies include name selection rules consistent with the articulated community-based purpose of the applied-for gTLD.") (1 point)
   c. **Content and Use** ("Policies include rules for content and use consistent with the articulated community-based purpose of the applied-for gTLD") (1 point)
   d. **Enforcement** ("Policies include specific enforcement measures (e.g. investigation practices, penalties, takedown procedures) constituting a coherent set with appropriate appeal mechanisms") (1 point)
4. **Community Endorsement** (4 points)
   a. **Support** ("Applicant is, or has documented support from, the recognized community institution(s)/ member organization(s) or has otherwise documented authority to represent the community.") (2 points)
   b. **Opposition** ("No opposition of relevance") (2 points)

Guidelines

Summary of Results from 2012

- 1,930 total applications received in 2012

- 84 (4.4%) were community-based applications

  - **34** applications were part of a contention set

  - **25** applications elected to participate in CPE (the remaining applications were not part of a contention set or opted not to participate in CPE)

  - **5** applicants prevailed in CPE:

      1. Big Room Inc. (ECO)
      2. Interlink Co. Ltd (.OSAKA)
      3. European Broadcasting Union (.RADIO)
      4. Asia Spa and Wellness Promotion Council (.SPA)
      5. Hotel Top Level Domain S.a.r.l. (.HOTEL)

Panel Procedures

- Panel = Core Team + Evaluators

- Core Team
  - Project Manager: oversees the Community Priority Evaluation project,
  - Project Coordinator: in charge of the day-today management of the project and provides guidance to the independent evaluators
  - Other senior staff members, including The Economist Intelligence Unit's Executive Editor and Global Director of Public Policy.

- Each application was assessed by seven individuals: two independent evaluators, and the core team, which comprises five people

- [Procedure Document](#)

Summary of Legal Challenges from 2012

- Only 7 of the CPEs were uncontested
  - ART; .IMMO; .MERCK; .MLS; .OSAKA; .SHOP; .TAXI

- 18 CPEs (72%) were contested, leading to multiple Requests for Reconsideration (RfR)
  - There were 3 RfRs, involving 13 applications, filed by the standard or non-prevailing applicants related to a community application prevailing in CPE.
  - There were 20 RfRs, involving 14 applications, related to a community applicant contesting the non-prevailing result of their CPE.

- Five CPEs led to an Independent Review Process (IRP)
  - .HOTEL, .INC/.LLC/.LLP, .SHOP

Final Report Outputs

SubPro Outputs

Implementation Guideline F from the 2007 policy is affirmed with modification under Topic 35: Auctions: Mechanisms of Last Resort / Private Resolution of Contention Sets. Implementation Guideline F is also relevant to this topic.

Affirmation with Modification 34.1: The Working Group affirms the continued prioritization of applications in contention sets that have passed Community Priority Evaluation (CPE). The Working Group further affirm Implementation Guideline H* from the 2007 policy, with one small modification: "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: (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 (ii) a formal objection process is initiated. Under exception (ii), an expert panel will apply the process, guidelines, and definitions set forth in IG P." This modified text removes the following sentence under (ii) in order to be consistent with 2012 implementation: "Under these exceptions, Staff Evaluators will devise criteria and procedures to investigate the claim."

SubPro Outputs

Implementation Guidance 34.2: In the 2012 Applicant Guidebook, the following text is included under definitions for Criterion 1-A Delineation, "Delineation" relates to the membership of a community, where a clear and straightforward membership definition scores high, while an unclear, dispersed or unbound definition scores low." The corresponding Evaluation Guidelines from the 2012 round include a non-exhaustive list of "elements of straight-forward member definitions." This list should continue to include elements applicable to economic communities with a formal membership structure, but it should also include elements applicable to communities that are not economic in nature, including linguistic and cultural communities, that have clear and straight-forward membership definition. The term "member" in this context should be interpreted broadly enough to include communities that do not have "card carrying" members. Further, the Evaluation Guidelines should include provisions that allow communities which are not economic in nature (and which therefore may not have clear and straight-forward membership structure) with an equal opportunity to score a full 2 points on the Delineation Criterion, as well as an opportunity to score a single point if some but not all elements of this criterion are met.

