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## 4.1 Community Priority Evaluation

### 4.1.1 Introduction

Community Priority Evaluation (CPE) is a contention resolution mechanism available to applicants that self-designated their applications as community applications. Prevailing in CPE would allow the community applicant to gain priority within a contention set. This section of the Program Implementation Review report discusses the following aspects of CPE:

- CPE Criteria
- CPE Process Implementation
- CPE Results

### 4.1.2 Relevant Guidance

The following guidance is relevant to the topic of Community Priority Evaluation and will be discussed in further detail in Sections 4.1.3 and 4.1.4 of this report:

- GNSO Recommendation 9: “There must be a clear and pre-published application process using objective and measurable criteria.”<sup>223</sup>
- GNSO Implementation Guideline F:

*If there is contention for strings, applicants may:*

- resolve contention between them within a pre-established timeframe*
- if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and;*
- the ICANN Board may be used to make a final decision, using advice from staff and expert panels.*

- GNSO Implementation Guideline H\*:

*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:*

- 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*
- a formal objection process is initiated.*

*Under these exceptions, Staff Evaluators will devise criteria and procedures to investigate the claim.*

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<sup>223</sup> ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-partA-08aug07.htm>

*Under exception (ii), an expert panel will apply the process, guidelines, and definitions set forth in [Implementation Guideline] P.GNSO Recommendation 10: “There must be a base contract provided to applicants at the beginning of the application process.”*

- Applicant Guidebook, Module 1: Introduction to the gTLD Application Process<sup>224</sup>
- Applicant Guidebook, Section 4.2: Community Priority Evaluation

### 4.1.3 Background

GNSO Implementation Guideline H acknowledged cases where an applicant may “lay claim that [a] TLD is intended to support a particular community.”<sup>225</sup> If only one applicant has made such a claim, then this claim can be “taken on trust;” if there are multiple applications for this particular TLD, then it becomes necessary to determine whether an applicant making such a claim should receive “priority” over the other applicants for that string. As part of the multi-year AGB development process, supported by consultation and input from the community,<sup>226</sup> the contention resolution mechanism CPE was developed in accordance with this GNSO Implementation Guideline.

As per the AGB and consistent with GNSO Implementation Guidelines F and H, if a community application prevailed in CPE, it was eligible to proceed to the next step in the Program, and the other applications in the contention set were eliminated.

To perform CPE evaluations, ICANN issued a call for expressions of interest in 2009 and selected two firms, Economist Intelligence Unit (EIU) and InterConnect Communications.<sup>227</sup> ICANN made the announcement of EIU and InterConnect Communications as the CPE evaluation panels at the ICANN42 Public Meeting.<sup>228</sup>

In early 2012, as publication of Initial Evaluation (IE) results (see Section 2.1: Initial and Extended Evaluation of this report) neared, ICANN began preparations for the contention resolution phase of the Program. As part of these preparations, ICANN determined that there were fewer than 40 community applications in contention (and therefore qualified for CPE). Based on the experience gained from IE, ICANN anticipated that significant training and preparation efforts would be required for the evaluation panels to achieve the desired consistency across evaluations. Given the relatively small number of potential evaluations, ICANN identified the reduction in training and preparation efforts as a potential benefit of using a single firm to act as the CPE Panel rather than dual-sourcing

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<sup>224</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

<sup>225</sup> ICANN. (8 August 2007) Final Report-Introduction of New Generic Top-Level Domains. Retrieved from <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

<sup>226</sup> ICANN. Applicant Guidebook Historical Documents. Retrieved from <http://newgtlds.icann.org/en/about/historical-documentation>; ICANN. New gTLD Program Explanatory Memorandum: Resolving String Contention. Retrieved from <https://archive.icann.org/en/topics/new-gtlds/string-contention-18feb09-en.pdf>

<sup>227</sup> ICANN. (25 February 2009) ICANN Call for Expressions of Interest for a New gTLD Comparative Evaluation Panel. Retrieved from <https://www.icann.org/en/topics/new-gtlds/eoi-comparative-evaluation-25feb09-en.pdf>

