

2/17/2015 9:55 PM

Subject: Comments to CPE Application 1-1309-81322 for .SPA

Description

ICANN,

Attached please find our comments to the CPE Application 1-1309-81322 for .SPA.
We will also submit via email to newgtlds@icann.org.

Please confirm receipt and transmit to the CPE provider for consideration.

Best regards,
Donuts Inc.

**Asia Spa and Wellness Council Application 1-1309-81322 for .SPA:
Comment to Community Priority Evaluation**

INTRODUCTION 1

ANALYSIS 2

CRITERION 1: The Application does not "establish" a "community," which requires more than just a commonality of interests 2

The Application does not include a sufficiently “clear and straight-forward” membership definition such that identified constituents would have awareness of their status as members.. 3

The Application is not “organized,” in that it does not point to any one entity “mainly dedicated to the community, with documented evidence of community activities.” 4

The “community” is “construed” for purposes of satisfying CPE, and is therefore neither “organized” nor “pre-existing.”” **Error! Bookmark not defined.**

The limits of the alleged “community” do not allow an award of both “extension” points.....4

CRITERION 2: The application does not establish sufficient "nexus" with the non-unique term “.SPA.” 5

The application cannot earn the available three "nexus" subpoints. 5

The String .SPA does not “match” the name of the alleged community, so the Application cannot be awarded three points. 6

The string .SPA does not even “identify” ASWPC’s “community” to earn 2 points under Guidebook standards.. 7

“SPA” does not "uniquely" identify the claimed "community." 8

CRITERION 3: The Application lacks community-based registration policies... 9

The post-sunrise “eligibility” rules are open to virtually anyone. 9

The Name Selection and Content/Use Limitations Each Involve Mechanisms That “Will Be Developed” In The Future. 10

CRITERION 4: The Application does not demonstrate relevant community support . 110

CONCLUSION **1Error! Bookmark not defined.**

INTRODUCTION

The Community Priority Evaluation ("CPE") is a serious undertaking. While it is designed to protect true communities and their designations, a "successful" CPE also *disqualifies* otherwise legitimate applicants that have met the rigorous criteria to operate 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 the scoring methodology 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.*

The system grants community priority only to applications that score at least 14 out of 16 possible points across four categories. *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"¹

The application under review ("Application") – by the "Asia Spa and Wellness Promotion Council Limited" ("Applicant" or "ASWPC")² – falls well short of that threshold, and thus cannot eliminate legitimate competing applicants.

Among other things, the variety, breadth and universality of a term like "SPA" prevents ASWPC from earning the four possible points for the CPE factor of "nexus." ASWPC overreaches, as would a "local tennis club applying for .TENNIS,"³ and attempts to "capture a wider geographic/thematic remit than it actually has."⁴

Also, the sheer lack of *any* meaningful documented community support dooms the Application to failure. For example, to obtain two "support" points, an application must have demonstrated backing by a majority of the "community" at issue.⁵ In this instance, the ASWPC includes but a single letter – one sentence in length – from a local organization in its native Malaysia, with no additional documentation.

¹ See <https://archive.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf> at 103.

² See <http://www.ASWPC.org>; see also Applic. § 1.

³ See AGB at 4-13; Economic Intelligence Unit CPE Guidelines ("Guidelines") at 8.

⁴ *Id.* at 8.

⁵ *Id.* at 18.

It should come as no surprise, therefore, that according to the criteria, Applicant cannot succeed in using CPE to co-opt a term with such broad applicability as “SPA.” ICANN formulated the community TLD concept to protect the labels of real, discrete and well-defined groups, not to allow opportunists the means to *commandeer* common dictionary words for their own purposes. That would run directly contrary to the intent of the new gTLD program to *increase* competition, not impede it.⁶

This does not diminish ASWPC’s efforts in preparing the Application. It generally appears competently drafted; it just does not meet ICANN’s stringent community criteria. The Applicant cannot properly claim a truly global moniker for its own use while excluding users in the rest of the world. While ASWPC certainly has the right to move forward with its Application, it must do so on the same level as all applicants, who have equal rights to compete for the string.

ANALYSIS

The Guidebook allows the 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 ASWPC the benefit of all doubts on each, the Application can earn no more than 6 to 10 of the 16 available points. Among other deficiencies, it cannot earn any points for “nexus” given the clear examples in the Guidebook, and the inquiry therefore could stop there. However, defects in other areas (most notably “community support”) warrant additional deductions and a rejection of CPE. Of course, a failing score on CPE does not completely defeat an Application; an unsuccessful applicant then is simply required to compete for the string fairly as all other applicants must do.

