

## Reconsideration Request

### 1. Requester Information

**Name:** Little Birch, LLC and Minds + Machines Group Limited,  
separate applicants for .eco

**Address:** Contact Information Redacted

**Email:** Contact Information Redacted

**Hereinafter: the “Requester”.**

### 2. **Request for Reconsideration of (check one only):**

**Board action/inaction**

**Staff action/inaction**

### 3. **Description of specific action you are seeking to have reconsidered.**

Requester seeks the reconsideration of ICANN’s Community Priority Evaluation Panel’s determination whereby Application ID 1-912-59314 for the .eco gTLD (hereinafter: the “Application”) submitted by Big Room (hereinafter: the “Applicant”) prevailed in Community Priority Evaluation. This determination was posted on ICANN’s website under URL <https://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf> (hereinafter: the “CPE Report”).

As a result of this Determination, ICANN has:

- resolved the contention set for the .eco gTLD;
- changing the status of the Application to “In Contracting”. Reference is made to the Application’s status page, available at <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1753>;
- changing the status of Requester’s application for the .eco gTLD to “Will Not Proceed”, as referred to on its status page available at <https://gtldresult.icann.org/application->

result/applicationstatus/applicationdetails/790.

**4. Date of action/inaction:**

6 October 2014

**5. On what date did you become aware of the action or that action would not be taken?**

7 October 2014

**6. Describe how you believe you are materially affected by the action or inaction:**

Considering the fact that the Determination states that Big Room's Application prevailed in the context of Community Priority Evaluation, the Requester's application for the .eco gTLD will be no longer considered by ICANN, which will likely result in ICANN not awarding the .eco gTLD to Requester.

**7. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.**

In view of the Requester, the concept "eco" is much broader than the so-called community definition provided by the Applicant, as contained in the determination.

Requester refers to:

- the community definition contained in the Application, which – in Requester's opinion – does not meet the criteria for community-based gTLDs that have been set out in ICANN's Applicant Guidebook;
- the community definition contained in the Application, which misrepresents that "eco" is the name or abbreviation of a community, whilst the meaning of "eco" or the "eco-" prefix is much broader than what has been set out in the Application;
- the registration policies, and in particular the eligibility and enforcement criteria set out in the Application do not meet the standards set out in the New gTLD Applicant Guidebook. In particular, considering the fact that the eligibility criteria contained in the Application for registering domain names under the .eco gTLD as well as the community definition contained therein are contradictory, vague, and ill defined, this may result in:

- third parties who are affiliated with the term or prefix “eco” but who are not a “member” of the “community” purported by the Applicant will be unable to register domain names in the .eco gTLD because they do not meet the eligibility requirements set out in the Application, which seems to be mainly directed to the non-existing “eco community”;
- others, such as but not limited to companies who clearly have no proven track record in relation to “ecological” or “environmental-friendly” behavior, would indeed be eligible to register domain names in this extension.

Further details in this respect are provided below:

### **As regards Criterion #1: Community Establishment**

According to the CPE Report, a “.eco Community” exists, which has been defined in the Application is as follows:

*“Members of the Community are delineated from Internet users generally by community-recognized memberships, accreditations, registrations, and certifications that demonstrate active commitment, practice and reporting.*

*Community members include:*

*Relevant not-for-profit environmental organizations (ie, accredited by relevant United Nations (UN) bodies; International Union for Conservation of Nature (IUCN) member; proof of not-for-profit legal entity status with documented environmental mission).*

*Businesses (ie, members of environmental organizations; UN Global Compact participants; hold internationally-recognized environmental certifications; report to a global sustainability standard).*

*Government agencies with environmental missions (ie, UN bodies, national/sub-national government agencies with environmental responsibilities).*

*Individuals (ie, members of environmental organizations; academics; certified environmental professionals).”*

Requester notes that the above is by all means not a definition of a community but a vague overview what its membership is considered by Big Room Inc. to consist of. According to the Requester, absent a clear and unambiguous definition of the “community” a community-based application is intended to serve, the Application needs to be dismissed from the outset.

The CPE Report and the Determination therefore assume the existence of a community, without reviewing whether this is actually the case.