<sup>228</sup> ICANN. (26 October 2011) New gTLD Program Update PowerPoint Presentation, slide 19. Retrieved from <http://dakar42.icann.org/meetings/dakar2011/presentation-new-gtld-program-update-26oct11-en.pdf>

the work. With this insight, ICANN verified that a single firm could handle the workload and that the firm was able to certify that it did not have a conflict of interest with any of the potential CPE applicants, as defined by Section 2.4.3.1 of the AGB and the firm’s contracts with ICANN. The EIU was then selected as the single firm to act as the CPE Panel. The EIU was selected for this role because it offers premier business intelligence services—providing political, economic, and public policy analysis to businesses, governments, and organizations across the globe. Additionally, the EIU had the ability to meet Program capacity and timeline constraints, and could perform its role without conflict of interests with applicants.<sup>229</sup>

To maintain transparency, fairness, and predictability in the CPE process, the CPE panel drafted a set of guidelines (CPE Guidelines) that its team would use to perform evaluations. These guidelines “provide[d] additional clarity around the process and scoring principles outlined in the AGB.”<sup>230</sup> The draft of the guidelines was published on 16 August 2013 for input from the ICANN community.<sup>231</sup> Comments and input were reviewed by the CPE Panel and incorporated if they aligned with the AGB. The final version of the guidelines was published on 27 September 2013, prior to the commencement of CPE.

### *Overview of the CPE Process*

When a community applicant became eligible for CPE,<sup>232</sup> ICANN sent an invitation to the applicant and provided 21 days for the applicant to elect participation (i.e., opt in) and submit the CPE fee of USD 22,000, which was refundable if the applicant prevailed in CPE. In parallel with notifying the applicant and in an effort to ensure awareness and transparency, ICANN would notify all other members of the contention set (including applicants for standard applications as well as other community-based applications) and note the invitation on the CPE page of the New gTLD microsite.<sup>233</sup> Included in the 21-day period was a final 14-day window for any new application comments or related correspondence to be submitted for the CPE panel’s consideration.<sup>234</sup>

ICANN would provide authorization to begin an evaluation to the CPE panel after both the applicant’s CPE fee had been collected and at least 14 days had elapsed after the CPE invitation. This ensured that the CPE evaluation did not start prior to the completion of the final 14 days of public comment. Applications were evaluated against the criteria in the AGB in accordance with the CPE

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<sup>229</sup> For more information on vendor selection, see: <http://newgtlds.icann.org/en/blog/preparing-evaluators-22nov11-en>. For more information on the EIU’s processes in CPE, see:

<http://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>

<sup>230</sup> ICANN. (25 February 2009) ICANN Call for Expressions of Interest for a New gTLD Comparative Evaluation Panel. Retrieved from <http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>

<sup>231</sup> ICANN. (16 August 2013) Announcement: Community Priority Evaluation Guidelines Posted for Community Review and Input. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-4-16aug13-en>

<sup>232</sup> ICANN. Community Priority Evaluation. Retrieved from <http://newgtlds.icann.org/en/applicants/cpe#eligibility>

<sup>233</sup> ICANN. Community Priority Evaluation. Retrieved from <http://newgtlds.icann.org/en/applicants/cpe#status>

<sup>234</sup> As noted, this window marked the *final* 14 days an applicant had to gather support for its application. ICANN guaranteed the Panel would consider all letters and comments submitted up to the end of that 14-day window. After the close of the period, applicants were able to submit further letters and comments, but ICANN could not guarantee they would be reviewed by the Panel. Please see the CPE FAQs for more information on this matter:

<http://newgtlds.icann.org/en/applicants/cpe/faqs-10sep14-en.pdf>

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panel's defined process.<sup>235</sup> As per the AGB, the CPE panel could use any available public information to inform its determination and could conduct independent research regarding the proposed TLD community and application. At its discretion, the CPE panel could issue Clarifying Questions (CQs) request clarification of any information required to make a determination.

The entire CPE evaluation from invitation to publication of results ranged in processing time from three to six months. The actual amount of time required depended on whether there were CQs, the number of support or opposition letters that required review and verification, and the amount of additional research performed by the CPE panel. The quantity and length of letters of support or opposition varied from less than 10 pages of additional materials to hundreds of pages of text for the panel to review.