⁶ See <http://newgtlds.icann.org/en/about/program>.

CRITERION 1: The Application does not "establish" a "clearly delineated community", which requires more than a mere commonality of interests.

"'Delineation' relates to the membership of a community, where a clear and straightforward membership definition scores high, but an unclear, dispersed or unbound definition scores low." *Id.* The test considers:

- the "level of public recognition of the group as a community," including the existence of "formal boundaries around" it and "what persons or entities ... form" it (which we call the "Identification" factor),
- whether the alleged community pre-dates the commencement of the new gTLD program in 2007 (the "Existence" element), and
- the level of "organization" of the community through at least one dedicated entity with documented evidence of community activities ("Organization").

AGB at 4-11. On the other hand, "extension" relates to "the dimensions of the community, regarding its number of members, geographical reach, and foreseeable activity lifetime" *Id.* See also Guidelines at 5-6.

With respect to delineation, satisfying all three of the Identification, Existence and Organization factors will allow an application to score up to 2 points. AGB at 4-12. While the concept of a "spa," namely a mineral spring that people visit for therapeutic benefits, certainly has "existed" for hundreds (even thousands) of years, the Application still does not and cannot satisfy the other delineation elements sufficiently to earn both points.

The Application does not include a sufficiently "clear and straightforward" membership definition such that identified constituents would have awareness of their status as members.

ASWPC describes its purported community as "spa operators, professionals and practitioners;" "[s]pa associations and their members around the world;" and "[s]pa products and services manufacturers and distributors."⁷

The crux of the Application appears centered almost exclusively around *facilities* where people receive health and wellness treatment services.⁸ Yet, the definition of "spa" is hardly so straightforward. In any event, the lack of specificity alone makes the

⁷ See Applic. § 20(a). The Application provides little guidance about how to define some of these concepts. Would "spa products and services manufacturers" include suppliers of towels, soap and other items that may be found in a "spa and wellness center," for example?

⁸ See, e.g., Applic. § 20(d).

Application's community definition unclear, dispersed or unbound, rather than "clear and straightforward," as required for full points. See AGB at 4-11; Guidelines at 4.

Even more telling, would "spa products and services manufacturers" readily recognize themselves as part of a specific, identifiable group (and one that is represented by ASWPC) together with other "spa operators"? We think they most assuredly would not, and that such a diverse and amorphous group would lack sufficient awareness to warrant full points. The Panel recognized this when denying delineation points to a community applicant for .TAXI,⁹ for example. The same result should follow here.

The Application is not "organized," in that it does not point to any one entity "mainly dedicated to the community, with documented evidence of community activities."

"According to the AGB, 'organized' implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities."¹⁰ However, the Application fails to make specific reference to such an entity. At most, ASWPC includes a lengthy list of organizations "whose activities and principles also have users at large in mind,"¹¹ but do not themselves actually "administer" any aspect of the community.¹² Therefore, the "community," as ASWPC as defined it, is not "organized" for purposes of CPE analysis.

The "community" is "construed" for purposes of satisfying CPE, and is therefore neither "organized" nor "pre-existing."

ASWPC's "community" is a construed one, designed merely to satisfy CPE analysis. While ASWPC may *desire* to aggregate disparate existing organizations under its Application umbrella, this "community" so construed by ASWPC did not pre-exist in the "organized" fashion presented for purposes of the Application, in that all the varied interests that could conceivably fall within ASWPC's amorphous criteria likely have not historically considered themselves as part of a single, discrete "community." The boundaries of this hypothetical "community" were solely constructed by ASWPC itself, and this alone is not sufficient for an award of full points. A CPE Panel similarly so held with respect to the community application for .IMMO.¹³

Indeed, isolating a "clearly delineated community" from an inherently vague term like "SPA" is extremely difficult, if not impossible. The Application confirms this. It fails to

⁹ <https://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf> at 2.

¹⁰ See <https://www.icann.org/sites/default/files/tlds/art/art-cpe-1-1097-20833-en.pdf> (CPE re .ART).

¹¹ See Applic. § 18(b).

¹² See Guidelines at 4.

¹³ <https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf> at 2-3.

meet the community “Identification” standard due to its unclear membership definition. This infirmity also affects whether the proposed community can be seen as “organized” or “pre-existing.” Certainly, ASWPC cannot score the full two points in this sub-category.

The limits of the alleged “community” do not allow an award of both “extension” points.

ASWPC also loses at least a point on Extension. The extension test examines two aspects: size and longevity. Neither concept applies in the abstract; both are examined in the context of the proffered community. See AGB at 4-12.

