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## AT-LARGE ADVISORY COMMITTEE

### ALAC Statement on the Community Priority Evaluation (CPE) Guidelines Update from ICANN

#### Introduction

The following individuals composed an initial draft of this Statement after discussion of the topic within At-Large and on the Mailing Lists

- Olivier Crépin-Leblond, Chair of the ALAC, ALAC member from the European Regional At-Large Organization (EURALO), and ALAC Executive Committee Chair; and
- Rinalia Abdul Rahim, ALAC member from the Asian, Australasian and Pacific Islands Regional At-Large Organization (APRALO) and ALAC Executive Committee.

On 26 August 2013, this statement was posted on the [At-Large Community Priority Evaluation \(CPE\) Guidelines Update from ICANN Workspace](#).

On that same day, Olivier Crépin-Leblond, Chair of the ALAC, requested ICANN Policy Staff in support of the ALAC to send a Call for Comments on the draft Statement to all At-Large members via the [ALAC-Announce Mailing List](#).

A version incorporating the comments was later posted to the aforementioned website.

The Chair of the ALAC requested that ICANN Policy Staff in support of the ALAC open a ratification vote on the Statement.

On 6 September 2013, Staff confirmed that the online vote resulted in the ALAC endorsing the Statement with 11 votes in favor, 0 votes against, and 0 abstentions. You may review the result independently under: <http://www.bigpulse.com/pollresults?code=3351CXLrzJjhS8TSKdxyZnrG>

#### Summary

1. The ALAC welcomes the proposal of “Community Priority Evaluation (CPE) Guidelines” prepared by The Economist Intelligence Unit (EIU).
2. The ALAC notes with satisfaction that the EIU has transposed the Applicant Guidebook Criteria into Evaluation Guidelines for what is intended to be an evidence-based evaluation process.
3. The ALAC supports the need for comprehensive community assessment to ensure the legitimacy of applicants and the long- term sustainability of their value proposals.
4. Without re-opening the debate on the Applicant Guidebook Guidelines themselves, the ALAC has several recommendations and observations to make based on the document within this Statement.

The original version of this document is the English text available at <http://www.atlarge.icann.org/correspondence>. Where a difference of interpretation exists or is perceived to exist between a non-English edition of this document and the original text, the original shall prevail.

# ALAC Statement on the Community Priority Evaluation (CPE) Guidelines Update from ICANN

## Introduction

On the whole, the ALAC welcomes the proposal of “Community Priority Evaluation (CPE) Guidelines” prepared by The Economist Intelligence Unit (EIU). It notes with satisfaction that the EIU has transposed the Applicant Guidebook Criteria into Evaluation Guidelines for what is intended to be an evidence-based evaluation process. The ALAC supports the need for comprehensive community assessment to ensure the legitimacy of applicants and the long-term sustainability of their value proposals.

Without re-opening the debate on the Applicant Guidebook Guidelines themselves, the ALAC has several recommendations and observations to make based on the document, which was made open for Public Comment. Our comments follow the structure of the EIU’s Guidelines document for ease of review.

## 1–A Delineation

Whilst it is important to establish this criterion clearly, history within the gTLD market has demonstrated that an assessment based on strict metrics alone falls short of expectations.

Further indicators (markers) should be added to 1A. If there are two competing applicants purporting to represent a “community”, then there should be other qualitative markers that can help differentiate the two.

There are Communities who need protection through leadership and foresight – and the “clear delineation proposal” in 1-A does *not* provide such safeguard when comparing Western-based Communities with Traditional Cultures.

Special care should be taken to protect “traditional knowledge” and “Indigenous Communities” that may not have the technological knowledge and ability to navigate the systems effectively.

For example, consider a large firm deciding to apply for .maasai, supporting a clearly delineated online community around a product named “Maasai” and already holding a trademark on the word “Maasai”. Then consider a Maasai Elder in the process of protecting their traditional name. Ron Layton of Light Years IP argues that the [Maasai brand is worth \\$10 million](#). Intellectual Property and Traditional cultural expressions have been the subject of global discussions as early as 1967 when there was an amendment to the Berne Convention for the Protection of Artistic and Literary Works for the protection of unpublished and anonymous works. Whilst Trademarks work in a manner where it is first come first serve, there has to be some level of moral and ethical consideration when it comes to reservation of names for Communities and not allowing them to be exploited.