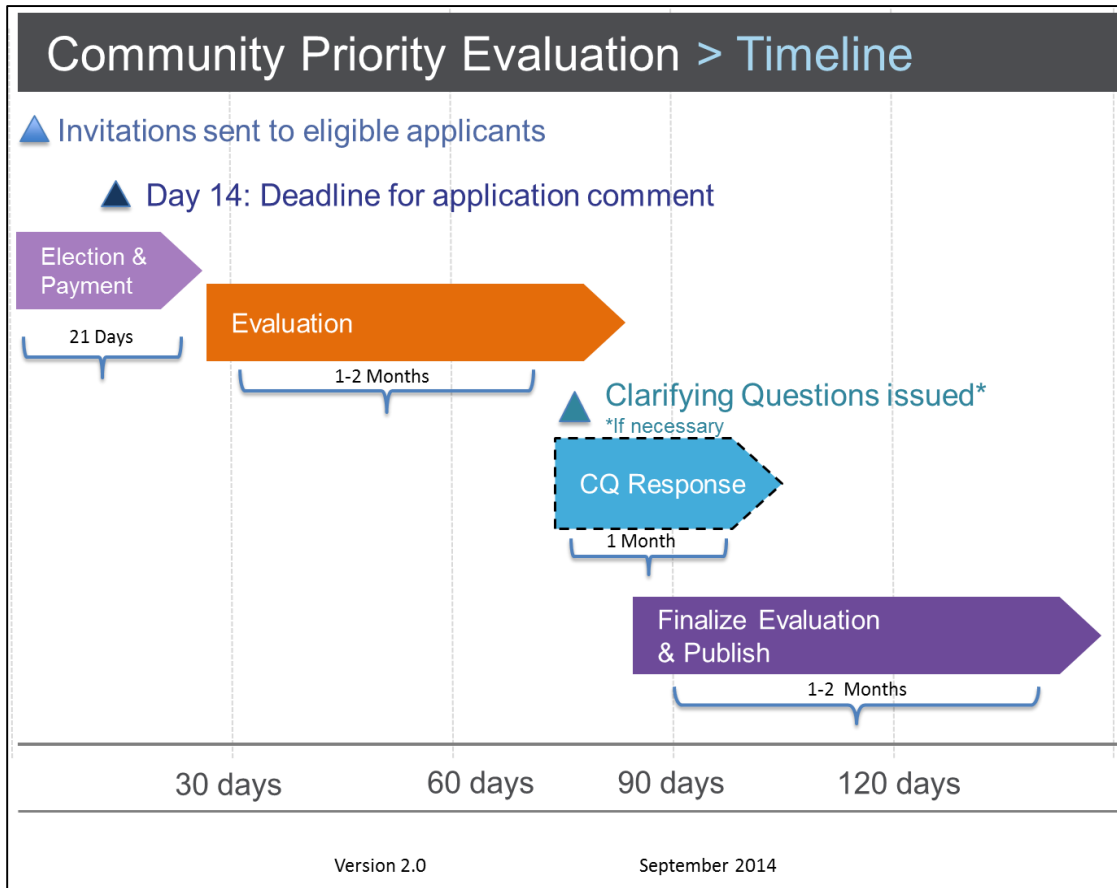
At the completion of evaluation, the CPE panel delivered a report to ICANN, which included the rationale for its determination. ICANN performed quality control on the report to ensure consistency and alignment with the AGB and CPE Guidelines as well as to ensure that adequate rationale was provided for scoring decisions. The CPE report was then published on the New gTLD microsite.<sup>236</sup> Figure 4.1.i depicts a typical CPE process timeline:

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<sup>235</sup>ICANN. Community Priority Evaluation. Retrieved from <http://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>

<sup>236</sup> ICANN. Community Priority Evaluation. Retrieved from <http://newgtlds.icann.org/en/applicants/cpe#invitations>

Figure 4.1.i: CPE Process Timeline



As of 31 July 2015, 19 applications have completed CPE. Table 4.1.i below provides a break-down of community applications.

