

A hand holding a magnifying glass over a network diagram. The diagram consists of a central node connected to several other nodes, which are further connected to more nodes, forming a web-like structure. Several people in business attire are standing on the nodes. The image is split vertically into two halves: the left half is white and the right half is orange. The text is overlaid on the right half.

**APPLICATIONS
TO ICANN FOR
COMMUNITY-BASED
NEW GENERIC TOP
LEVEL DOMAINS
(gTLDs):**

**Opportunities
and challenges
from a human rights
perspective**

- Commissioned by the Council of Europe.
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- Based on desk research and interviews.

Findings

Human rights, the public interest and communities

- ICANN adopted a new Bylaw in May 2016 that explicitly commits ICANN to respect internationally recognized human rights.
- However, the Community TLD process failed to adequately protect the following human rights:
 - Freedom of expression
 - Freedom of association
 - Non-discrimination
- These rights fell short in large part because due process (itself a Human Right) did not meet acceptable standards.
- ICANN lacks a clear vision on the purpose of community-based TLDs.
- There is no clear definition of “community” for the purpose of community-based applications: the initially broad definition of community as formulated by the GNSO has been severely restricted in the Applicant Guidebook, the Community Priority Evaluation (CPE) Guidelines and by the Economist Intelligence Unit (EIU). As a consequence, the process defeats the initial GNSO Policy intention.

Findings

Process

Community Objections

- Inconsistency in the determinations of whether entities had standing to object.
- The experts and panels have applied implicit standards when making their decisions. Such implicit standards ought to be made explicit to guarantee maximum predictability and alignment with the intended goal of the programme.

Community Priority Evaluation

- There is no external quality control of the Economist Intelligence Unit's procedures and decisions, despite this being a term of the contract between the EIU and ICANN.
- ICANN has devolved itself of all responsibility for determining community priority, despite the EIU insisting that it has merely an advisory role with no decision-making authority. As a result, there is no effective appeal process and ICANN's own accountability mechanisms are unable to hold ICANN (or the EIU) to account.

Findings

Process

Accountability Mechanisms

- Community-based applicants and their competitors have recourse to the following accountability mechanisms: reconsideration requests, the Independent Review Process, the ICANN Ombudsman, and the court. These mechanisms have been of very limited value to community applicants.

General concerns

- The cost of applications, the time taken to assess them, and conflicts of interest, as well as a number of areas of inconsistency and lack of transparency, have led to accusations of unfairness and of discrimination.
- Maximum predictability of the behaviour of delegated decision-makers need to be guaranteed by ICANN.
- There are no appeal mechanisms in place.
- The lines of responsibility are unclear when it comes to delegated decision-makers.

Looking to the Future

Improve the current process by:

- Having greater clarity of the purpose of Community TLDs and why ICANN has created a special regime for Communities. This should be firmly grounded in Human Rights.
- Introducing a single appeal mechanism which can look at substance as well as process.
- Ensuring that all the delegated decision making processes – for Community Objections, CPE and the accountability mechanisms –are all human rights compliant and quality controlled.
- Review the role of the Economist Intelligence Unit. The credibility of the EIU has arguably been damaged by allegations of lack of transparency, collusion with ICANN staff, and conflicts of interest.
- Seek to reduce costs.

Looking to the Future

Revise the entire process by:

Placing sufficient restrictions on the registry agreements for Community TLDs to deter purely commercial interests from applying. This would shift the burden of proof so that applicants would not need to prove they were, in fact, community-based as this would be a *prima facie* assumption. Instead, applications would be awarded to those who proved they had the most support from, and accountability to the community, and would provide the most benefit.