



October 23, 2013

Internet Corporation for Assigned Names and Numbers

Via e-mail: [newgtld@icann.org](mailto:newgtld@icann.org)

Dear ICANN:

Attached here is Donuts' comments regarding Community Priority Evaluation for the .TAXI string.

Thank you for your review of our input, and for forwarding this document to the evaluation panel.

Sincerely,

Donuts Inc.

## TaxiPay Application for .TAXI: Comment to Community Priority Evaluation

|  |    |
|--|----|
| INTRODUCTION .....   | 3  |
| ANALYSIS .....   | 4  |
| CRITERION 1: The TaxiPay application does not "establish" a "community" under either the "delineation" or "extension" tests, thus yielding well less than the maximum of four points. ...  | 4  |
| The application exhibits no clear "delineation" of any "community." .....  | 5  |
| The TaxiPay application cannot receive two points for community delineation. Even if the evaluation panel finds some loosely delineated TAXI community, it could not award more than a single point.....   | 7  |
| CRITERION 2: The TaxiPay application does not establish a sufficient "nexus" to any "community" described by the word "TAXI," and the word certainly does not "uniquely" describe any such community.....  | 8  |
| The <.TAXI> string does not "match" or even "identify" a "community." .....  | 8  |
| "TAXI" does not "uniquely" identify the claimed "community." .....   | 10 |
| CRITERION 3: The application can receive few, if any, points for registration policies: it imposes vague restrictions on eligibility, and none on content and use; its enforcement plan lacks rigor; and it employs essentially no name selection restrictions. .... | 11 |
| TaxiPay does not establish eligibility criteria consistent with its community application. ...   | 12 |
| TaxiPay does not establish name selection restrictions consistent with its community application.....  | 13 |
| TaxiPay content and use policies. ....   | 14 |
| Applicant's enforcement procedures fall short.....   | 14 |
| CRITERION 4: The TaxiPay application does not have support from a majority of the newly formed "community," nor does it show how even that limited support was developed.....  | 15 |

## INTRODUCTION

The Community Priority Evaluation ("CPE") is a serious undertaking. While it protects communities and their names, a "successful" CPE also disqualifies applicants that otherwise have met the rigorous criteria to obtain a top-level domain:

[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.

Applicant Guidebook ("Guidebook" or "AGB") § 4.2.3 at 4-9. Accordingly, ICANN created scoring to "identify qualified community-based applications," while preventing "false positives" -- *i.e.*, "awarding undue priority to an application that refers to a 'community' construed merely to get a sought-after generic word as a gTLD string." *Id.*

To obtain community priority, an application must score 14 out of 16 possible points. *Id.* at 4-10. "In cases of generic words submitted as community based strings, test runs by [ICANN] staff show that the threshold is difficult to attain ...." See <http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf>.

The objective analysis in this paper demonstrates that the TaxiPay application for .TAXI does not meet the criteria to garner nearly the 14 points necessary to "win" the CPE and disqualify the other applicants. The application suffers from two (among other) fatal flaws regarding the community criteria.

First, the applicant has attempted to manufacture a community around many disparate functions involved in some (even remote) way with taxi services. The community as TaxiPay defines it includes software developers, event organizers, public service institutions such as hospitals, governments and regulators, and individuals.

Second, TaxiPay has selected a generic term that should represent the global taxi industry, but has shown support only from a small number of entities in the German region. It could have chosen a unique string such as .FunkTaxiBerlin, the German organization that supports its community application. Instead, it applied for the easier to find, more globally used and generic term .TAXI – a good business decision, perhaps, but one that sacrifices the delineation, nexus and uniqueness elements necessary to qualify as a community TLD.

The applicant undertakes the CPE essentially as a low cost, high reward gamble. It tries inappropriately to use the CPE to circumvent the appropriate contention set resolution process defined by ICANN.

This does not diminish the subject application. Indeed, it appears capably executed. It simply does not meet the community criteria. As defined by the applicant, the gTLD

name .TAXI does not clearly identify a single community with defined boundaries, nor does a cohesive “taxi” community exist. It lacks the measurable size, boundaries and longevity needed to satisfy the Guidebook standards.