Table 4.1.i: Break-down of Community Applications

Number of new gTLD applications	1,930
Number of applications self-designated as community	84
Number of applications self-designated as community that were in contention	34
Number of contention sets that included self-designated community application(s)	28
Number of self-designated community applications that participated in CPE as of 31 July 2015	19
Number of self-designated applications that prevailed CPE as of 31 July 2015	5

## 4.1.4 Assessment

### 4.1.4.1 COMMUNITY PRIORITY EVALUATION CRITERIA

Awarding priority to a particular applicant type was described by the GNSO in its Final Report for the “Introduction of New Generic Top-Level Domains.” The development of a process based on GNSO Implementation Guidelines F and H required significant discussion, and establishing the CPE criteria to determine whether priority should be awarded to a community application were the results of over three years of work by the ICANN community during the development of the AGB.

Section 4.2.3 of the AGB states the goal of the CPE process was 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).” Recognizing that the outcome of CPE has significant impact on not only the community applicant but all other applicants in the contention set, the AGB states the following regarding the CPE criteria: “It should be noted that a qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application.”<sup>237</sup> This kind of evaluation required a “holistic approach” that helped to counter the difficulty of interpreting and balancing aspects of communities. Thus, four primary criteria were established to assess an application’s qualifications for earning priority on the basis of community. In summary, they were:

1. Community Establishment – This criterion relates to the community as explicitly identified and defined according to statements in the application.
2. Nexus between Proposed String and Community – This criterion evaluates the relevance of the string to the specific community that the application claims to represent.

<sup>237</sup> AGB, Section 4.2.3: Community Priority Criteria

3. Registration Policies – This criterion evaluates the applicant’s registration policies as indicated in the application. Registration policies are the conditions that the future registry will set for prospective registrants.
4. Community Endorsement – This criterion evaluates community support and/or opposition to the application.

To maintain transparency, fairness, and predictability in the CPE process, the CPE panel drafted a set of guidelines (CPE Guidelines) that its team would use to perform evaluations. The Guidelines “provide[d] additional clarity around the process and scoring principles outlined in the AGB.”<sup>238</sup> The draft of the Guidelines was published on 16 August 2013 for input from the ICANN community.<sup>239</sup> Comments and input which aligned with the AGB were incorporated into the final version of the Guidelines, which was published on 27 September 2013, prior to the commencement of CPE.<sup>240</sup>

Given that awarding priority to community-based applications is a fairly new concept, the GNSO may wish to review whether the implementation of CPE meets the GNSO’s intended goal. The ICANN Board also identified community considerations as a topic that may be appropriate for the GNSO’s discussion of evaluation in the current round and adjustments for future application procedures.<sup>241</sup>

#### **4.1.4.2 CPE PROCESS IMPLEMENTATION**

In implementing CPE, ICANN focused on ensuring that all aspects of the process, from eligibility determination to result publication, were applied consistently and in accordance with the AGB.

To support process transparency, ICANN published CPE criteria prior to the opening of the application window as part of the AGB and published CPE Guidelines prior to the commencement of CPE. In addition, ICANN created a dedicated CPE page on the New gTLD microsite<sup>242</sup> to share relevant information regarding CPE with applicants and the community.

To support consistency, the CPE panel developed a process that could be applied to the evaluation of all applications and published the process on the CPE page of the New gTLD microsite.<sup>243</sup> ICANN also followed the defined and published eligibility criteria to invite applicants to CPE.<sup>244</sup> Deadlines for CPE election, payment, and final comments were also consistently applied. Finally, prior to the publication of the CPE reports, ICANN reviewed the reports for consistent application of the AGB criteria.

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<sup>238</sup> The Economist Intelligence Unit. Community Priority Evaluation Guidelines Version 2.0. Retrieved from <http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>

<sup>239</sup> ICANN. (16 August 2013) Announcement: Community Priority Evaluation Guidelines Posted for Community Review and Input. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-4-16aug13-en>

<sup>240</sup> The Economist Intelligence Unit. Community Priority Evaluation Guidelines Version 2.0. Retrieved from <http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>

<sup>241</sup> ICANN. (17 November 2015) Annex A to Resolutions 1014.11.17.10 – 2014.11.17.12. Retrieved from <https://www.icann.org/en/system/files/files/resolutions-annex-a-17nov14-en.pdf>