Indeed, based on the above overview, any individual who or business that becomes a member of or a donator to an environmental organization such as Greenpeace or the WWF would, according to the above “definition” be a member of the “community for .eco”.

By accepting such an approach, the CPE Report and the Determination are not taking into account the various criteria set out in the Applicant Guidebook (AGB) for community-based applications.

According to the AGB, the term “community” implies “more of cohesion than a mere commonality of interest”, and there should be “an awareness and recognition of a community among its members”.

Although Big Room Inc. and the CPE Panel attempt to establish that there is a “cohesion” among the members of this so-called “community for .eco”, they are in fact only establishing that there is indeed – at maximum – a “mere commonality of interest”:

- according to the Application *“[t]he Community has historically structured and organized itself and its work through an international network of organizations, including millions of individual members with strongly aligned goals, values and interests”*; (emphasis added)
- furthermore, *“members traditionally organize through multi-organization alliances around specific events, geographies, and issues”*;
- according to the Determination, *“the community is defined in terms of its association with, and active participation in, environmental activities”*.<sup>1</sup>

Whilst the Requester does not negate that the members referred to in the Application share a number of common goals, values and interests (as expressly stated in the Application), this in itself is insufficient to determine that there is an established community. The “issues” the members addressed in the Application could be to a certain extent aligned, and some of them may “associate” themselves with these issues and activities, but this does not prove that there is “awareness and recognition” of a community in the sense of the AGB.

According to the Requester, this view is underlined by the CPE Panel’s determination that the string “.eco” is *“not a match of the community or a well-known short-form or abbreviation of the community name”*, as required by the AGB for a score of 3 for Nexus: in other words, Requester does not understand how a wide variety of so-called “members” consider themselves part of a “community for eco” or “.eco community” if “eco” is not even recognized as the name or the abbreviation of the community ...

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<sup>1</sup> CPE Report, Page 5.

This is clear evidence of the fact that being or associating with “eco” as in “ecology” and “environment” is the common goal, value or interest of all the “members” of this community, and demonstrates that none or at most an extremely limited number of them are really convinced that there is a “cohesion” amongst them, considering the fact that they are supporting different projects or causes that are in the environmental sphere.

In addition, the CPE Report and the Application states that “[T]he term “eco” has been long used to identify members of the Global Environmental Community (the Community), as well as concepts, products and services associated with the Community’s goal of a respectful, responsible and sustainable use of the environment.”<sup>2</sup> (emphasis added)

Requester therefore does not understand how the CPE Panel has come to the conclusion that an “eco” community can exist if not only the community itself is identified by the term “eco”, but also (i) members of the Global Environmental Community, (ii) concepts, (iii) products, and (iv) services. Again, according to the Requester, this only demonstrates that “eco” is an overarching umbrella term, but not a true community in the sense of the AGB.

Therefore, Requester requests ICANN to reconsider the scoring on Criterion #1: Community Establishment, and provide the Application with a score of 1 or even 0 (zero) on this Criterion.

### **As regards Criterion #2-A: Nexus between Proposed String and Community**

Public information reveals that the string “eco” does not “closely describe” the community or the community members, and that it certainly over-reaches substantially beyond the community referred to in the application.

For instance, according to Wikipedia,<sup>3</sup> the term “eco” may refer to:

- *eco-*, a prefix mostly relating to ecological or environmental terms (emphasis added)
- *.eco*, (*dot-eco*), a proposed top-level domain for the Internet
- *Eco* (currency), a proposed currency
- *Eco* (video game), a computer simulation game
- *Umberto Eco* (born 1932), Italian philosopher, semiotician, novelist
- *Eco*, a character, played by Jacqueline Duncan, on the children's show *The Shak*
- *The natural substance of energy and power in the Jak and Dexter games*

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<sup>2</sup> CPE Report, Page 5.

<sup>3</sup> <http://en.wikipedia.org/wiki/Eco>.

Requester notes that no reference is being made to any “eco community”, nor does the string apparently seem to identify “the name of the core community members” as stated in the determination. If a “community of eco” would exist, this would be one of the elements that would generally be recognized by an important public source such as Wikipedia, to which thousands of people have contributed over the years.