## ANALYSIS

The Guidebook allows the CPE panel to award up to four points in each of four categories (maximum points in parentheses):

- "Community establishment," which involves "delineation" (2) and "extension" (2), AGB at 4-10 *et seq.*;
- "Nexus," meaning both “nexus” (3) and "uniqueness" (1), *id.* at 4-12 *et seq.*;
- "Registration policies," consisting of "eligibility" (1), "name selection" (1), "content and use" (1) and "enforcement" (1), *id.* at 4-14 *et seq.*; and
- "Community endorsement," which considers "support" (2) and "opposition" (2), *id.* at 4-18 *et seq.*

Applying the standards established by ICANN for these criteria, and giving TaxiPay the benefit of all doubts on each, its application cannot reach four points on any of them. A fairer reading finds the application well short on each, making a total of 7 its highest reasonably achievable score based on the analysis of each factor below.

### **CRITERION 1: The TaxiPay application does not "establish" a "community" under either the "delineation" or "extension" tests, thus yielding well less than the maximum of four points.**

A "community" as described in the Guidebook "impl[ies] more cohesion than a mere commonality of interest." AGB at 4-11. As such, the Guidebook calls for examining the claimed community in terms of its "delineation" and "extension." These concepts focus on (a) recognition of the alleged community by its members, (b) existence of the named community prior to September 2007, the commencement of the new gTLD program, and (c) the community's "tenure" into the future. *Id.*

The “community” identified by TaxiPay in its application for .TAXI consists of a broad, undefined and unbounded collection of organizations—not just licensed cab companies and drivers, but all organizations that conceivably surround them, even including certain organizations that utilize taxi services, such as the Oscars. This imprecisely articulated "community" has no clear boundaries or global or regional organization. Consequently, the application does not provide any specificity regarding size and longevity of any "community" known by a "TAXI" label.

Nor does the alleged community “pre-exist” the new gTLD program in any such form. It seems invented by TaxiPay to gain a preference over other applicants. Such shortcomings limit the application to no more than 2 of the 4 possible points under this “community establishment” criterion.

**The application exhibits no clear "delineation" of any "community."**

The "delineation" test, AGB at 4-11, considers three factors:

- "Delineation" of the membership of a community – "a clear and straightforward membership definition scores high, while an unclear, dispersed or unbound definition scores low." Guidelines include the following (*id.* § 3.5.2):
  - The level of public recognition of the group as a community at a local and/or global level; and
  - The level of formal boundaries around the community and what persons or entities are considered to form the community.
- Whether the alleged community "pre-exists" the new gTLD program -- i.e., existed as a community before 2007; and
- The level of "organization" of the community, meaning that at least one entity dedicates itself mainly to the community, with documented evidence of community activities.

An application that satisfactorily demonstrates all three relevant parameters (delineation, pre-existing and organized) can score a 2. *Id.* at 4-12. The TaxiPay application does not do so, and therefore cannot receive 2 "delineation" points.

The TaxiPay application does not convey the required sense of community, unity of purpose or cohesion. Instead, it artificially combines many disparate businesses that serve the taxi industry in some way, even as customers of taxis, such as hospitals or event organizers. TaxiPay relies upon generic, hard-to-define labels such as the "taxi community" in its application, while then pointing out that:

The community [includes] four main community groups: Firstly, the core taxi industry with taxi drivers, taxi offices, and individual taxi entrepreneurs, all of which can be clearly identified based ... licenses, ... Secondly, the immediate surrounding industry[ies], such as hardware and software suppliers, recruiting and training companies, auto shops, automotive suppliers, insurances and pertinent press all with a very strong if not exclusive focus on the ... core taxi industry... identified through trade register excerpts. Thirdly, superordinate organizations, such as governmental organizations, public authorities and institutions and committees with the purpose of establishing relevant policies for the core taxi industry, as well as non-governmental organizations with the purpose of advocating taxi-related issues towards the public sector, the general

## TaxiPay Application for .TAXI: Comment to Community Priority Evaluation

public and relevant taxi industry representatives on a municipal, regional, national and international level. This group verifies its affiliation to the taxi community through a written, official and verified statement ... or a certificate of a verified register of associations. Fourthly, the taxi community includes affiliated businesses ... with a special interest in the products and services of the core taxi industry, such as major places of public interest (i.e. hospitals) or major events of public interest (i.e. Oscar Academy Awards)... ” (Applic. §§ 20a,c.)

While many of these organizations *might* combine when required to serve a common interest, the CPE requires more than just this.

As stated, “community” implies “more of cohesion” than a “mere commonality of interest.” The dictionary defines “cohesion” as “the act or state of cohering; tendency to unite, ‘to stick together.’” AGB at 4-11.