<sup>242</sup> ICANN. Community Priority Evaluation. Retrieved from <http://newgtlds.icann.org/en/applicants/cpe#status>

<sup>243</sup> ICANN. Community Priority Evaluation. Retrieved from <http://newgtlds.icann.org/en/applicants/cpe>

<sup>244</sup> ICANN. Community Priority Evaluation. Retrieved from <http://newgtlds.icann.org/en/applicants/cpe#eligibility>

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### *Letter of Support/Opposition Verification Process*

To support an accurate evaluation, a letter verification process was instituted within CPE, similar to the process used in the context of Geographic Names evaluation. The verification process required that the authenticity of relevant letters that could impact a scoring decision be confirmed by the panel.<sup>245</sup> This process step addressed concerns expressed by both community- and non-community-based applicants prior to the beginning of CPE.

The letter verification process posed several challenges for applicants, commenting organizations, and the CPE panel. There were three avenues through which the community could provide input to a CPE evaluation: the Application Comments Forum,<sup>246</sup> by submitting a letter of support to the applicant for inclusion in their application [Question 20(f)], and by submitting correspondence to ICANN which would be posted publicly<sup>247</sup> for review and consideration by the Panel. Most applications included community input from all three avenues, and ICANN often received a fairly high volume of correspondence during the 14-day CPE invitation period or shortly after the period ended. The letters submitted via the correspondence page were challenging to review, as the letters were submitted over a long period of time (beginning “Reveal Day” in June 2012 through the CPE) and were up to several hundred pages in length. Due to the increased workload for the panel, this part of the process often extended the evaluation period for the application. Verifying the letters was sometimes complicated by a lack of contact information provided to the panel by the author of the letter or the applicant or contact information that was obsolete by the time the evaluation occurred.

To counter this challenge, ICANN encouraged applicants to provide a current list of supporters with contact information for those that authored letters by the start of the evaluation. Additionally, if the CPE panel was unable to receive the desired verification from the author and the impact of not having the verification would impact the scoring of the evaluation, the panel would issue a CQ to the applicant requesting their assistance in soliciting a response to the verification attempt and requesting that they provide current contact information for the author. Secondly, applicants or their supporters often submitted information to ICANN via correspondence after the deadline. Although the panel was not required to take these submissions into account, the panel did attempt to do so,<sup>248</sup> which extended the timeline of some evaluations.

### *Application Changes and Clarifying Questions*

The approach to CQs in CPE was intended to support the idea that applicants could not make substantive changes to their applications after the close of the objections window, as members of the community would not have the ability to file objections based on the updated application.

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<sup>245</sup> The Economist Intelligence Unit. (07 August 2014) Community Priority Evaluation Panel and Its Processes. Retrieved from <https://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>

<sup>246</sup> ICANN. Application Comments. Retrieved from <https://gtldcomment.icann.org/comments-feedback/applicationcomment/viewcomments>

<sup>247</sup> ICANN. gTLD Correspondence. Retrieved from <http://newgtlds.icann.org/en/program-status/correspondence>

<sup>248</sup> ICANN. (10 September 2014) Community Priority Evaluation (CPE) Frequently Asked Questions version 1.3. Retrieved from <http://newgtlds.icann.org/en/applicants/cpe/faqs-10sep14-en.pdf>.



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To support this idea, ICANN ensured that application materials for CPE applicants were not modified prior to CPE taking place. Change requests relating to the parts of the application that would be reviewed by the CPE panel were deferred until after CPE.<sup>249</sup> This was to prevent applicants from amending their applications in order to improve their chances of prevailing in CPE based on previously posted CPE results from other applications.

Secondly, the CQ process in CPE differed from IE. According to the CPE Panel Process Document,<sup>250</sup> “[i]f the core team so decides, the EIU may provide a clarifying question (CQ) to be issued via ICANN to the applicant to clarify statements in the application materials and/or to inform the applicant that letter(s) of support could not be verified.” With respect to CPE, CQs may have been issued in instances where the panel required the applicant to:

- Address any application comments that may impact the scoring of their application
- Address any letters of opposition
- Contact supporting organizations and ask them to respond to the EIU’s request for validation of letters of support
- Address any objection determinations where the applicants were the objectors and the experts did not rule in their favor
- Clarify application materials

Using a different approach to CQs in CPE than IE caused some challenges in implementation. Despite ICANN’s best efforts, it was challenging for ICANN to communicate the rationale for why applicants did not receive CQs prior to receiving their results.

