

From: Reg Levy
Sent: Monday, March 03, 2014 08:54
To: Christine Willett
Subject: .hotel CPE

Christine—

The attached is respectfully submitted as an evaluation of HOTEL Top-Level-Domain S.a.r.l.'s application for .hotel. Please publish it on the ICANN correspondence page and forward it to the appropriate CPE panel.

Thank you,
Reg

HOTEL Top-Level-Domain S.a.r.l.'s Application for .hotel
Comment to Community Priority Evaluation

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Introduction

This evaluation of the HOTEL Top-Level-Domain S.a.r.l.'s ("Hotel TLD") community priority application for .hotel (Application ID 1-1032-95136) is offered to the Community Priority Evaluation (CPE) Panel in the hope that it will be of use. It has been stated in various venues that CPE-related letters submitted to ICANN and to the public comment forum would be directed to the relevant CPE Panel.

It must be underscored that, if the rules set forth in the Applicant Guidebook (AGB) are followed, many community priority applications for generic strings will fail—and rightly so—given that ICANN has set the entry barrier quite high. So high that, out of 16 possible points, if an applicant loses more than 2, it is *not a community* as contemplated by the AGB and must fail CPE. This barrier is so strict because the danger of having a TLD claiming to serve a community for which the community either does not exist or does not agree to the applicant who has claimed it will represent that community is so high. As will be shown below, the Hotel TLD application will not have sufficient points to pass CPE.

The AGB is a document created by the ICANN multistakeholder community over many years of drafts and conversations. The AGB as it stands was agreed to by all applicants by virtue of their applications and must be adhered to.

Although this evaluation is offered by a party with vested business interests in this discussion, it is offered in the spirit of the multistakeholder model. It must be insisted upon that all CPE Panels rely solely on the rigorous criteria put forth in the AGB.

Hotel TLD is claiming a very generic term as its community name and the CPE process was designed to prevent this. As would be expected, Hotel TLD's application does not pass our evaluation, scoring only 9 of the 14 points necessary. Here is a summary of the key areas of concern:

Analysis

The CPE is comprised of four criteria, each of them divided into sub-sections that are individually evaluated. They are:

- + Community Establishment
- + Nexus between Proposed String and Community
- + Registration Policies
- + Community Endorsement¹

Each of the sub-sections is scored on a basis from 0–4 points, allowing the possibility of scoring a maximum of 16 points overall. 14 points are required to successfully pass CPE.²

The Panel is respectfully reminded that the AGB was relied upon by all applicants and the Panel must rely exclusively to the AGB for information regarding how to come to a decision regarding the Hotel TLD application for .hotel. While the CPE Panel may rely on some level of outside research, this remains undefined and information regarding the definitions of and criteria for qualifying as a community under the AGB must come solely from the AGB itself. evaluation criteria published by ICANN in the AGB.

Criterion 1: Community Establishment; Score: 2

Summary

Out of 4 possible points for Criterion 1, Hotel TLD merits at most only 2.

¹ *New gTLD Applicant Guidebook*, Version 2012-06-04 ("AGB"), §4.2.3.

² *Id.*

Criteria

A maximum of 4 points is possible on the Community Establishment criterion, or 2 points each for “Delineation” and “Extension”. To receive the full 2 points for Delineation, the AGB states that an application must invoke a “clearly delineated, organized, and pre-existing community.” For 1 point, the application must be clearly delineated and pre-existing but insufficiently for 2 full points. To score 2 points for Extension, a community must be “of considerable size and longevity”. To score 1 point for Extension, a community must have either considerable size or longevity.³

“Community” as defined by the AGB requires that there be

*(a) an awareness and recognition of a community among its members; (b) some understanding of the community’s existence prior to September 2007 (when the new gTLD policy recommendations were completed); and (c) extended tenure or longevity—non-transience—into the future.*⁴

Hotel TLD’s application, however, allows into the so-called “community” establishments that are not hotels—such as marketing organizations—and *excludes* from the “community” establishments that *are* hotels, such as bed-and-breakfasts.

Despite this definition, the AGB awards no points for the length of the community’s existence—past or future.

Analysis

Delineation

To receive the full 2 points for delineation, the AGB states that an application must invoke a “clearly delineated, organized, and pre-existing community.” For 1 point, the application must be clearly delineated and pre-existing but insufficiently for 2 full points.