As to the former, “[t]wo conditions must be met to fulfill the requirements for size: the community must be of considerable size *and* must display an awareness and recognition of a community amongst its members.” See EIU Community Priority Evaluation Report re: .INC.¹⁴ As mentioned, ASWPC may like to assert that it speaks on behalf of the “40,000 spas in the world,” Applic. § 20(a), but these putative community “members” likely would have little awareness or recognition that they have been made part of any specific “community,” and probably have little (if any) “awareness or recognition” of ASWPC itself. There is an even lower likelihood that each of the various “spa products and services manufacturers and distributors” either are aware of Applicant.

While the size and longevity of persons simply familiar with the *term* “SPA” can hardly be questioned, the extent to which these attributes apply to a specific “community” – and with the requisite awareness – prevents the Application from garnering the full two points for Extension. See EIU Community Priority Evaluation Report re: .LLP.¹⁵ Also, the instant “community” should be considered as a construed one, manufactured solely for purposes of satisfying CPE.¹⁶

When combined with what likewise should be no more than one point for delineation, the application should yield no more than two of the four possible “Community Establishment” points.

CRITERION 2: The application does not establish sufficient “nexus” with the non-unique term “SPA.”

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, worth zero, two or three points, and a “uniqueness” score of zero to one. An application must score at least two points for nexus in order to obtain a point for uniqueness. See AGB at 4-14. Thus, the system

¹⁴ <https://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf> at 3 [emphasis added].

¹⁵ <https://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf> at 3.

¹⁶ *Id.* at 3.

allows a score of 4, 3, 2 or 0 points, but not a score of 1. ASWPC, as shown below, merits none.

The application cannot earn the available three nexus subpoints.

The points available under the nexus subtest are awarded as follows:

- 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: The 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. The Application cannot earn three (or even two) points by these standards. The word “SPA” can mean many things to many people. However, it does not match the name of the “community” even as ASWPC has designated it. Nor, because of the term’s wide application, does it adequately identify any “community.” The Application therefore overreaches and cannot earn the three or even two potential nexus points.

The String .SPA does not match the name of the alleged community, so the Application cannot be awarded three points.

The Application claims to represent the “40,000 spas throughout the world.” Applic. § 18(a). However, ASWPC applies for the more generic appellation “SPA.” This does not match the name of the “community” even as ASWPC has described it.

“Match” denotes a higher standard than “identify,” and means “is equal to.” See Guidelines at 7. In its analysis of .MLS, for example, the EIU found no “match” between applicant “Canadian Real Estate Association” (*a/k/a* “CREA”) and the string “.MLS” even despite CREA’s affirmative claim of trademark rights in the acronym.¹⁷

ASWPC portrays itself as the representative of “spa and wellness community.” However, it has not applied for a string using its own name, such as .ASWPC, or even .ASIAN-SPA-AND-WELLNESS-CENTERS, the latter of which could be seen as more accurately describing its proffered member base. Instead, it has specifically *rejected* these designations as undesirable from a business perspective:

The Registry has studied the different possibilities for representing the community with a TLD string, including for example, .spa, .well, .wellness, .saw, etc. None of the alternatives come close to the choice of “.spa” as a

¹⁷ <https://www.icann.org/sites/default/files/tlds/mls/mls-cpe-1-1888-47714-en.pdf> at 4.

short, representative and meaningful representation of a key distinctive spirit and cohesion describing the community.

See Applic. § 20(d). That ASWPC chose a name not matching its own should come as no surprise at all, as the phrase “Asian Spa and Wellness Promotion Council Limited” belies Applicant’s narrow geographic footprint. See EIU Community Priority Evaluation Report re: .TENNIS (e.g. “Tennis Australia”) at 2.¹⁸

A highly generic and malleable term like "SPA" does not match any one community in particular, in the same sense that, for example, the "Navajo" and "Boy Scout" communities go by those precise names. The Application, therefore, cannot receive three points.

The string .SPA does not even identify ASWPC’s “community” in order to earn two points under Guidebook standards.

Nor can the Application achieve a score of 2. To do so, the applied-for string would have to “*closely describe* the community or the community members, *without over-reaching substantially beyond* the community.” *Id.* at 4-13 (emphases added). While “.SPA” may help “describe” the purported community, it does not do so closely enough to warrant a score of 2.

