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August 1, 2013

Ms. Christine Willett
Vice President, gTLD Operations
ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

Dear Christine,

The Community TLD Applicant Group (CTAG) appreciated your outreach about meeting in Durban and the time you and Trang Nguyen spent with us. In follow-up to that exchange of ideas, we would like to contribute the following statement of concerns and reiterate our willingness to be helpful, where appropriate, in resolving them as expeditiously as possible. We would like to state at the outset how much we appreciate the opportunity for dialogue at this point in the evaluation process.

First, we believe that it is important to return to the original policy where support for communities was an integral part of the GNSO policy Recommendations. It is the GNSO Recommendations, approved by the ICANN Board, that remain the original and authoritative policy source that must remain the touchstone for all implementation unless superseded by other policy decisions.

In the new gTLD policy one finds the following:

It is expected that applicants will apply for targeted community strings such as .travel for the travel industry and .cat for the Catalan community as well as some generic strings.¹

From this we see that the notion of community foresaw a wide notion of community as strings such as the existing .travel and .cat were seen as good examples of a community. Communities were described by one example that was a diffused community (.travel), and other that was more constrained community (.cat): one example that reflected a business community and one that represented an identity-based community. Neither of the examples had a single locus of community control, both were distributed notions of community.

¹ ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, 8 August 2007 <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>, paragraph 13 page 14

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There is a policy of support for communities in **Recommendation 20** for objections:

An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.²

This was a strong statement in support of communities. If a substantial part of a community significantly objects to an application it “**will be rejected**”. While we could endlessly discuss the exact meaning of ‘substantial’ and ‘significant’, there is no doubt as to the importance given to community in the recommendations. At this point, with the objection process ongoing, we can only hope that those doing the dispute resolution pay close attention to the importance of substantial and significant community objection.

There is a policy of support for community applications in the Implementation Guidelines:

IG 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.

IG 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

² Ibid page 21

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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.

The policy stated here indicates that an assertion of community was to be accepted “**on trust**” unless there was a contention set and until such time as an objection was initiated - please take note of the ‘**and**’ at the end of clause H(i).

Has it ever been the case that the community assertions were accepted, unless and until challenged by an objection of a substantial and significant portion of the community? No, from the start, the implementation has been based on distrust of community claims. The implementation, from the start has presupposed that community applicants need to prove themselves worthy of the term community. Instead of waiting for objection-based challenges, the mere existence of a contention-set has been sufficient to challenge the claim of community. This is not in keeping with the letter or the spirit of the new gTLD Policy, which is the basis of the new gTLD program. This deviation of implementation from policy remains of critical concern to the CTAG.

In creating the Community Priority Evaluation (CPE) process, ICANN implementers have reinforced the notion that communities must prove themselves. A test was created, more of a gauntlet, which many in the ICANN community (e.g., GAC members, ICANN staff, applicants) acknowledge will be extremely challenging to pass. The test was created in such a way as to greatly prefer false negatives over positives. Throughout the process of evolving the Applicant Guide Book (AGB) many commented on problems with the test; yet nary a comment received consideration. The CPE test remained relatively consistent through many drafts of the AGB and continues to be an unnecessary barrier to success for community applicants. Instead of protecting communities, it advantages those who might exploit communities. This was not the

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intent of the new gTLD Policy and remains a great concern to those in the CTAG and the communities they support and represent.

Whenever the strictness of the test was challenged, the retort was always of the form: Since community status is a trump to standard applications, it must be as difficult as possible to achieve. This reasoning missed the point of the policy. The policy was meant to encourage communities to apply and to give them an advantage in consideration of the registration policies (i.e., eligibility, name selection, content/use and enforcement) to safeguard the gTLD and more importantly the respective community. The policy was meant to encourage communities, not to make their applications more costly, difficult or perilous. The GNSO wanted to support community applications, conceived as similar to the sponsored gTLD that had been the objects previous rounds of new gTLDs. The new gTLD program currently discourages communities. It has an objection process that charges communities unfathomable sums to protect themselves. It has an Independent Objector who apparently refused to defend communities because he could not decide who was or wasn't a community, despite the indication that the claim was to be taken on trust. The CPE process is regrettably tuned to favor a false negative over a positive.

In retrospect, it is clear that the AGB process for contention set processing when there is a community contender does not match the Board approved Policy requiring recognition and support of communities. Various members of the CTAG have been making this comment since before CTAG was created and are once again making it in the hope that the situation can still be remedied.