Furthermore, according to the same source, the abbreviation eco has a wide variety of uses:

- *Enterprise Core Objects, software development framework useful for domain-driven design*
- *Economic Cooperation Organization, an international organization involving seven Asian and four Eurasian countries*
- *Electronic Countermeasures Officer, an officer in the reimagined Battlestar Galactica series*
- *Emil Chronicle Online, a 2005 Japanese MMO computer game*
- *Encyclopaedia of Chess Openings, a scheme to classify chess openings*
- *Engineering Change Order, used for changes in documents such as processes and work instructions*
- *English Chamber Orchestra, a chamber orchestra based in London*
- *The Environmental Commissioner of Ontario*
- *Environment and Conservation Organisations of Aotearoa New Zealand*
- *Epichlorohydrin, a synthetic rubber with the ISO code eco*
- *Equity carve-out, a sort of corporate restructuring*
- *Esporte Clube Osasco, a Brazilian football (soccer) club*
- *Eternally Collapsing Objects, an alternate theory of black hole. See Magnetospheric eternally collapsing object*
- *European Communications Office, the permanent secretariat of the Electronic Communications Committee, a part of European Conference of Postal and Telecommunications Administrations*
- *eco (denomination), a Presbyterian denomination (full name eco: A Covenant Order of Evangelical Presbyterians)*
- *Noticias eco, a now defunct 24-hour Spanish-language cable news network, owned and operated by Televisa*
- *Elementaire Commando Opleiding (elementary commando course) of the Korps Commandotroepen (KCT)*

Furthermore, the prefix “eco-” is, next to “ecology” or the “environment” (in the ecological sense) also used in the context of terms relating to “economy”.<sup>4</sup>

In the Requester’s view, the CPE Panel has therefore not considered the many other meanings of the term “eco”, some of which have been outlined above, and

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<sup>4</sup> <http://en.wiktionary.org/wiki/eco->

has therefore erroneously determined that “[t]he applied-for string (.eco) identifies the name of the community” or “the name of the core community members”.<sup>5</sup>

Furthermore, the CPE Panel errs when determining that “the public will generally associate the string with the community as defined by the applicant”: although “eco” could indeed be considered by the community as the prefix for terms relating to ecology or the environment, the public will not directly or indirectly consider this abbreviation as the identifier of a community or groups, organizations, companies or individuals that has supported the Applicant.

Based on basic Internet research, it is clear that many of the members of the organizations referred to in the Application are far from being liaised with “ecological” or “environmental” activities.

By way of example, the UN Global Compact<sup>6</sup> has the following companies as its members: E.I. du Pont de Nemours,<sup>7</sup> Bayer Group,<sup>8</sup> Dow Chemical,<sup>9</sup> BASF,<sup>10</sup> and General Electric.<sup>11</sup> Requester points out in this respect to the fact that the CPE Panel has recognized the UN Global Compact to be “sufficient to meet the AGB’s standard of a “recognized” organization”.<sup>12</sup>

These companies are five out of the Top 10 of the Toxic 100 Air Polluters, published by the Political Economy Research Institute, a department of the University of Massachusetts Amherst,<sup>13</sup> which clearly shows that the “community” invoked by the Applicant is fictitious, and that the “membership” of this self-invoked “community” can be easily obtained, without being subject to any scrutiny.

Considering the above, it is unlikely that the public at large will:

- 1) directly or even indirectly associate the term “eco” or the string “.eco” with the Applicant;
- 2) directly or even indirectly associate the term “eco” or the string “.eco” with any sort or type of “community” in general, or specifically with an “eco community”;

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<sup>5</sup> CPE Report, Page 5.

<sup>6</sup> <https://www.unglobalcompact.org>.

<sup>7</sup> <https://www.unglobalcompact.org/participant/3023-DuPont>.

<sup>8</sup> <https://www.unglobalcompact.org/participant/1212-Bayer-AG>.

<sup>9</sup> <https://www.unglobalcompact.org/participant/9210-The-Dow-Chemical-Company>.

<sup>10</sup> <https://www.unglobalcompact.org/participant/1194-BASF-SE>.

<sup>11</sup> <https://www.unglobalcompact.org/participant/4253-General-Electric-Company>.

