



Topic Introduction: Community Applications

New gTLD SubPro PDP WG | Sub Team 3 | 7 March 2017

Background: Community Applications

In the 2012 New gTLD Program round, applicants had the option of designating an application as community-based. In the absence of string contention, that claim was taken on trust, as recommended in **Implementation Guideline H**.

Implementation Guideline F notes that in the case of string contention without mutual agreement between applicants, *“a process will be put in place to enable efficient resolution of contention.”*

Per the Applicant Guidebook (Module 4, String Contention Procedures, 4.2 Community Priority Evaluation), if applicants do not resolve string contention among themselves, community-based applicants may request a Community Priority Evaluation. A panel appointed by ICANN reviews community-based applications to determine if any fulfills the community priority criteria.

Background: Community Priority Evaluation

The community priority panel reviews and scores community-based applications against four criteria:

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

An application needs 14 points to prevail in a community priority evaluation. If a single community-based applicant receives 14 or more points, it is given priority over all other applications in the contention set. If multiple applications meet the criteria, the AGB contains a process for resolving the remaining contention.

There was significant discussion about the appropriate threshold for a prevailing score. There debate focused on two concerns:

- allowing applications that met AGB criteria to pass the evaluation
- preventing illegitimate use of the mechanism

Questions and Concerns Related to the Topic

The Discussion Group raised a number of concerns about the Community Priority Evaluation:

- lack of transparency
- the Panel misinterpreted the applications
- the Panel improperly applied the CPE criteria in reaching its determinations
- excessively high scoring threshold, as defined in the AGB

The DG noted the high 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.

Rationale for Policy Development

The Working Group may want to explore the topic of a community framework within the New gTLD Program and seek to refine the:

- definition of community
- concept of priority for community-based applications
- process for awarding such priority
- criteria and scoring threshold for determining if priority is applicable

The WG could also choose to review whether the implementation of the CPE met the GNSO's intended goals, taking into consideration the results of CPE cases from the 2012 round.

Applications to ICANN for Community-based New gTLDs: Opportunities and challenges from a human rights perspective

2016 Report written by Eve Salomon and Kinanya Pijl for the Council of Europe:
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806b5a14>

*This report grounds its examination from a human rights angle, with particular regard to the rights to freedom of expression, freedom of association, non-discrimination and due process. . . Any failure to follow a decision-making process which is fair, reasonable, transparent and proportionate endangers freedom of expression and association, and risks being discriminatory. We have therefore paid particular attention to the key processes affecting community based applications, e.g. the community objection and community priority evaluation (CPE) processes, to assess whether they are fair and reasonable. **We conclude that there are well-founded concerns that weaknesses in those processes may affect the human rights of community applicants.***

Recommendations: Notion of “Community” and the Public Interest

- Define a clear and consistent definition of “community.”
- Re-assess the criteria and guidance as formulated in the AGB and CPE Guidelines in the light of the spirit of the GNSO Policy Recommendations.
- Instruct and train delegated decision-makers, such as the experts and panels deciding on Community Objections and CPE, to interpret the cases before them in light of the purpose for which community-based applications were enacted.
- Provide clarity on the public interest values community TLDs are intended to serve.

Recommendations: Community Priority Evaluation

- Consider reducing the costs for CBAs for future gTLD rounds. . .
- Establish and publish clear time deadlines for the various stages of the application process, accountability mechanisms and any appeal mechanisms for future gTLD rounds in order to further due process, manage expectations and enable a degree of accountability. . .
- Take care to ensure appearances of conflicts of interest are minimized. . .
- Consider whether ICANN should provide dedicated staff assistance to CBAs. . .
- Take greater care to keep CBAs informed about anything which affects the progress of their application. . .
- Have a clear set of definitions and/or guidance that works across different but related ICANN processes to reduce apparent inconsistency. . .
- In any future new gTLD rounds ensure that post hoc guidance is not issued in such a way as to give any impression of unfairness. . .
- Either re-evaluate the scoring system and points to lower the bar or develop a new process altogether for assessing community applicants.
- Full registry conditions, including key elements of the application and any additional Public Interest Commitments, should be published to enable on-going monitoring by stakeholders to ensure compliance by the applicant to the community to which it is accountable.

Chapter 7: Accountability Mechanisms

- Institute a single appeal mechanism which can reconsider the substance of a decision, as well as procedural issues. In order to avoid the appeal mechanism being effectively used as the primary decision making body, it would be reasonable to seek to limit the grounds of appeal, similar to those in legal proceedings. However, this would require greater transparency of the decision making process at first instance (currently at the EIU Panel level). Such an appeal mechanism could effectively replace the other existing ICANN accountability mechanisms.

Chapter 8: Concepts for the Next gTLD Application Rounds

- Consider community applications first. . . If, after evaluation, an applicant is deemed to be “community” (in ICANN terms), then no other applications for the applied-for string should be considered.
- Consider whether the model applied for geo-names TLDs could offer possibilities for CBAs. . . further thought could be given to the possibility of establishing prior consultation obligations with entities and organisations already accredited as representatives of certain communities. . .
- Have applications in staggered batches. ICANN could invite “expressions of interest” in applying, asking potential applicants to submit an interest in a string of their choice. ICANN could then advertise the strings in batches, requiring all competing applications to be submitted simultaneously. At the same time, they could ask for any community objections. . .
- Beauty parade for all applications. . . all applications from self-declared CBAs should be looked at together to determine which one best meets the selection criteria.
- Have a different community track. Most countries around the world have systems in place for the licensing and regulation of community media. Useful precedents can be borrowed from these existing regimes. . .