Just this month, the GAC once again pointed out the importance of communities in its [Durban Communiqué](#)³. In paragraph 7b the Advice section includes:

Community Applications

- i. The GAC reiterates its advice from the Beijing Communiqué regarding preferential treatment for all applications which have demonstrable community support, while noting community concerns over the high costs for pursuing a Community Objection process as well as over the high threshold for passing Community Priority Evaluation.
- ii. Therefore the GAC advises the ICANN Board to: a. Consider to take better account of community views, and improve outcomes for

³ <http://durban47.icann.org/meetings/durban2013/presentation-gac-communique-18jul13-en.pdf>

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communities, within the existing framework, independent of whether those communities have utilized ICANN's formal community processes to date.

The members of CTAG are grateful to the GAC for once again acknowledging and emphasizing the importance of communities.

The CTAG is also gratified to know that there is a current effort to help ensure the CPE is a fair, open and transparent process. CTAG members have long felt and spoken out about the flaws in the test. Many in CTAG have long argued that the test favors standard applicants over community applicants. We hope that this imbalance, that this unfairness, can be alleviated by the current work ICANN is preparing for CPE operational readiness.

The CTAG is eager to work with the ICANN implementation team, in a manner similar to the Registry Agreement and Registrar Accreditation Agreement negotiating teams, on the final preparations for CPE.

Additionally, there are several recommendations, some of which have been put forward previously, of ways that the current process, despite its flaws can be improved. The CTAG requests that the ICANN implementation team consider these recommendations:

- Permit the expert panelists to consult with applicants for clarifications, especially when it would be significant in their grading.
- Provide a transparent result to community applicants after the CPE so they can know the criteria on which and why they did not receive the maximum score.
- Allow a community applicant that does not pass the evaluation to discuss the results with the expert panel, and allow for reconsideration by the expert panel after such discussions.
- Implement a CPE review mechanism by the NGPC for all applicants that achieved a threshold-level score in the test, but did not pass. The threshold would be determined by the NGPC.

The point of these recommendations is to evolve the CPE into a process that supports the claims of communities as opposed to one that seeks to falsify the claims of all community applicants. Throughout the process, community applicants have been disadvantaged compared to the standard applicants. We request that CPE be a tool that serves community applicants and their respective stakeholders.


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We look forward to hearing from you and working with ICANN and the Internet community to achieve a fair, open and transparent CPE process.

Sincerely,



Craig S. Schwartz
CTAG Coordinator

cc: Mr. Fadi Chehadé, President and CEO, ICANN
Mr. Akram Atallah, President, Generic Domains Division, ICANN
Mr. Cherine Chalaby, Board Chair, New gTLD Program, ICANN
Mr. Jonathan Robinson, Chair, GNSO Council

CTAG Membership as of July 2013

1. ADAC - Allgemeiner Deutscher Automobil-Club e.V. (ADAC)
2. ARCHI, IMMO, SKI - STARTING DOT
3. BANK, INSURANCE - fTLD Registry Services, LLC
4. BARCELONA - Municipi de Barcelona
5. BERLIN - dotBERLIN GmbH & Co. KG
6. CORP, INC, LLC, LLP - Dot Registry LLC
7. CPA - American Institute of Certified Public Accountants
8. ECO - Big Room Inc.
9. GAL - Asociacion puntoGAL
10. GAY - dotgay llc
11. GMBH - TLDDOT GmbH
12. GREE - GREE, Inc.
13. HAMBURG - Hamburg Top-Level-Domain GmbH
14. HOTEL - HOTEL Top-Level-Domain S.a.r.l
15. KIDS - DotKids Foundation Limited

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16. MED - HEXAP SAS
17. MUSIC - DotMusic / CGR E-Commerce Ltd
18. MUSIC – .music LLC / Far Further
19. NGO, ONG - Public Interest Registry
20. OSAKA - Interlink Co., Ltd.
21. QUEBEC - PointQuebec Inc
22. RADIO - European Broadcasting Union (EBU)
23. SCOT - Dot Scot Registry Limited
24. SHOP - Commercial Connect LLC
25. SPORT - SportAccord
26. TATAR - Coordination Center of Regional Domain of Tatarstan Republic LLC
27. TENNIS - TENNIS AUSTRALIA LTD
28. THAI - Better Living Management Company Limited
29. TIROL - Punkt Tirol GmbH
30. VERSICHERUNG - dotversicherung-registry GmbH
31. WIEN - punkt.wien GmbH

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