<sup>12</sup> CPE Report, Page 8.

<sup>13</sup> [http://www.peri.umass.edu/toxicair\\_current/](http://www.peri.umass.edu/toxicair_current/).

- 3) directly or even indirectly associate the term “eco” or the string “.eco” with many organizations and companies that are considered to be members of the so-called “community” described in the Application; and
- 4) directly or even indirectly associate the term “eco” or the string “.eco” with the “*name of the core community members*”.

Hence, Requester is of the opinion that the term “eco” substantially over-reaches the so-called “community” the Applicant has attempted to define in the Application.

Therefore, Requester requests ICANN to reconsider the scoring on Criterion #2-A: Nexus, and provide the Application with a score of 0 (zero) on this Criterion.

### **As regards Criterion #2-B: Uniqueness**

As Requester has pointed out in the previous section, the term “eco” has various meanings that are completely unrelated to the “community” determined in the Application or the “names of community members” that are part of such so-called, but non-existing, “community”.

Therefore, Requester requests ICANN to reconsider the scoring on Criterion #2-B: Uniqueness, and provide the Application with a score of 0 (zero) on this Criterion. More in particular, since Requester has substantiated on the basis of public information and independent research that 0 (zero) points should be awarded in relation to Criterion #2-A: Nexus, the score for Criterion #2-B: Uniqueness should be automatically reset to 0 (zero).

### **As regards Criterion #4-B: Opposition**

The CPE Panel has determined that “*the application met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not receive any relevant opposition. The application received the maximum score of 2 points under criterion 4-B: Opposition*”.

Whilst the CPE Panel has confirmed that the Application received letters of opposition, it does not detail: (i) which letters have been received, (ii) which letters have not been considered in the determination, (iii) which criteria and standards have been used in determining whether these letters were from groups, individuals or communities “of negligible size” that had an association to the applied for string.

Therefore, the Requester is of the opinion that the determination does not meet



the appropriate standards of transparency and due process, which renders it impossible for Requester to review whether the Applicant has indeed satisfied the criterion 4-B: Opposition.

### **Other Submissions by Requester**

Requester also refers to its request made under the Documentary Information Disclosure Policy, attached hereto as Annex 1.

In any case, Requester reserves the right to supplement this Reconsideration Request with further information and arguments following the outcome of their request under the Documentary Information Disclosure Policy, even if no additional information would be provided by ICANN.

### **8. Detail of Board or Staff Action – Required Information**

#### **Provide the Required Detailed Explanation here:**

In the context of ICANN’s New gTLD Program, ICANN has received the following applications for the .eco gTLD:

- the Applicant’s application for a community-based gTLD (Application ID 1-912-59314);
- Little Birch’s “standard” application (Application ID 1-1434-1370);
- Top Level Domain Holdings Limited’s “standard” application (Application ID 1-1039-91823).

On October 6, 2014, ICANN’s Community Priority Evaluation panel published its Determination stating that the Applicant’s Application for the .eco gTLD obtained a passing score of 14 out of 16 points, and hence prevailed in Community Priority Evaluation.

Since Requester is of the opinion that the publication of these Community Priority Evaluation results are considered to be an action by ICANN staff, which is in particular the case for modifying the statuses of each of the respective applications for the .eco gTLD listed below, it is entitled to invoke and utilize ICANN’s Reconsideration Request process in relation to this Determination / action by ICANN staff.

The immediate effect of this Determination seems to be that the Requester’s application for the .eco gTLD will no longer be considered by ICANN, given the fact that the status of its application has been changed to “Will Not Proceed”, as is reflected on their respective Application Status pages published by ICANN.

Reference is made to Little Birch's "standard" application (Application ID 1-1434-1370), published at <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/790>.

Requester therefore requests ICANN in accordance with its Reconsideration Request process to:

- reconsider the Determination, and in particular not award a passing score in view of the Community Priority Evaluation criteria set out in the Applicant Guidebook for the reasons expressed in this Reconsideration Request and any reasons, arguments and information to be supplemented to this Request or forming part of a new Reconsideration Request in the future;
- reconsider ICANN's decision that the Requester's application for the .eco gTLD "Will Not Proceed" to contracting;
- restore the "Application Status" of the Requester's application and the Application submitted by the Applicant to "Evaluation Complete", their respective "Contention Resolution Statuses" to "Active", and their "Contention Resolution Result" to "In Contention".