## 1–B Extension

Whilst we understand the need for a Top Level Domain to be representing the majority of people in a community, “Considerable Size” is a subjective metric, which needs to reflect context that may be

diverse.

Take for example the context of the Pacific Islands where the population size is diverse: Niue has 1300 inhabitants whereas Papua New Guinea has a population of 8 million people. Tuvalu (.tv), Palau (.pw), Tokelau (.tk) and Niue (.nu) are examples of small countries. There may be community applications from small countries like these island nations where the matter of “considerable size” may differ. The question then arises as to how applications from the Communities of such countries would have any chance of success when compared to applications supported by multi-national commercial entities anchoring a “community” around one of their products?

Take another example based in Africa: The “Amharic” Community is limited in members and geographic dispersion. It is a linguistic and cultural Community located in Ethiopia. Why should it be given a low score when it is a valid Community?

As in 1-A, there appears to be absolutely no safeguard for small Community applications if the sole criterion in 1-B is overall extension. The ALAC is therefore concerned that here again a strict arithmetical evaluation will discriminate against small Communities and therefore recommends that there be special consideration when the community is of special interest or endangered.

## **2–A Nexus**

The ALAC appreciates the care that has gone into defining the Nexus. However, a concern has been raised in the special case of community applications made by a Diaspora and the Diaspora exceeds the original population of a country. Simple examples would be Niue (3500 living in New Zealand vs. 1500 in Niue) or Lebanon (14 million living elsewhere vs. 4.3 million in Lebanon). An application made by a Diaspora may therefore score higher than a local community application in the country of origin. Determining which of the two Communities should be prioritized is a difficult matter.

## **3–A Eligibility**

For a geographic location community TLD, the current Guidelines take the example of Eligibility as applications that impose a geographical restriction for applicants, requiring that the registrant’s physical address be within the boundaries of the location.

The ALAC recommends that the Eligibility criterion be extended to registrants conducting business targeted at the location irrespective of their physical location. This should score better than an unrestricted approach thus the ALAC proposes a three level grading:

- 2 = eligibility restricted to community members
- 1 = eligibility restricted to service provision to community members
- 0 = Largely unrestricted approach to eligibility

## **4–A Support and 4–B Opposition**

There is neither mention of individuals nor governments as recognized channels or sources of support or opposition. Some individuals may not be part of an institution or organization, but could potentially rally to make an endorsement or objection. Online petitions as well as crowd-sourcing and other forms of virtual Communities do not have the legal framework in place nor the strict hierarchy that this section appears to require for a letter of support or opposition to be endorsed.

Extra care should be used in 4 – B, where “a group of non-negligible size” is too vague, and without measurable elements, may lead to a non-objective and gamed evaluation.

The ALAC also re-iterates its concern regarding Community Support and Opposition, that the new gTLD Program has not been advertised enough to Communities worldwide. Evaluators should exercise care in using this criterion particularly when lack of opposition is observed.

One failure of the ICANN process has been to give not enough time for Communities worldwide to understand their rights in objecting to applications that could be detrimental to their Community. In this respect and in the vast majority of cases, the Objections process at ICANN (and indeed the new gTLD Program altogether) was unknown when the window for Community Objections was open.

With insufficient notice to the concerned Communities to respond and object, those who understand the mechanics of the new gTLD application process may be the first to respond and lend their support.

Evaluating the level of Community support or opposition as determined in Criterion #4 is tricky in that support for the applicant will easily be found whilst opposition is less likely to be readily stated since potential opponents are less likely to be involved in the new gTLD Process. As a result, Communities that might benefit more from a specific gTLD, but are not aware of the new gTLD process taking place, will not have the chance of voicing their concerns unless they have been advised in advance of the opportunity to do so.