Hotel TLD’s application proclaims that is “intended exclusively to serve the global Hotel Community”.⁵ Delineation relates to the “membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low.”⁶ At first glance, this seems appropriate, however, Hotel TLD goes on to define hotels as “[e]stablishment[s] with reception, services and additional facilities where accommodation and in most cases meals are available.”⁷ Under this definition, bed-and-breakfasts fall firmly into the category of “hotels” yet there is no allowance for them to join the “community” TLD since, while some may be members of inn and hotel associations, they are not regulated in the same way as hotels and need not be members of any association in order to operate.⁸

³ *Id.* The CPE Panel is once again encouraged and instructed to refer to the AGB for further definitions provided by ICANN for the explicit purpose of determining whether an applicant meets the strict criteria necessary to pass CPE.

⁴ *Id.*

⁵ Public portion of HOTEL Top-Level-Domain S.a.r.l.’s application for .hotel (“Hotel TLD’s Application”), available at <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1562>. Last accessed 20 February 2014. Answer to Question 18(a): Describe the mission/purpose of your proposed gTLD.

⁶ AGB, §4.2.3.

⁷ Hotel TLD’s Application. Answer to Question 18(b): How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?

⁸ Wikipedia entry on “Bed and breakfast”. Available at: http://en.wikipedia.org/wiki/Bed_and_breakfast. Last accessed 20 February 2014. Section on “Regulations” and “Professional and trade associations”.

In addition, the licensing and requirements of hotels worldwide varies from jurisdiction to jurisdiction. This can be seen from the GAC⁹ Early Warnings¹⁰ issued by Germany and France, respectively. For example, France's GAC representative stated that any application for .hotel must be closed and restricted only to hotel businesses.¹¹ France made this comment on all applications for .hotel *except* that of Hotel TLD.¹² Germany's GAC representative, however, stressed that any .hotel TLD *not* be restricted, stating that to do so would be anticompetitive in nature.¹³ Such vast differences are evident between countries so close to one another—and both members of the EU—let alone the differences between countries globally.

Finally, Hotel TLD defines the list of businesses who would be eligible for domain names in their .hotel namespace and it includes, bafflingly, marketing agencies.¹⁴ Indeed, *any* company that “represents” a hotel is eligible for membership,¹⁵ from accountants to lobbyists. It beggars belief that these institutions would be eligible for .hotel domain names but family-run bed and breakfasts would not be.

Hotel TLD must score 0 for Delineation.

Extension

To score 2 points for Extension, a community must be “of considerable size and longevity”. To score 1 point for Extension, a community must have either considerable size or longevity.¹⁶

Assuming, for the moment, that the “community” defined by Hotel TLD can be considered a community for the purposes of scoring under Extension, Hotel TLD has defined a community of considerable size—indeed it encompasses the entire globe, despite the many differences nationally and in countries where the concept defined by Hotel TLD is not represented by the word “hotel”.

Hotel TLD scores 2 points for Extension.

Score

Based on the manner in which Hotel TLD has described the “community” it purports to represent, Hotel TLD can score no more than 2 for Criterion 1. This is because it cannot score any for Delineation, as discussed above, because it disallows certain classes of institution that fall into its definition and allows nearly anyone vaguely associated with a hotel.

Criterion 2: Nexus between Proposed String and Community – Score: 2

Summary

Out of 4 possible points for Criterion 2, Hotel TLD merits only 2.

⁹ Governmental Advisory Committee to the ICANN Board. The GAC is relied upon by the ICANN Board for guidance and advice and, for the New gTLD Programme, was in a unique position to delay, halt, or encourage applications via “Early Warnings”.

¹⁰ See ICANNWiki entry on “GAC” at http://icannwiki.com/index.php/GAC#Early_Warnings. Last accessed 20 February 2014.

¹¹ GAC Early Warning – France – Hotel: Hotel-FR-25198.pdf, *et al.* Available at <https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings>. Last accessed 20 February 2014.

¹² GAC Early Warnings. Available at <https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings>. Last accessed 20 February 2014.

¹³ GAC Early Warning – Germany – Hotel: Hotel-DE-95136.pdf, *et al.* Available at <https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings>. Last accessed 20 February 2014.

¹⁴ Hotel TLD's Application. Answer to Question 18(b). Five categories of “exclusive” membership in the supposed .hotel “community” are listed. The third category includes “Marketing organizations”.

¹⁵ *Id.* The fifth category includes any “Other Organizations representing Hotels”.

¹⁶ AGB, §4.2.3.