The TaxiPay application does not assert or demonstrate any “cohesion” among those who may use taxis from time to time but engage in many different professions in which they may or may not directly or indirectly deal with one another. Those engaged in these professions might have common interests in “taxi” services, but they do not “tend to stick together.” By its own words, the application indicates the absence of any trappings of organization. Taxi drivers, developers of taxi-related software, government organizations, or individuals and public sites such as hospitals rarely combine in any way and on the occasions they might, they would be brought together by their mere commonality of interest — and that interest surely is not the taxi industry itself.

Further, the CPE Guidelines (ver 2.0) ask: “Is there at least one entity mainly dedicated to the community?” The applicant answers:

Although the global taxi community fulfills all given criteria that define a community, a single and overarching constituent part does not yet exist.

Though widespread, the taxi industry also proves to be one of the most fragmented industries in the world. Applic. § 20(b).

Thus, the applicant admits that no organization exists dedicated to the community as applicant has defined it. The applicant, in fact, seeks to build relationships where none have existed before.

The Guidebook, moreover, describes “delineation” in terms of the “level of *formal boundaries* around the community and what persons or entities are considered to form the community.” *Id.* § 3.5.2 (emphasis added). As additionally stated in the CPE criteria, “a clear and straightforward membership definition scores high, while an unclear, dispersed or unbound definition scores low.” *Id.* at 4-11. Notwithstanding these plain standards, the application states that “community” membership can come from within one of many disparate organizations that are not formally organized.

## TaxiPay Application for .TAXI: Comment to Community Priority Evaluation

Again, these points do not derogate from the application generally. Rather, as applied here, the existence of many taxi related businesses, the benefits they bring, and the disparate associations identified in the TaxiPay definition of the taxi community, simply does not permit conferring *community* priority upon applicant and awarding it a gTLD to the exclusion of other qualified, worthy applicants. Neither the cohesive connection nor the defined boundaries exist to justify such a result.

**The TaxiPay application cannot receive two points for community delineation. Even if the evaluation panel finds some loosely delineated TAXI community, it could not award more than a single point.**

Applicant does not show the "extent" of the claimed "community."

To receive one or two points for "extension," an application must demonstrate a "community of considerable size and longevity." "Extension" relates to the dimensions of the community, regarding its number of members, geographical reach, and foreseeable activity lifetime, as further explained below. If an application satisfactorily demonstrates both community size and longevity, it scores two "extension" points. On this subject, ICANN requests the following:

- When was the community established, including the date(s) of formal organization, if any, as well as a description of community activities to date?
- The current estimated size of the community, both as to membership and geographic extent

Applic. § 20(a). TaxiPay answers:

The taxi community has its roots in the 17th century, where sedan chairs were first used to publicly transport persons of interest from point A to point B in Paris, France (1617) and Berlin, Germany (1668). Even at the beginning of the personal transport business, the price was dependent on the time it took to transport a person to the desired place of interest.

*Id.* The applicant thus admits lack of an identifiable "community" formation date. The application seems to revolve around the sole organizing principle of an association that bases fees on the time it takes to transport passengers.

The TaxiPay application makes it clear that many organizations support the taxi industry, but admits that no organization exists to represent or serve the entire "community" as TaxiPay defines it. TaxiPay instead intends to form a new community as to which "a single and overarching constituent part does not yet exist." Applic. § 20(b).

The Guidebook criteria clearly require a formation date of some type. TaxiPay answers in two ways: (1) the taxi community has existed since the 17<sup>th</sup> century; and (2) TaxiPay

## TaxiPay Application for .TAXI: Comment to Community Priority Evaluation

has as its “mission” to unite the disparate entities in the taxi industry. Neither of the two answers satisfies the criteria or entitles applicant to points.

One cannot merely state, in answer to “how old and how big,” that the entity is as old as fare collection for rides based on time to travel. If a community exists, it has, by the requirements stated in the criteria, a specific beginning. The applicant skirts its responsibility because no specific “taxi” community exists as defined by the applicant. The proposed group collects disparate persons, skills and businesses, but does not amount to a single community with clearly describable boundaries.

Neither does the applicant make any attempt to estimate the size of the proposed community. The standard for “extension” requires that the applicant describe the community size and age, which the applicant itself has shown to be impossible. The “community” it describes has too much breadth to be deemed a single community.