Implementation Guidance 34.3: In the 2012 Applicant Guidebook, the following text is included under Definitions for CPE Criterion 1-A Delineation: "Notably, as "community" is used throughout the application, there should be: . . . (b) some understanding of the community's existence prior to September 2007 (when the new gTLD policy recommendations were completed)..." and " "Pre-existing" means that a community has been active as such since before the new gTLD policy recommendations were completed in September 2007." The corresponding section of the CPE Evaluation Guidelines states, "The following questions must be scored when evaluating the application: . . Has the community been active since at least September 2007?" For subsequent procedures, references to "September 2007" should be changed to "the beginning of the then current application submission period."

SubPro Outputs

Implementation Guidance 34.4: In the 2012 Applicant Guidebook, in order to succeed in a Community Priority Evaluation, Criterion 1-A stated that a community should have the requisite "awareness and recognition" among its members ("Delineation"). ==The Working Group recommends that this criterion must take into consideration the views of the relevant community-related experts, especially in cases where recognition of the community is not measurable== (eg., where such recognition is prevented by national law).

Implementation Guidance 34.5: In the 2012 Applicant Guidebook, the following text is included under Definitions for CPE Criterion 1-A Delineation: "Organized" implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities." ==The interpretation in the Evaluation Guidelines of the term "mainly" should make clear that it is possible for more than one entity to administer and/or represent a community. The Guidelines should further make clear that an organization that represents a community should be treated on equal footing with one that administers a community==.

SubPro Outputs

Implementation Guidance 34.6: In the 2012 Applicant Guidebook, text regarding CPE Criterion 2-A Nexus includes guidance on scoring in relation to the criterion. Corresponding text included in the Evaluation Guidelines should be more specific and clear regarding scoring to eliminate any ambiguity in interpretation. The Working Group suggests the following text to include in the Evaluation Guidelines: "With respect to "Nexus", for a score of 3, the essential aspect is that the applied-for string matches the name of the community. Where an exact match is not established but the applied for string is established as commonly known by others as a well-known short-form or abbreviation of the community, it will also be eligible for a score of 3. Where the applied-for string does not match the name of the community or is not a well-known short-form or abbreviation of the community, it may score a 2 if it identifies the community - i.e. closely describes either the community or a reasonably understood boundary of the community members, without overreaching substantially beyond the community. An applied-for string which identified the community but over-reaches substantially into a community will score a zero."

Implementation Guidance 34.7: In the 2012 Applicant Guidebook, text regarding CPE Criterion 2-B Uniqueness includes the following definition: " "Identify" means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community." The corresponding Evaluation Guidelines should make clear that there are two distinct paths to establish if an applied for string identifies the community: 1. describing the community OR 2. describing the community members. The Guidelines should explicitly state that these paths are not interconnected or contingent on one another.

SubPro Outputs

Implementation Guidance 34.8: The Evaluation Guidelines regarding Criterion 2-B Uniqueness should make clear that evaluators should not be making a qualitative assessment of whether a term is the most appropriate or descriptive term for a given community compared to other possible terms. Instead, they should be examining whether this is a term that the public in general associates with this community as opposed to another meaning.

Implementation Guidance 34.9: CPE Evaluation Guidelines regarding scoring for Criterion 4-A Support should make clear that it is not assumed for the purposes of scoring that only a single organization will serve as the representative for an entire community and that other considerations may be taken into account in scoring for this criterion if multiple organizations represent a community.

Implementation Guidance 34.10: The following text included in the 2012 Applicant Guidebook Section 4.2.3 Community Priority Evaluation Criteria should also be incorporated into the CPE Evaluation Guidelines: "The sequence of the criteria reflects the order in which they will be assessed by the panel. The utmost care has been taken to avoid any "double-counting" - any negative aspect found in assessing an application for one criterion should only be counted there and should not affect the assessment for other criteria."

Implementation Guidance 34.11: The Working Group urges the Implementation Review Team to consider 1. Changing the passing score for achieving community priority status from a numerical score to a percentage of the total number of possible points and 2. Lowering the threshold for achieving community-based status from the 87.5% of the total available evaluation points (14 out of 16 points) as was the case in the 2012 round to 75-80% of the total available points.

SubPro Outputs

Recommendation 34.12: The process to develop evaluation and selection criteria that will be used to choose a Community Priority Evaluation Provider (CPE Provider) must include mechanisms to ensure appropriate feedback from the ICANN community. In addition, any terms included in the contract between ICANN org and the CPE Provider regarding the CPE process must be subject to public comment.

