

CC2 Themes – Work Track 3

Community Applications and CPE

3.3.1 - As indicated in the Implementation Guidance of the 2007 Final Report, the claim by an applicant to support a community was intended to be taken on trust unless the applied-for TLD is in contention with one or more TLDs or is the respondent in an objection. As a result, the claim to support a community was only evaluated in Community Priority Evaluation (CPE) and Community Objections. Do you believe that the implementation and delivery of CPE were consistent with the policy recommendations and implementation guidance provided by the GNSO? If no, do you have suggested improvements to either the policy/implementation guidance or implementation?

Excerpts:

[ALAC supported adopting preferential pricing and considering Community applications for preferential pricing.](#)

“No change is required IF the only benefit of being a Community TLD is in relation to objections and priority. However, the **ALAC supports other advantages such as preferential pricing (both at the application and operational levels) and if that is adopted, all Community applications should be examined.**” – ALAC

[RySG and Aflias suggested a Community priority approach that is not “all or nothing.”](#)

Excerpt:

“. . . In its current formulation, CPE was difficult to achieve, with a low rate of success amongst applicants. Despite this fact, **some CPE applications seemed to represent an attempt to game the system** to gain an advantage over other applicants rather than representing bona fide communities. . . **a community priority approach that is not “all or nothing” may help address this set of concerns**, and may also make it possible for CPE to be more relevant in scenarios where contentions do not exist. Despite these concerns, **we do believe that the general mechanism of providing priority in contention sets (and therefore, not evaluating an applications community status unless contention exists) is consistent with current GNSO policy and implementation guidance.**” – RySG, Aflias

[NCSG recommended improving transparency.](#)

“Also, both the Community **Community Priority Evaluation process and the Panel should be more transparent** as there are often doubts regarding the Panel's decision making process and the dissatisfaction with the results by the community based applicants or the ousted ones.” -- NCSG

[Jannik Skou suggested eliminating the community application type.](#)

“These considerations support the suggestion to **delete the community type application** altogether.” – Jannik Skou

3.3.2 There is a general sentiment amongst many in the community that the CPE process did not provide consistency and predictability in the 2012 round. Do you believe this was the case and if so, do you have examples or evidence of these issues?

[dotgay LLC, Aflias, RySG, and ALAC provided examples of issues with consistency and predictability.](#)

Excerpts:

“Consistency: Examples that dotgay would like to share which clearly illustrate **inconsistencies in CPE** are contained in the **Expert Opinion submitted to ICANN by Yale Law Professor William Eskridge**. . . I specifically draw your attention to Section IV, A & B of the report (pages 10-25) however the entire document has great value in highlighting issues with the 2012 version of CPE. [staff note: see Expert Opinion at <https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-13sep16-en.pdf>]

Predictability: Issues with predictability in CPE were also plentiful from the very beginning; ranging from the **CPE evaluation procedures** (EIU created their own CPE guidelines after applications were submitted), **timeline** (2-3 months for CPE turned into over 8 or more for some) and **cost** (\$10,000 fee was inflated to well over \$20,000). . .” – dotgay LLC

“Yes, we agree the CPE process **lacked consistency and predictability**. Some of the issues were a result of the **evaluation inconsistencies**, e.g., the strict or light adherence to the scoring; others because of the applications themselves and **attempts to ‘game’ the process** by applying as a community when there was no demonstrably clear community.” – Aflias

“We agree that in some case, individual **CPE decisions seemed to result in different scoring for apparently quite similar sets of facts**. In addition, there was a **lack of transparency in how CPE was evaluated**. In many cases, **materials evaluated were not available to the public or even to other applicants**, or what factors or materials panels considered. It was also **not clear what the roles for ICANN and EIU were**. . .” – RySG

“Yes, that was the case. In the view of the ALAC, **.kids and .gay are two such examples.**” -- ALAC

[dotgay LLC, Aflias, and RySG provided suggestions for improving consistency and predictability.](#)