Of course, it makes reasonable business sense for TaxiPay to define the community in this way. A broad definition may attract more registrants and provide for a more robust TLD. However, the applicant cannot have it both ways. If TaxiPay wants to gain a preference over all other qualified applicants, it must narrowly construe a well-defined community of certain size and origination date.

The application does not do this, and certainly not with the precision required for an award of two points. If the CPE panel sees any points at all available, it cannot award more than one. Combined with its reduced (if any) "delineation" points, TaxiPay conceivably could receive a total of no more than two of the four available "community establishment" points.

### **CRITERION 2: The TaxiPay application does not establish a sufficient "nexus" to any "community" described by the word "TAXI," and the word certainly does not "uniquely" describe any such community.**

Criterion 2 requires a "nexus" between the asserted community and the applied-for string. AGB at 4-12. The test consists of a "nexus" factor of up to three points, and a "uniqueness" score of zero to one.

The application does not show that the claimed community, if it exists, goes by the specific name "TAXI" in the same sense that, for example, the "Navajo" and "Boy Scout" communities go by those precise names. The "TAXI" label has many uses made by diverse groups such that it cannot attach uniquely to an identifiable community designated by that term. As such, the application can achieve no more than two of a possible four "nexus" points.

**The .TAXI string does not "match" or even "identify" a "community."**

The Guidebook scores "nexus" as follows:



## TaxiPay Application for .TAXI: Comment to Community Priority Evaluation

- For a score of 3: The string matches the name of the community or is a well-known short-form or abbreviation of the community name;
- For a score of 2: String identifies the community, but does not qualify for a score of 3; and
- For a score of 0: String nexus does not fulfill the requirements for a score of 2.

AGB § 4.2.3. For a score of 2, the applied-for string should "closely describe the community or the community members, without over-reaching substantially beyond the community." *Id.* at 4-13. "If the string appears *excessively broad* (such as, for example, a globally well-known but local tennis club applying for ".TENNIS") then it would **not** qualify for a 2." *Id.* (emphases added).

TaxiPay describes its "community" as "comprised of entities who participate in different types of activities that directly and indirectly support the taxi industry." *Applic.* § 20. The application defines the relationship between the <.TAXI> string and the community identified by applicant as "based on the largest common name denominator between all members of the taxi community, as well as its direct beneficiaries." This includes "entrepreneurs and companies of the core taxi industry, members of the immediate surrounding industry (i.e. suppliers), superordinate organizations and affiliated businesses, as well as its beneficiaries, namely current and potential taxi customers, have in common." *Applic.* § 20(d).

While one might reasonably find some degree of nexus between the label "taxi" and the "core taxi industry," such a relationship does exist between the label "taxi" and the "community" as *applicant* has so broadly *defined* it. As cited above, this newly created community includes: "superordinate organizations and affiliated businesses, as well as its beneficiaries, namely current and potential taxi customers, i.e., software providers, event organisers, public service organisations, governments and regulators, and even customers." *Id.* Simple analysis demonstrates that zero nexus points should issue in this instance. The applicant has cast such a wide net in forming its "community" that no single, existing label can readily apply. As formed, the community includes the many different industries that interact with taxi service providers but could not be considered part of their cohesive community.

What label can we append to such an amalgam of individuals and organizations? One cannot reasonably believe that software application writers or event organizers such as the people who produce the Academy Awards consider themselves part of a taxi "community." The applicant has created a community without borders or a recognizable name. No nexus because no label accurately describes this new community. The term "taxi" certainly does not.

In order to achieve a score of three, a "match" must exist between the community and the label. In this case, the applicant, seeking a score of three, might have narrowed its

community definition and selected a name such as .FunkTaxiBerlin, a local community organization with its own website. See <http://www.funk-taxi-berlin.de/>.

One can understand why the applicant selected a broader term: it is commercially advantageous to select the more recognizable term. In order to gain this advantage however, the applicant foregoes the right to claim strong nexus between the community and the label. As a result, the name "TAXI" does not qualify for a score of 3. To do so, the applied-for name must be the name of the community. One can belong to the boy-scouts-of-america or to the uk-philately-society. But one cannot join the "taxi community" because it does not exist. The Guidebook held out the score of 3 to those special cases only where a group decided to apply for exactly its name.