Criteria

A maximum of 4 points is possible on the Nexus between Proposed String and Community criterion, or 3 points for “Nexus” and 1 point for “Uniqueness”. To receive the full 3 points for Nexus, the AGB states that an the applied-for string must “match[...] the name of the community or [...]be] a well-known short-form or abbreviation of the community”. To score 2 points for Nexus, the string must identify the community. There is no ability to score 1 point for Nexus. To score 1 point for Uniqueness, the applied-for string must have “no other significant meaning beyond identifying the community described in the application”.¹⁷

Analysis

Uniqueness

To receive the full 3 points for Nexus, the AGB states that an the applied-for string must “match[...] the name of the community or [...]be] a well-known short-form or abbreviation of the community”.¹⁸

Here, the word “hotel” does indeed refer to hotels—at least in some languages—though not to the “community” that Hotel TLD seeks to create, which includes marketing agencies¹⁹ any anyone who represents hotels.²⁰ Since Hotel TLD allows these non-hotel entities into it’s supposed .hotel “community”, it cannot score highly for uniqueness. Surely, no one thinks of tax preparers when one hears the word “hotel”, yet this is exactly who the TLD would be “restricted to” under Hotel TLD’s application.²¹

Hotel TLD scores 2 points for Uniqueness.

Nexus

To score 1 point for Nexus, the applied-for string must have “no other significant meaning beyond identifying the community described in the application”.²²

As shown above, the Hotel TLD “community” encompasses multiple parties that no one would otherwise associate with .hotel, keeping the TLD from describing the “community” it claims to create and represent.

Hotel TLD scores 0 points for Nexus.

Score

Because of the manner in which Hotel TLD has chosen to “restrict” its TLD, it can score no more than 2 points for Criterion 2: Nexus between Proposed String and Community. This is because the word “hotel” does not naturally refer to people who merely “represent” hotels in other industries.

Criterion 3: Registration Policies; Score: 1

Summary

Out of 4 possible points for Criterion 3, Hotel TLD merits only 1.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Hotel TLD’s Application. Answer to Question 18(b).

²⁰ An enterprising law firm could easily cash in on the respect that a .hotel domain name conveys by purchasing law.hotel after representing a hotel in a brief contract negotiation.

²¹ Hotel TLD’s Application. Answer to Question 18(b).

²² AGB, §4.2.3.

Criteria

A maximum of 4 points is possible on the Registration Policies criterion, or 1 point each for Eligibility, Name Selection, Content and Use, and Enforcement. To receive 1 point for Eligibility, eligibility for registration in Hotel TLD's .hotel namespace must be "restricted to community members". To receive 1 point for Name Selection, Hotel TLD must institute "[p]olicies [that] include name selection rules consistent with the articulated community-based purpose of the" string. To receive 1 point for Content and Use, Hotel TLD's [p]olicies include rules for content and use consistent with the articulated community-based purpose of" .hotel. To receive 1 point for Enforcement, Hotel TLD's "[p]olicies [must] include specific enforcement measures".²³

Analysis

Eligibility

To receive 1 point for Eligibility, eligibility for registration in Hotel TLD's .hotel namespace must be "restricted to community members".²⁴ In its answer to Question 20, Hotel TLD addresses how it defines its "community" "for registration purposes":

According to DIN EN ISO 18513:2003, "A hotel is an establishment with services and additional facilities where accommodation and in most cases meals are available."²⁵

Hotel TLD states that it will conduct "registrant eligibility verification"²⁶ but does not discuss what that verification will consist of.²⁷ Assuming, for the moment, that its verification is successful, Hotel TLD will allow hotels, marketing agencies, or law firms to register domains in its .hotel TLD. While this is exactly what it defines to be in its "community", it is *not* what is defined by "hotel".

Hotel TLD must score 0 for Eligibility.

Name Selection

To receive 1 point for Name Selection, Hotel TLD must institute "[p]olicies [that] include name selection rules consistent with the articulated community-based purpose of the" string.²⁸

Hotel TLD's only discussion of name selection restrictions indicate that it will follow ICANN's requirements to restrict registrations. Otherwise, it states that it will place no limitation on names in its .hotel space.²⁹

Hotel TLD must score 0 for Name Selection.

Content and Use

To receive 1 point for Content and Use, the Hotel TLD's [p]olicies include rules for content and use consistent with the articulated community-based purpose of" .hotel.³⁰

Hotel TLD's content and use restrictions are stringent and require that the domain name be used to display hotel-related content.³¹

²³ *Id.*

²⁴ *Id.*

²⁵ Hotel TLD's Application. Answer to Question 20(a).

²⁶ Hotel TLD's Application. Answer to Question 20(e): Provide a description of the applicant's intended registration policies in support of the community-based purpose of the applied-for gTLD.

²⁷ Although it does assure ICANN and the rest of its audience of its application that it will comply with EU data protection laws. Hotel TLD's Application. Answer to Question 20(e).

²⁸ *Id.*

²⁹ Hotel TLD's Application. Answer to Question 18(b).

³⁰ *Id.*

Hotel TLD may score 1 for Content and Use.