“. . . leaving so many **elements of CPE to be developed while the new gTLD program was already in motion was a huge mistake** and should never be repeated. . . If cost estimates are published in advance then **ICANN should also be willing to assume some reasoned burden of those costs should they inflate beyond a reasonable amount** before undertaking. . .” -- dotgay LLC

“The process must provide more **clarity on the scoring criteria, stronger definition of the standard by which a community is defined, and more uniform application** of this by all review panelists for all applications.” – Afilias

“. . . We therefore make the following recommendations to improve the process:

- **Improved training for panelists.** Objection process, legal rights process generally better. Look to those models for better training.
- **Similar review/appeals process for CPE decisions** as we’re proposing for objections.
- **Better documentation of roles and factors** in the CPE evaluation process. Materials evaluated as part of the CPE process should be made public.
- There should be a **formal process by which other applicants have an opportunity to comment** on a CPE application and its supporting materials.” -- RySG

3.3.3 - CPE was the one instance in the New gTLD Program where there was an element of a comparative evaluation and as such, there were inherently winners and losers created. Do you believe there is a need for community priority, or a similar mechanism, in subsequent procedures? Do you believe that it can be designed in such a fashion as to produce results that are predictable, consistent, and acceptable to all parties to CPE? The GNSO policy recommendations left the issue of a method for resolving contention for community claimed names to Board and the implementation. Do you believe that a priority evaluation is the right way to handle name contention with community applicants? Should different options be explored? If so which options should be explored and why?

[ALAC responded that CPE is still reasonable if properly implemented.](#)

“CPE is still **reasonable if properly implemented** and the criteria is not set purely to limit gaming.” -- ALAC

[dotgay LLC suggested including review and evaluation of Public Interest Commitments in the CPE or another phase of the Program, and if deemed important for the community, then they should be a required for any operator of the gTLD.](#)

Excerpt:

“We believe there is a need for community priority in subsequent rounds and it must be designed in such a fashion as to be **more accessible to communities and produce results that are predictable, consistent, and acceptable** to all parties to CPE. . . Suggestion: Whether a mechanism is put in place during CPE (or another phase of the program) **public interest commitments (or perhaps better designated as “community interest commitments”)** should at some point receive review and evaluation. If those interests are deemed to be important or necessary for the community, then it should be a **required standard of any operator** of the gTLD – similar to how GAC advice rolled out on regulated industries. This would occur regardless of whether the community application prevailed. Perhaps there should also exist a **responsibility of gTLD operators to uphold certain interests of the community to ensure harm or detriment through the operation of the gTLD is avoided**, especially when the community has engaged in the process and expressed

interest in being heard. . .” – dotgay LLC (staff note: please see full comment for detailed discussion of the example of dotgay)

[vTLD Consortium, NABP recommended providing clarity on the public interest values Community TLDs are intended to serve.](#)

Excerpt:

“ . . . **priority evaluations are appropriate to address name contention with community applicants.** . . . the Consortium supports the Council of Europe report recommendation to ICANN to “Provide **clarity on the public interest values community TLDs are intended to serve.** . . . These public interest values should include: the protection of vulnerable groups or minorities; pluralism, diversity and inclusion; and consumer or internet user protection.”” – vTLD Consortium, NABP

[Afilias and RySG provided suggestions to reduce the possibility of gaming.](#)

“A possible way to address this is by **solving for the case of how an application ‘games’ the system by applying as a Community.** Specifically, ICANN should evaluate the process through this lense and **note the areas where an applicant gets an advantage** and then think through **if the other applicants** - including those not applying for a contention set as a community - **were inherently disadvantaged.** Another element to consider in this evaluation is who **to provide other applicants in the contention set the chance to be considered a “community”** and not automatically deemed not a community. This iterative process will help ICANN explore mechanisms that do not quickly create winners or losers via a community designation.” – Afilias