The implementation of CPE strove to balance the CPE panel’s ability to request clarification without providing the applicant with the opportunity to provide new information not already in the application. Prospective community-based applicants were required to have addressed the criteria in the originally submitted application.

### *Community Priority Evaluation Results*

As of 31 July 2015, 19 applications representing 17 strings had participated in CPE and, of those, four applications had prevailed (i.e., achieved at least 14 of the 16 available points).

ICANN received complaints from applicants (both community and standard applicants) regarding the outcomes of CPE, through formal correspondence and ICANN Accountability Mechanisms. Such complaints included feedback that there was a lack of transparency, that the panel misinterpreted the applications or the communities they claimed to represent, and that the panel improperly applied the CPE criteria in reaching its determinations. ICANN observed that in any Program process where an application was eliminated or an applicant was dissatisfied with a Program outcome, it

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<sup>249</sup> ICANN. (5 September 2014) New gTLD Advisory. Retrieved from

<http://newgtlds.icann.org/en/applicants/advisories/change-request-set-05sep14-en>

<sup>250</sup> The Economist Intelligence Unit. (6 August 2014) CPE Panel Process Document. Retrieved from

<http://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>

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was likely that negative feedback would be submitted and Accountability Mechanisms would be invoked. Much of the feedback received about the CPE outcomes was in line with this observation.

The GAC issued advice to ICANN in multiple Communiqués regarding CPE and the various outcomes. In its Communiqués from Beijing, Durban, and Singapore, the GAC referred to “preferential treatment” that should be given applications with “demonstrable community support” or a “collective and clear opinion.”<sup>251,252,253</sup>

In the 14 May 2014 scorecard, the NGPC responded to the GAC that it “[would] continue to protect the public interest and improve outcomes for communities, and to work with the applicants in an open and transparent manner in an effort to assist those communities within the existing framework.”<sup>254</sup> By adhering to the AGB and ensuring each CPE is consistent with the AGB criteria, ICANN has sought to meet the GAC’s advice. Additionally, the subject of community considerations has been identified by the ICANN Board as a topic that may be appropriate for discussion by the GNSO.<sup>255</sup>

## 4.1.5 Conclusion

ICANN and the CPE panel implemented processes and procedures to assure the fair, consistent, and predictable administration of the CPE process. The CPE panel consistently applied the CPE criteria from the AGB to each application it evaluated and provided its rationale for each of its scoring decisions.

The concept of awarding priority to applications based on a set of criteria was new to this round of gTLD applications. Before a next round, the following should be considered:

- Whether to continue the practice of evaluating and awarding priority to community based applications
- Whether the criteria for granting priority should be revised

Staff recommends considering all dimensions of the feedback received to revisit the CPE scoring and framework before the next application round.

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<sup>251</sup> Governmental Advisory Committee. (11 April 2013) GAC Communiqué – Beijing People’s Republic of China. Retrieved from <https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf>

<sup>252</sup> Governmental Advisory Committee. (18 July 2013) GAC Communiqué – Durban, South Africa. Retrieved from <http://durban47.icann.org/meetings/durban2013/presentation-gac-communique-18jul13-en.pdf>

<sup>253</sup> <sup>253</sup> Governmental Advisory Committee. (27 March 2014) GAC Communiqué – Singapore. Retrieved from <http://www.icann.org/en/news/correspondence/gac-to-board-27mar14-en.pdf>

<sup>254</sup> ICANN. (14 May 2014) Annex 1 to Resolution 2014.05.14.NG02. Retrieved from <https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-1-14may14-en.pdf>

<sup>255</sup> ICANN. (17 November 2015) Annex A to Resolutions 1014.11.17.10 – 2014.11.17.12. Retrieved from <https://www.icann.org/en/system/files/files/resolutions-annex-a-17nov14-en.pdf>

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In summary:

**4.1.a** Consider all dimensions of the feedback received to revisit the CPE scoring and framework before the next application round