Nor does the application meet the test for a score of 2. In order to qualify for a 2, the applied-for string should closely describe the community or its members, "without over-reaching substantially beyond the community." AGB at 4-13. The Guidebook cites the example of the globally known but local tennis club applying for the globally oriented word "tennis," and states that, in such a case, the local tennis club cannot qualify for two points.

The same result should follow in this situation. Beyond cavil, the application does not meet the test for three points. While we believe based on ICANN's local tennis club example that the application similarly does not merit even a "2," the panel certainly could not award any greater number of points than that at its most generous.

**"TAXI" does not "uniquely" identify the claimed "community."**

An applicant can earn a uniqueness score of 1 if the applied-for string has no other significant meaning beyond identifying the community described in the application; a score of zero does not fulfill this requirement. AGB § 4.2.3.

To be an unambiguous identifier, the "ideal" string would have no other associations than to the community in question. This arguably can be achieved by using the community institution abbreviation as string, but there are other possibilities—for example, by putting a prefix or suffix on a generic string to make it distinctly and uniquely associated with the relevant community (again for example, prefixing "boy" to "scouts" for the community of boy scout organizations, or suffixing "growers" to "apple" for the associations of apple growers).

See <http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf>, p.103. This puts the necessary balancing in the hands of applicants. Does an applicant select a popular, well-recognized term that does not uniquely identify a community, such as .SCOUTS or .SCOUTING? Or does the applicant select its own unique name, such as .BOYSCOUTSOFAMERICA? Or, more apt here, .TAXI or .FunkTaxiBerlin?

“Uniqueness’ relates to the meaning of the string.” See <http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv3-15feb10-en.pdf>, p.65. Therefore, the analysis must focus on the meaning (more accurately, meanings) of the word “TAXI.” Is it the unique name of the community created by the applicant? In the case of this application, TaxiPay points out that “the term “taxi” has long been established,” and is utilized, in different forms in many countries, and thus fails the “uniqueness” standard.

In addition In addition, the Guidebook states that the phrase "beyond identifying the community" implies a that the string must identify a community – *i.e.*, score 2 or 3 for "nexus" – in order to score 1 for "uniqueness." AGB at 4-14. Because it fails to show "nexus," TaxiPay cannot score a point for uniqueness.

Evidence of common use of the term "TAXI" may make the term an excellent choice for a top-level domain. However, its ubiquity betrays the applicant’s claim to a label uniquely matched to its community. TaxiPay had to choose between a well-known, broadly used term and a string unique to a specific segment of a broad industry, and chose the latter. While this may have been a wise business decision, it sacrificed TaxiPay’s ability to achieve points in nexus and uniqueness necessary to carry the day as a community applicant. Of the four total points available for "nexus," the subject application can earn no more than two.

**CRITERION 3: The application can receive few, if any, points for registration policies: it imposes vague restrictions on eligibility, and none on content and use; its enforcement plan lacks rigor; and it employs essentially no name selection restrictions.**

“Registration policies” represent the conditions that the registry will set for prospective registrants – *i.e.*, those desiring to register second-level domains. A community application will receive one point for each of the four following policies:

- Eligibility restricted to community members (a largely unrestricted approach to eligibility receiving zero points);
- Name selection rules consistent with the articulated community based purpose of the applied for gTLD;
- Rules for content and use consistent with the articulated community based purpose of the applied for gTLD; and
- Specific enforcement mechanisms.

Guidebook § 4.2.3.

The panel should score applications from a holistic perspective, applying these categories to the particularities of the community explicitly addressed. The restrictions

and corresponding enforcement mechanisms proposed by the applicant should show an alignment with the community-based purpose of the TLD and demonstrate continuing accountability to the community named in the application. *Id.*

Due to its sweeping definition of a "TAXI" community, the application's broad eligibility requirements do not meet the specific Guidebook criteria. It does not prescribe name selection rules beyond those associated with premium names. It prescribes essentially no content and use restrictions. The application states that TaxiPay will employ post-delegation sampling techniques to detect non-compliance and undertake enforcement actions. It provides no other detail, including staffing, budget, detection, enforcement escalation steps, policies, or procedures. These shortcomings eliminate most "registration" points, but even liberal interpretation could yield no higher than three, and more likely two or less.

**TaxiPay does not establish eligibility criteria consistent with its community application.**

An applicant must undertake a strict registration policy to score an eligibility point. In a policy advisory, ICANN noted:

Registration policy is a criterion where a balance is needed between what is reasonably the most appropriate registration policy for a community and the risk for gaming of the process by an "open" application declaring itself as "community-based" to get an advantage in a contention situation. The approach taken is conservative in this respect, with the high score reserved for a registration policy only permitting members of the community to register.