## **9. What are you asking ICANN to do now?**

Based upon the information contained in the Application, Requests are convinced that the Application does not meet the criteria to qualify as a community-based gTLD set out in ICANN's Applicant Guidebook.

In view of obtaining further insights into the arguments of the Community Priority Evaluation panel and the information on which such panel has relied, Requester has submitted together with this Reconsideration Request and request to obtain further information under ICANN's Documentary Information Disclosure Policy.

Based upon the information and arguments included in this Reconsideration Request, for which the Requester reserves the right to submit additional arguments and information following the outcome of their request submitted to ICANN in accordance with the Documentary Information Disclosure Policy, Requester requests ICANN to:

- acknowledge receipt of this Reconsideration Request;
- suspend this Reconsideration Request in view of possible supplementary arguments and information to be provided by Requester on the basis of ICANN's responses to Requester's Documentary Information Disclosure Policy;
- in the meantime, suspend the process for awarding the .eco gTLD to the Applicant;

- reverse the “Application Status” of Requester’s application and the Application submitted by the Applicant to “Evaluation Complete”, their respective “Contention Resolution Statuses” to “Active”, and their “Contention Resolution Result” to “In Contention”;
- ultimately, unless Requester withdraws this Reconsideration Request or does not provide ICANN with additional information or arguments within a timeframe of 15 days following receipt of ICANN’s responses to Requester’s request under the Documentary Information Disclosure policy, if any.

**10. Please state specifically the grounds under which you have the standing and the right to assert this Request for Reconsideration, and the grounds or justifications that support your request.**

Requester is an applicant for the .eco gTLD.

Reference is made to ICANN’s status page for its application with ID 1-1434-1370), published at <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/790>.

Given the fact that due to the Determination, the Requester’s application for the .eco gTLD will not proceed to the contracting phase with ICANN, which will likely result in ICANN not awarding the .eco gTLD to Requester, it is clear that the Determination materially affects Requester’s applications for this string.

As a consequence, Requester has standing to file this Reconsideration Request in relation to the Determination by the Community Priority Evaluation, as well as ICANN’s subsequent decision to change the status of Requester’s application from “In Contention” to “Will Not Proceed”.

**11. Are you bringing this Reconsideration Request on behalf of multiple persons or entities? (Check one)**

Yes

No

**11a. If yes, Is the causal connection between the circumstances of the Reconsideration Request and the harm the same for all of the complaining parties? Explain.**

Yes. Requester is an applicant for the .eco gTLD and is directly affected by the Determination, which – ultimately – would cause irreparable harm to Requester if such Determination would be final.

However, Requester acknowledges that, most likely and ultimately, only one of the contenders for the .eco gTLD will effectively become the Registry Operator for such gTLD.

**Do you have any documents you want to provide to ICANN?**

Pending Requester’s request under the Documentary Information Disclosure Policy, Requester is not providing any specific documents to ICANN, but reserve the right to do so as a follow-up to this Reconsideration Request or in the context of one or more new Reconsideration Requests. Requester recognizes and acknowledges that any such additional Reconsideration Requests may be consolidated by the Board Governance Committee.

**Terms and Conditions for Submission of Reconsideration Requests**

The Board Governance Committee has the ability to consolidate the consideration of Reconsideration Requests if the issues stated within are sufficiently similar.

The Board Governance Committee may dismiss Reconsideration Requests that are querulous or vexatious.

Hearings are not required in the Reconsideration Process, however Requestors may request a hearing. The BGC retains the absolute discretion to determine whether a hearing is appropriate, and to call people before it for a hearing.

The BGC may take a decision on reconsideration of requests relating to staff action/inaction without reference to the full ICANN Board. Whether recommendations will issue to the ICANN Board is within the discretion of the BGC.

The ICANN Board of Director’s decision on the BGC’s reconsideration recommendation is final and not subject to a reconsideration request.

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Signature

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Date