Recommendation 34.13: The Community Priority Evaluation (CPE) process must be efficient, transparent and predictable.

Implementation Guidance 34.14: To support predictability, the CPE guidelines, or as amended, should be considered a part of the policy adopted by the Working Group.

Implementation Guidance 34.15: ICANN org should examine ways to make the CPE process more efficient in terms of costs and timing.

Recommendation 34.16: All Community Priority Evaluation 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.

SubPro Outputs

Recommendation 34.17: 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.

Recommendation 34.18: 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.

Recommendation 34.19: Letters of opposition to a community-based application, if any, must be considered in balance with documented support for the application.

Implementation Guidance 34.20: The 2012 Applicant Guidebook includes the following text regarding scoring for CPE Criterion 4-B Opposition: "Opposition: 2= No opposition of relevance; 1= Relevant opposition from one group of nonnegligible size; 0= Relevant opposition from two or more groups of non-negligible size." In listing considerations for determining whether an organization is of "non-negligible size," the Evaluation Guidelines should include text indicating that the determination of what is non-negligible must be relative to the size of the community that that applicant is proporting to serve.

Scope of Project

Recommendation 34.21: If the Community Priority Evaluation Panel conducts independent research while evaluating an application, limitations on this research and additional requirements must apply. The Working Group 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 have an opportunity to respond. 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 Guideline 34.22: To support transparency, if the Community Priority Evaluation Panel relied on research for the decision it should be cited and a link to the information provided.

Implementation Considerations

Implementation Considerations

- <u>Scoring Considerations</u>
  - Based on SubPro Final Report Outputs, the scoring threshold would be lower–this may increase the potential number of "prevailing" applicants
  - Increasing the value of some criteria and/or making the scoring more of a scale may allow for more points to be achieved (e.g., IG 34.6)

- <u>Criteria Considerations</u>
  - Some wholesale changes to criteria may be needed to help with ensuring that both formal and non-formal communities have an equal chance to achieve points (IG 34.4, 34.5)
  - Some criteria are redundant and/or unnecessarily strict (IG 34.7, 34.8 re: "Uniqueness")

Implementation Considerations

- Panel/Procedure Considerations
  - Regarding <u>Recommendation 34.16</u>: *"All Community Priority Evaluation 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."*

    - ICANN org understands this to mean that the panel guidelines or other supplementary procedural documentation must only be available at the start of the next round and not necessarily published in the AGB.
    - ICANN org expects that it would develop these documents and then confer with the vendor at the time they are appointed (which may be before or after the opening of the round)

Next Steps

Next Steps

- <u>Now-October:</u> Continued internal discussion

- <u>Mid-Late October:</u> IRT session

- <u>ICANN81:</u> IRT session

Upcoming IRT Meetings

Agenda Item #4

Provisional Meeting Schedule

#	Date	Time UTC	Topic	Wiki
67	03-Sep-24	13:00-14:00	7. Metrics and Monitoring	https://community.icann.org/x/OYBVFQ
3	*4-Sep-24*	*13:00-14:00*	*IDN Sub-Track*	*https://community.icann.org/x/D4ALFq*
68	05-Sep-24	**13:00-14:00**	ASP and RSP T&C Public Comment Update Data Protection Privacy Statement	https://community.icann.org/x/QYBVFQ
69	10-Sep-24	13:00-14:00	Outreach and Engagement	https://community.icann.org/x/SoBVFQ
70	12-Sep-24	**13:00-14:00**	32. Limited Challenge/Appeal Mechanism	https://community.icann.org/x/UoBVFQ
71	17-Sep-24	13:00-14:00		https://community.icann.org/x/X4BVFQ
4	*18-Sep-24*	*13:00-14:00*	*IDN Sub-Track*	*https://community.icann.org/x/HIALFq*
25	*19-Sep-24*	*18:00-19:00*	*ASP Sub-Track*	*https://community.icann.org/x/OoALFq*
72	19-Sep-24	19:00-20:00	36. Base Registry Agreement	https://community.icann.org/x/aoBVFQ
73	24-Sep-24	13:00-14:00	32. Limited Challenge/Appeal Mechanism	https://community.icann.org/x/c4BVFQ

Dates, times, and agendas will be confirmed closer to the meetings.

AOB

Agenda Item #5