ASWPC frames its Application around spa and wellness “centers,” as if physical facilities encompass every person or entity with a potential use for the generic term “SPA” throughout the world. This is clearly not the case, as a number of other constituencies could have a legitimate interest in the string, such as:

- Manufacturers of whirlpool tubs (see <http://spa-warehouse.com>);
- Joint-stock entities designated as “Società Per Azioni” or “S.p.A” entities (see http://en.wikipedia.org/wiki/Joint-stock_company#Italy);
- A “Society of Professional Accountants” (see <http://www.spa.org.uk/>);
- The Defense Contractor “Systems Planning and Analysis, Inc.” (see <http://www.spa.com>);
- “Special Protection Areas” in Europe for protecting migratory birds and other wildlife (see http://en.wikipedia.org/wiki/Special_Protection_Area).

Indeed, while ASWPC acknowledges that the term “SPA” can have meanings outside its purported “community,” it treats them as a “minority” and not worthy of any

¹⁸ <https://www.icann.org/sites/default/files/tlds/tennis/tennis-cpe-1-1723-69677-en.pdf>

meaningful consideration when compared to its preferred meaning.¹⁹ While this may prove useful for ASWPC's business goals, CPE analysis is not that simple.

According to the Guidebook, "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." AGB at 4-13. As in the Guidebook's tennis-related example, ASWPC's Application "over-reaches substantially," in that it attempts to "capture a wider geographical/thematic remit than the community has."²⁰

As noted in its Application, ASWPC made a conscious decision to apply for .SPA – a string with broad applicability – to serve its own purposes, such as to increase its visibility and value as a registry. While ASWPC may consider this to be a perfectly legitimate and understandable choice, as a result it nonetheless voluntarily abdicated any right to preference over others who would operate the TLD in a more open (and broad-based) manner. ASWPC cannot have it both ways. As in the highly analogous case of .TENNIS, it should earn none of the three possible nexus points.

"SPA" does not "uniquely" identify the claimed "community".

The "uniqueness" subfactor "relates to the meaning of the string." See <http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv3-15feb10-en.pdf> at 65. Put simply, is the string a truly *unique* word that has no other significant meaning beyond referring to the community asserted by the applicant?

First, the analysis need never even reach that question. A point for uniqueness requires "that the string does identify the community – *i.e.*, scores 2 or 3 for 'Nexus' – in order to be eligible for a score of 1 for 'Uniqueness.'" AGB at 4-14. Since the Application here does not earn two or three points for nexus, the rules also bar it from consideration for a uniqueness point.

Even absent that bright line limitation, the Application still would not earn a uniqueness point. As mentioned, that can occur only where the applied-for string has "no other significant meaning beyond identifying the community described in the application." AGB at 4-13. The term "SPA" of course, goes beyond identifying spas and wellness centers. The word is much more varied, with a number of widely-utilized connotations, such as those described above.

ICANN has put the necessary balancing in the hands of applicants. Does one select a popular, well-recognized term that — like .SCOUT or .SCOUTING — that may describe the community at issue, but also has other meanings that widen its impact? Or does the applicant select a more unique and specific community name, such as .BOY-SCOUTS-OF-

¹⁹ See Applic. § 20(b).

²⁰ See Guidelines at 8.

AMERICA? The latter may deserve a scoring point, whereas the former most assuredly does not.

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).

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

The breadth of the simple term "SPA" may make it an excellent choice for a top-level domain. However, its versatility defeats any efforts to associate it *uniquely* with one group in particular. ASWPC had to choose between a sweeping, common term or a string unique to its specific segment, and it selected the former. While this may have advantages from a marketing or business strategy perspective, it also carries the disadvantage of not uniquely identifying a “community.”

Of the four total points available for "nexus" and “uniqueness,” the Application should earn *zero*. The term is not unique, and does not even closely describe the purported community. Thus, the Applicant cannot possibly receive the necessary 14 of 16 points to pass CPE, and the Panel need proceed no further.

CRITERION 3: The Application lacks community-based registration policies.

“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 (including an avenue for appeal).

AGB at 4-16. The panel should score applications from a holistic perspective, applying these categories to the particularities of the community explicitly addressed. *Id.* 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.* See also EIU Community Priority Evaluation of IMMO (“[t]he registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD”).²¹

The post-sunrise “eligibility” rules are open to virtually anyone.

The Application lays out various “[s]unrise and startup policies” to “provide priority registration opportunities to community members.”²² According to the Application, these policies will attempt to verify that a would-be registrant meets certain criteria, such as having a “valid operating license,” “spa, beauty or wellness certification,” “membership with any spa or wellness industry association,” etc.²³

However, once sunrise has ended, ASWPC states that it “intends to maintain an open platform allowing individuals and companies from around the world meeting *basic eligibility requirements as required by ICANN* to register and utilize the TLD on a first-come-first-served basis.”²⁴ In other words, one must be part of the “spa community” to participate in the sunrise, but *anyone* who could otherwise register a .COM or .ORG domain name can register a .SPA after the sunrise period ends, so long as the “mandatory guidelines” (discussed further below) are met. Because it does not restrict registrations to community members, the Application cannot earn the single point available for this element. See Guidelines at 11.

