4.4.5 Community Applications

- *4.4.5.1 Explanation of the Subject*

Applicants when applying could designate their application as community-based, one of only two application types available in the 2012 New gTLD Program round, with the other being standard. In the absence of string contention, claims to support a particular company were simply accepted, as recommended in 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:*
>
> *(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 these exceptions, Staff Evaluators will devise criteria and procedures to investigate the claim.*
>
> *Under exception (ii), an expert panel will apply the process, guidelines, and definitions set forth in IG P.*

However, in the event that there are multiple applicants vying for the same or similar string, the 2007 Final Report provided guidance for resolving that string contention when a community-based applicant was involved, as noted in Implementation Guideline F:

> *If there is contention for strings, applicants may:*
>
> *i) resolve contention between them within a pre-established timeframe*
>
> *ii) 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;*
>
> *iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.*

According to Module 4, String Contention, of the Applicant Guidebook, in 4.2 Community Priority Evaluation, if there is no self-resolution of string contention for community-based applicants of identical or confusingly similar strings, a Community Priority Evaluation may be requested.[1]

The AGB notes the following details

> *Community priority evaluation will only occur if a community-based applicant selects this option. Community priority evaluation can begin once all applications in the contention set have completed all previous stages of the process. The community priority evaluation is an independent analysis. Scores received in the applicant reviews are not carried forward to the community priority evaluation. Each application participating in the community priority evaluation begins with a score of zero.*

According to the AGB, all applicants must identify whether they are submitting a community-based or standard application. The AGB notes the following:

> *At the start of the contention resolution stage, all community-based applicants within remaining contention sets will be notified of the opportunity to opt for a community priority evaluation via submission of a deposit by a specified date. Only those applications for which a deposit has been received by the deadline will be scored in the community priority evaluation. Following the evaluation, the deposit will be refunded to applicants that score 14 or higher. Before the community priority evaluation begins, the applicants who have elected to participate may be asked to provide additional information relevant to the community priority evaluation.[2]*

A community priority panel appointed by ICANN will review community-based applications to determine whether any of them fulfills the community priority criteria. If a single community-based application is found to meet the community priority criteria that applicant will be declared to prevail in the community priority evaluation and may proceed. If more than one community-based application is found to meet the criteria, the remaining contention between them will be resolved as described in the AGB as follows:

> *In the case where the applications are in indirect contention with one another (see subsection 4.1.1), they will both be allowed to proceed to the next stage. In this case, applications that are in direct contention with any of these community-based applications will be eliminated.*

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[1] See Applicant Guidebook Module 4, String Contention Procedures, 4.2 Community Priority Evaluation at
https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf
[2] Ibid

In the case where the applications are in direct contention with one another, these applicants will proceed to an auction. If all parties agree and present a joint request, ICANN may postpone the auction for a three-month period while the parties attempt to reach a settlement before proceeding on to auction. This is a one-time option; ICANN will grant no more than one such request for each set of contending applications.

If none of the community-based applications are found to meet the criteria, then all of the parties in the contention set (both standard and community-based applicants) will proceed to an auction. [3]

The Community Priority Panel will review and score the one or more community-based applications against four criteria:

1. Community Establishment (0-4 points);
2. Nexus between Proposed String and Community (0-4 points);
3. Registration Policies (0-4 points); and
4. Community Endorsement (0-4 points).

An application must score at least 14 points to prevail in community priority evaluation. There was considerable debate about what the proper threshold should be for a prevailing score. The implications of a prevailing score are that the community-based application receives priority over all other applications in the contention set, so care needed to be taken to ensure that the threshold was set adequately high to prevent illegitimate use of the mechanism, while also allowing communities that met the definitions as established in the AGB to have a legitimate opportunity to pass the evaluation.

- *4.4.5.2 Questions and Concerns Related to Subject*

DG members voiced criticism and concerns regarding CPE results, including feedback that there was a lack of transparency, that the Panel misinterpreted the applications, that the Panel improperly applied the CPE criteria in reaching its determinations, and that the scoring threshold as defined in the AGB was too high. Of the 18 CPE results that have been published, 11 have resulted in an ICANN Accountability Mechanism,[4] filed either by the applicant if it did not prevail in CPE, or by the other members of the contention set if the community applicant prevailed.

CPE was the only area of the program that relied on a comparative evaluation that created "winners" and "losers" and as such, the stakes were understood to be high by all parties. While the usage of accountability mechanisms was high relative to the number of CPEs, it should be noted that to date, there is only a single instance where the CPE results and process were not upheld, which seems to indicate that ICANN and its evaluators carried out the process properly.

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[3] Ibid

[4] See: https://www.icann.org/resources/pages/mechanisms-2014-03-20-en

As such, CPE, and perhaps the broader topic of how communities should be considered within the New gTLD Program, may warrant considerable discussion on the definition of community, the concept of priority for community-based applications, the process for awarding such priority, and the criteria for determining if priority is applicable.

GAC Advice was provided to ICANN in multiple Communiqués regarding community-based applications and CPE. 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."[5]

In the 14 May 2014 scorecard[6], the NGPC responded to the GAC that it "will 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." By adhering to the AGB and ensuring each CPE is consistent with the AGB criteria, ICANN has sought to meet the GAC's advice.

- *4.4.5.3 Relevant Guidance*

  o Implementation Guideline F
  o Implementation Guideline H

- *4.5.5.4 Rationale for Policy Development*

  Community Priority Evaluation (CPE) was understood to be a challenging aspect of the program and in taking into account the number of reconsideration requests from both community-based applicants that did not prevail and non community-based applicants that were ousted by a prevailing community-based applicant, those challenges were realized. As suggested above, the topic of a community framework within the New gTLD Program, which could seek to refine the definition of community, the concept of priority for community-based applications, the process for awarding such priority, and the criteria and scoring threshold for determining if priority is applicable could be explored.

  Given the widespread dissatisfaction of the results of CPE, a potential PDP-WG on New gTLD Subsequent Procedures may wish to review whether the implementation meets the GNSO's intended goals. As of the writing of this report, not all possible cases of CPE have concluded; a possible PDP-WG may want to take this into consideration, if the situation persists, before reaching any conclusions.

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[5] See here: https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf; http://durban47.icann.org/meetings/durban2013/presentation-gac-communique-18jul13-en.pdf; http://www.icann.org/en/news/correspondence/gac-to-board-27mar14-en.pdf
[6] Scorecard available here: https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-1-14may14-en.pdf