<http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf>, p.103.

The applicant does describe candidate eligibility restrictions, but very broadly and not meeting the strict policy described in the Guidebook. The application suggests that TaxiPay can verify participants in its "community." Yet, its overbroad classification includes the many diverse participants identified above, from "individual taxi entrepreneurs" to "immediate surrounding industries" to "the general public" and those with a special interest in the products and services of the core taxi industry, such as "major events of public interest (i.e. Oscar Academy Awards)." Applic. § 20(a).

These extremely wide and vague boundaries make the creation and monitoring of eligibility requirements difficult or ineffective. While not "open" eligibility, the application approaches it closely enough to seem as though the applicant is "gaming" the CPE procedure in the way that ICANN feared from its comment above.

Are such loose eligibility restrictions appropriate for a .TAXI TLD? While a would-be applicant may propose to open its TLD to all who respect its mission, that same

openness disqualifies it from earning *community* points. Instead of narrowly describing eligibility criteria to qualify as a community TLD within the meaning of the Guidebook, Applicant has reasonably opted for a more open, commercially oriented TLD.

**TaxiPay does not establish name selection restrictions consistent with its community application.**

Name selection restrictions serve to protect the identified community if the rules stay faithful to the articulated community-based purpose of the applied for gTLD. In this case, TaxiPay will comply with the restrictions on registration of character strings set forth at Specification 5 of the Registry Operator Agreement, but little else. As the sole exceptions, “the registrant agrees that name of the chosen second level domain has to contain major parts, if not the full name of the registrant’s company/ organization/ affiliate business,” and “the name demonstrates a clear connection to the name or occupation of the registrant.”

In some cases, such minor restrictions can indirectly result in second-level names that reflect the interests of the core taxi industry. However, the loose criteria written by TaxiPay do not require relating a second-level name to the word “taxi” or even the core “taxi” industry. This absence of eligibility restrictions, coupled with the broad community eligibility, effectively means no restrictions on names, potentially resulting in such tenuous “community” connections as, for example, generalhospital.taxi, oscars.taxi, paysoftware.taxi, fedgovt.taxi, joesgarage.taxi.

All other restrictions described by the applicant seek to prevent bad behavior, as every other new gTLD must do, but have no relation “to name selection rules consistent with the articulated community based purpose of the applied for gTLD.” Guidebook § 4.2.3. To make the point, the complete list of name restrictions follows:

SECOND LEVEL STRING SELECTION The applicants will have to obligate themselves to strictly follow a Code of Conduct (CoC). The CoC will consist of a generic and a taxi-specific part. The generic part covers topics as following

- Second level domain name registration must not infringe upon the rights of others - Second level domain name registration must not violate trademark (or any other) rights of others
- Second level domain name registration must not, in any case, violate national and international laws
- Neither second level domain name nor content published under it can contain explicit or implicit pornography, violence glorification, political or religious extremism (including but not necessarily limited to fascism, Islamism, etc.)
- The registrant has a legitimate interest in the domain name
- The registrant does not act in bad faith
- The registrant and all respective activities must abide national and international laws
- The registrant agrees that in dispute cases, the verdict of a third party dispute resolution provider (such as a community audit, and according to ICANN’s dispute

## TaxiPay Application for .TAXI: Comment to Community Priority Evaluation

- resolution processes) is binding
- The registrant agrees that name of the chosen second level domain has to contain major parts, if not the full name of the registrant’s company/ organization/ affiliate business

In addition, a particular domain name can only be registered if:

- The name has not been registered yet
- The name is not reserved or blocked
- The name fulfills the technical and lexical requirements
- The name demonstrates a clear connection to the name or occupation of the registrant

Absent some on-going type of name restrictions, this application cannot be awarded a point on for name selection.

### **TaxiPay content and use policies.**

These appear to align with the intended purpose of the TLD. They seem unworkable given the absence of clear eligibility criteria and name restrictions. Standing alone, however, the application merits a point in this area.

The listing of use restrictions related to the purpose of the TLD does not, however, cure deficiencies in other areas. ICANN separated the criteria with a scoring mechanism developed through bottom-up policy discussion to ensure awarding of preferences – and exclusion of other meritorious applicants – only when an application meets the requirements enough to earn 14 out of 16 possible points.