The Name Selection and Content/Use Limitations Each Involve Mechanisms That “Will Be Developed” In The Future.

In addition, while the Application does briefly mention certain mandatory guidelines that specify the names that can be selected and how they may be utilized, these guidelines *do not currently exist*, but will be developed as “one of the first tasks” by the proposed .SPA Registry Community-Advisory-Council (“SPARC”) at some future date. While ASWPC’s intent appears laudable, CPE analysis is rigorous and must *include* – not merely *propose* – specific measures “aligned with the community-based purpose of the TLD.”²⁵ ASWPC cannot therefore attain the sole “name selection” point.

ASWPC does, concededly, provide at least a reasonable discussion about enforcement mechanisms, including an avenue for appeal (*e.g.* a “Mandatory Administrative Proceeding”). However, given the lack of any real eligibility restrictions, and when

²¹ <https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf> at 5.

²² See Applic. § 20(e).

²³ *Id.*

²⁴ *Id.*

²⁵ See AGB at 4-15; Guidelines at 13.

considering that the name selection and content/use restrictions are purely hypothetical at this stage, ASWPC warrants no more than two points out of four.

CRITERION 4: The Application does not demonstrate relevant community support.

The “support” criterion looks at both support and opposition, with an application potentially eligible for two points for each subfactor. While ASWPC’s Application does not appear to have encountered any significant opposition to date, it should nonetheless receive a zero for support as it offers only one letter, consisting of a single sentence — without any description of process or rationale — from a local spa in its native Malaysia.

For “support,” an 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.

See AGB at 4-17. More importantly, to count as “relevant” community support the Guidebook specifically requires a “description of the *process and rationale used in arriving at the expression of support.*” *Id.*, at 4-18.

ASWPC does not claim to be the only “recognized” community institution or member organization. Rather, while the Application includes an extensive list of purported “Spa & Wellness Community Organisations,”²⁶ ASWPC offers only one actual item of documentation²⁷ from a local spa in its native Malaysia to demonstrate community support. Further, the letter itself is just one sentence in length, including only this simple statement:

“We are pleased to support the application for .spa as a mean to further develop and promote the spa and wellness industry.”

This hardly constitutes “relevant” support documentation. A close read of the text illustrates that the purported local spa is not actually supporting ASWPC’s specific bid for .SPA, but rather that it finds the notion of a .SPA domain *generally* appealing as a

²⁶ See Applic. § 18(b).

²⁷ See <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/137957?t:ac=123>

promotional tool. Further, there is no discussion regarding any “process and rationale” used to make the decision to support ASPWC’s Application.

Under the Guidebook, “support and opposition will be scored in relation to the communities explicitly addressed in the application, *with due regard for communities implicitly addressed by the string.*” Guidelines at 16 (emphasis added). There is no indication that the Application even has support from “at least one group with relevance,” much less a majority of the purported “40,000 spas around the world” or any other groups (e.g. hot tub manufacturers, European “Società Per Azioni” companies, etc.) implicitly referenced by the string.

ASWPC’s score for this sub-criterion must be zero points. Its total score for the entire fourth factor can therefore be no greater than two.

CONCLUSION

The Applicant undertakes the CPE essentially as a “low cost, high reward” gamble. ASWPC is inappropriately trying to use the CPE process to circumvent the appropriate contention set resolution process defined by ICANN.

However, one would expect to find it exceedingly difficult to succeed at CPE using such a loose, unbounded amalgamation as that suggested by a word as generic as “SPA.” This is why the CPE criteria are set so high—to prevent the creation of artificial “communities” in order to gain an advantage in the new gTLD process.

An objective consideration of the relevant criteria would suggest the following scores:

- Most appropriately two, but certainly no more than three, points for “Community Establishment.”
- Zero points for “Nexus,” and under no circumstances more than two points because the string does not “match” or identify “uniquely” the community claimed in the Application.
- Most reasonably two, but certainly no more than three, points for “Registration Policies” due to lack of any meaningful eligibility criteria.
- A maximum of two points for “Community Endorsement” (with this stemming *solely* from the opposition sub-criterion).

Thus, six to ten points represents the absolute “best case” scenario for the Applicant. Falling well short of the 14 points necessary out of the 16 available, the Application should not pass CPE.