“The RySG supports the inclusion of bona fide communities in future expansions of the gTLD space. CPE was difficult to achieve, with a low rate of success amongst applicants. Despite this fact, **some CPE applications seemed to represent an attempt to game the system** to gain an advantage over other applicants rather than representing bona fide communities. CPE should not be decided on an “all or nothing” basis; instead **should be based on a sliding scale.** For example **ICANN might provide a multiplier in auction process for “grey area” applications. Applications that clearly cross the threshold still automatically prevail in the contention set.** If this approach is adopted, **all applications in the contention set should be considered to determine whether they also partially meet the criteria for community status.**” – RySG

[Jim Prendergast responded that it is premature to make recommendations on this topic until the investigation undertaken by the ICANN CEO is complete.](#)

“The CPE process was shown by an IRP proceeding to have been compromised. It is **premature to make any assertions as to what changes need to be made prior to the completion of the investigation being undertaken by the ICANN CEO** into this matter. Once the full spectrum of issues related to CPE deficiencies are known, then it would be appropriate to answer this question.” – Jim Prendergast

3.3.4 - Were the rights of communities (e.g., freedom of expression, freedom of association, freedom of religion, and principle of non-discrimination) infringed by the New gTLD Program? Please provide specific examples.

[RySG, BRG, and Afilias replied that they do not believe that the rights of communities were infringed.](#)

Sample excerpt:

“No, we do not believe that the rights of communities, including with respect to freedom of expression, freedom of association, freedom of religion, and principles of non-discrimination were infringed by the new gTLD program.” -- RySG

3.3.5 - Besides CPE, are there other aspects of the New gTLD Program related to communities that should be considered in a more holistic fashion? For instance, in the 2012 round, the claim to support a community is largely only relevant when resolving string contention. Do you think community applications should be structured and/or evaluated differently than other applications?

[vTLD Consortium and NABP supported community applicants having registration policies requiring verification that registrants are members of the community.](#)

Excerpt:

“The Consortium believes that community applications should be evaluated somewhat differently than other applications. **Demonstrating that registrants are bona fide members of the community which the operator claims to support through registration policies requiring verification** would increase trust in that space.” – vTLD Consortium, NABP

[RySG and Afilias addressed potential implications of the model for subsequent procedures, for example continuous application periods or a system that did not involve rounds.](#)

Excerpt:

More generally, if ICANN were to adopt an approach to **allocating new gTLDs that did not involve rounds** and eliminated the possibility of contentions, it may be worth considering whether any **incentives could be created for applications representing bona fide communities.**” – RySG

“This issue is **largely obviated by continuous application periods** and modification of CPE to not immediately create winners and losers.” – Afilias

3.3 General Comments

[GAC and GAC UK provided additional comments on the topic of Communities and CPE in general.](#)

“Previous GAC advice on these issues should be considered, as follows:

- Where a community which is impacted by a new gTLD application has expressed a collective and clear opinion, that opinion should be duly taken into account as part of the application. (Beijing Communiqué 2013)
- Take better account of community views, regardless of whether those communities have utilised the ICANN formal community process or not. (Durban Communiqué 2013)
- Examine the feasibility of implementing an appeal mechanism to the current round of gTLDs for Communities to pursue where an applicant has contested the decision of a community priority evaluation panel, resulting in rejection of the communities case. (Los Angeles Communiqué 2014)

The GAC has recently referred to the PDP Working Group for consideration the recommendations of a report on community applications commissioned by the Council of Europe.” -- GAC

“The **poor performance and management of the CPE process** and related mechanisms was a major failure in the current round. The independent experts commissioned by the **Council of Europe analysed** the issues and experience of applicants and has made a coherent and thorough set of recommendations in their report presented at the Hyderabad ICANN meeting, in order to correct the systemic mistakes so that communities wishing to express themselves and assemble freely through a gTLD will be able in a future process to apply with confidence and in the knowledge that they are supported by the ICANN stakeholder community.” – GAC UK