### **Applicant’s enforcement procedures fall short.**

Award of a point on enforcement requires specificity: investigation practices, penalties, and takedown procedures, “constituting a coherent set with appropriate appeal mechanisms.” The application does commit to developing and implementing enforcement mechanisms, but does not cite specifics. Just as with registration policies, the application is scant about enforcement procedures. TaxiPay states that:

its commissioned Registry Service Provider will validate a registrant’s eligibility for a domain at second level under the gTLD .taxi, and will act upon request or complaint on the basis of the above described registration policies. TaxiPay GmbH itself, however, will provide an in-house validation agent in order to be able to react quickly upon possible cases of abuse and/or arising disputes. Applic. § 20e.

TaxiPay also promises to “implement effective mechanisms for addressing abusive practices, establish a point of contact for third-party reporting of abusive practices... [and] publish on its website and include as binding registry policy an Anti-Abuse Policy ....” *Id.*

By the foregoing, TaxiPay devotes the same effort to combatting the types of abuse and fraud that all registries, community or not, must implement. The applicant does not, however, devote any planning effort toward addressing abuses of the specific “community” restrictions within a .TAXI gTLD. It has taken steps toward enforcement of registration restrictions, but not furnished detailed plans. It takes no steps toward enforcement of content, use or naming restrictions.

This is not to say that TaxiPay will not enforce its content and use restrictions. If it set out a plan to do so, no reason likely would exist to doubt them. However, TaxiPay has not furnished the sort of compliance program contemplated in the Guidebook and especially has ignored enforcement of its content and use restrictions. Therefore, the applicant should not receive a point for this part of the evaluation.

In sum, the application should earn no more than one point in the area of registration policies. It seeks to cast a wide net and serve all those who define themselves as associated in some way with taxi industry. In broadening the participation in the TLD, the applicant has foregone the ability to enact strict eligibility, content and use, and name selection policies. The label “taxi” itself does not lend itself to restrictions. The application as proposed by TaxiPay does not and cannot include the registration restrictions necessary to earn more than one of the possible four points on this element.

**CRITERION 4: The TaxiPay application does not have support from a majority of the newly formed “community,” nor does it show how even that limited support was developed.**

The “support” criterion actually looks at both support and opposition in awarding up to four points to an application. For “support,” the applicant must demonstrate that:

- It is, or has documented support from, the recognized community institution(s)/member organization(s) or has otherwise documented authority to represent the community. It must have documented support from institutions/organizations representing a *majority* of the overall community in order to score 2.
- Documented support from at least one group with relevance may allow a score of 1, but does not suffice for a score of 2.

For consideration as relevant support, documentation *must contain a description of the process and rationale used in arriving at the expression of support*. Support is not based merely on the number of comments or expressions of support received. AGB § 4.2.3.

On the opposition side, an application will earn two points where it lacks any opposition of relevance, and one where it has “relevant” opposition from “one group of non-

## TaxiPay Application for .TAXI: Comment to Community Priority Evaluation

negligible size.” It will be awarded no points in the case of “relevant opposition from two or more groups of non-negligible size.” *Id.*

The applicant provides eight letters of support. All come from German firms. The public comment section for the application has no supporting but one opposing letter. Clearly, TaxiPay’s limited support does not rise to a majority of the taxi “community,” especially as the application defines it – *i.e.*, as including not only licensed cab firms but software developers, event planners and other allegedly taxi-reliant industries.

Just as importantly, the letters lack the requisite *description of the process and rationale used in arriving at the expression of support*. None includes any meaningful description of how it came to support TaxiPay’s application, as required even for a score of one. Rather, all appear to match each other in content. Each includes, in the same order: a description of the corporate entity, TaxiPay; a description of supporting entity; a statement endorsing the TaxiPay application and the “mission” of TaxiPay; and the intent to register a .TAXI “community” domain once delegated. The similarity of the letters belies the claim of true support and all lack the requisite foundation describing process.

Again, this makes no value judgment regarding TaxiPay’s effort in preparing its application and supplementary materials. We would expect it exceedingly difficult to gain the appropriate support required from the large, unbounded community that TaxiPay attempts to create. This is why the CPE are set so high—to prevent the creation of artificial communities in order to gain an advantage in the new gTLD process. Thus, regardless of TaxiPay’s qualifications to operate a registry generally, its application cannot earn the two *community* points in this critical area.