Enforcement

To receive 1 point for Enforcement, Hotel TLD's "[p]olicies [must] include specific enforcement measures".³²

Hotel TLD devotes *one whole paragraph* to its enforcement policies, including "standard dispute policies", a single point of contact (which is required by ICANN³³), and random checks.³⁴ These are barely enforcement measures and are not at all specific.

Hotel TLD must score 0 for Enforcement.

Score

Although Hotel TLD's registration policies are clear, they do not represent the hotel industry or any kind of "community". Further, it has *no* name selection policies and or enforcement plans. Out of 4 available points, Hotel TLD can score only 1 for Criterion 3: Registration Policies.

Criterion 4: Community Endorsement; Score: 4

Summary

Out of 4 possible points for Criterion 4, the Hotel TLD merits 4.

Criteria

A maximum of 4 points is possible on the Community Endorsement criterion divided equally between Support and Opposition. For the full 2 points for Support, Hotel TLD must show that it has "documented support from, the recognized community institution(s)/member organization(s) or has otherwise documented authority to represent the community." To score 1 point for Support, Hotel TLD must show "support from at least one group with relevance, but insufficient support" to merit a score of 2. For the full 2 points for Opposition, Hotel TLD must show "no opposition of relevance". To score 1 point for Opposition, Hotel TLD must show "[r]elevant opposition from one group of non-negligible size." For 0 points, Hotel TLD may have "[r]elevant opposition from two or more groups of non-negligible size."³⁵

Analysis

Support

For the full 2 points for Support, Hotel TLD must show that it has "documented support from, the recognized community institution(s)/member organization(s) or has otherwise documented authority to represent the community." To score 1 point for Support, Hotel TLD must show "support from at least one group with relevance, but insufficient support" to merit a score of 2.³⁶

Hotel lists support from multiple national and international hotel associations.³⁷

Hotel TLD has the requisite documentation to show sufficient support to merit 2 points.³⁸

³¹ Hotel TLD's Application. Answer to Question 20(e).

³² AGB, §4.2.3.

³³ AGB, §5.4.1. "registry operator must maintain and publish on its website a single point of contact"

³⁴ Hotel TLD's Application. Answer to Question 20(e).

³⁵ *Id.*

³⁶ *Id.*

³⁷ Hotel TLD's Application. Answer to Question 20(f): Attach any written endorsements from institutions/groups representative of the community identified in 20(a). Attachments available at <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1562>. Last accessed 20 February 2014.

Opposition

For the full 2 points for Opposition, Hotel TLD must show “no opposition of relevance”. To score 1 point for Opposition, Hotel TLD must show “[r]elevant opposition from one group of non-negligible size.” For 0 points, Hotel TLD may have “[r]elevant opposition from two or more groups of non-negligible size.”³⁹

While there are no formal objections to Hotel TLD’s application, it bears noting that the hotels and hotel associations that supported Hotel TLD’s application asked ICANN’s Independent Objector⁴⁰ to object to all non-Hotel TLD applications for the string .hotel.⁴¹ After fully vetting all of the applicants, the Independent Objector, charged with safeguarding the rights of Internet users and ensuring confidence in the New gTLD Application Programme, found no reason to object to any of the .hotel gTLDs on the basis of community objections.⁴²

Hotel TLD may score 2 points for Opposition.

Score

Hotel TLD scores the full 4 points for Criterion 4: Community Endorsement but it, once again, must be underscored that the Independent Objector found no reason to object to any of the other applications for .hotel—including on the basis of community support.

Conclusion

Hotel TLD’s application for .hotel attempts to supersede all other applications by applying for community priority evaluation. Unfortunately, it comes nowhere near succeeding in either establishing a community, creating a nexus around that “community”, or establishing registration policies to protect that community. While many in the hotel industry support Hotel TLD’s application for .hotel, the supposed “community” TLD would allow numerous non-hotel entities into its namespace, including marketing agencies, accountants, law firms, and the like, and would do little to police and restrict eligibility, limit name selection, or enforce any kind of protection within its namespace.

As has been amply shown above, Hotel TLD’s application for a community TLD must fail CPE. The Panel is thanked for its kind attention to this evaluation and its strict adherence to the AGB.

Reg Levy
Minds + Machines

³⁸ It will be shown later, however, that at least some of this so-called “support” was signed off on by groups without consulting their members, throwing into question the remaining letters of “support”.

³⁹ AGB, §4.2.3.

⁴⁰ See ICANNWiki entry on “Independent Objector” at http://icannwiki.com/index.php/Independent_Objector. Last accessed 20 February 2014.

⁴¹ Public comment posted in the Application Comment section of ICANN’s website. Available at: <https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/5719>. Last accessed 20 February 2014.

⁴² The Independent Objector’s page at ICANN.org. Available at: <http://newgtlds.icann.org/en/program-status/odr/independent>. Last accessed 20 February 2014.