**ENOM COMMENTS ON REVISED**

**EXCERPTS OF DAG**

**JULY 2009**

**2.1.1.4.1 Categories of Strings Considered Geographical Names.**

We generally endorse the additional clarity and guidance on geographic names contained in this version. In the definition of what constitutes a geographic name, however, the only provision that causes us concern is the phrase *‘in any language’* that applies to country, territory and capitol city names at the Top Level. This expansive phrase might cause unintended consequences in that it could create situations where an applied for string is a widely and commonly used (non-geographic) term in its own language, but is also an exotic translation of a geographic term in some other language. By exotic we mean the translation is in a language not commonly used in the country/ territory the DAG provision is trying to protect.

As a hypothetical example, the English word ‘BOOK’ might happen to be the Maltese language translation of a territory in Argentina (where Spanish is the primary language and Maltese is rarely spoken). Though this scenario may seem unlikely the thousands of geographic terms multiplied by the hundreds (or perhaps thousands) of languages means the overall number of ‘protected’ words is very large.

We think the current provision creates two problems:

1. It causes unpredictability as applicants cannot identify all possible language variations of all countries, territories and capitols. Applicants will try in good faith to avoid collisions but these collisions may nevertheless occur, resulting in failure of the application and loss of a portion of the Initial Evaluation Fee; and

1. It may result in a commonly used term in one language being denied to Internet users of that language because the term is also an exotic translation of a geographic place. In the previous example, the expansive phrase in the DAG would cause the denial of the TLD .BOOK to a large number of English speaking people in order to protect a relatively rare translation, and perhaps one where the affected country has no real concern about use of the word BOOK as a TLD. We realize it may be possible for the applicant to subsequently obtain a non-objection from the affected Government, but in most cases we believe this would be difficult and should be unnecessary.

In order to mitigate this situation we recommend a DAG modification that gives the Geographic Names Panel discretion to allow a string to proceed in certain circumstances. The following is some suggested language:

*“If the applied for string is a common generic word and, in the judgment of the Geographic Names Panel the translated language is of peripheral relevance to the designated country, the*

*Panel can recommend that the requirement for obtaining Government approval be waived – except the relevant Government can still file an objection to the waiver”*

**Evaluation Question 52: Funding and Revenue**

The *“Exceeds Requirement’*” score for this question lists four criteria. The second and third criteria appear to be ‘or’ rather than ‘and’. Can you please confirm whether an Exceeds score can be achieved by satisfying one of these two criteria (in addition to satisfying the first and fourth criteria).

**3.1.2.3 Morality and Public Order Objection**

The significant broadening of Standing to Object (anyone can now Object) is likely to increase the incidence of frivolous or malicious Objections. We strongly endorse the idea of a ‘quick look’ review to reduce the need for full dispute proceedings in such cases. During ‘quick look’ the DRSP could deny an Objection where the applied for TLD is very clearly not in breach of the standards in section 3.4.3 of the DAG. In our view an Objector found to be frivolous or malicious should not have any portion of their Objection Fee refunded. We believe the mere existence of a “quick look” will help to discourage frivolous morality and public order objections.

**3.1.5 Independent Objector**

The proposed scope, methods and funding for the Independent Objector (IO) in Module 3 seem sensible. In our estimate there are likely to be few, if any, cases where the IO initiates an Objection. Nevertheless we think it is important to have this capability in place as a contingency.

**3.4.4 Community Objection**

We endorse the changes made to this section in Module 3. We believe they more clearly align this form of Objection with the objective of Community – namely, to prevent the misappropriation of a string that uniquely or nearly uniquely indentifies a well established and closely connected group of people or organizations.

**4.2.3 Community Priority Criteria**

The principle of ‘Community’ is complex. In our view it should give preference to applicants whose selected string so closely reflects the applicant group’s identity that to allow another applicant to have that string would impinge the rights of the group. By “rights” we mean the string is the name of the group, and has no other meanings, so in effect it “belongs” to them. We believe Community is proper for applicants who do not have legal (e.g. trademark) rights in the string but nevertheless should not have to compete with other possible applicants for the string.

Community should not abused by applicants seeking to obtain and limit a generic string that has many uses. Such general strings should be allowed to be shared by the wider Internet community. When a legitimate Community string is communicated (by itself and without other words) there should be no doubt which group of individuals or organizations the string refers to. By definition there should be very limited or no other uses of the string outside a description of that group.

Due to the fact that Community bids beat Open bids for the same strings there is a huge incentive for applicants to claim Community. The fact that Community limits the pool of potential registrants (by

awarding points for Restrictions) is not a sufficient detriment to outweigh the incentive to claim Community. It barely dampens the incentive at all, because the applicant’s first priority is to obtain the string and a generic string obtained without competition, even if restricted, may be more valuable than an unrestricted generic string obtained via competition. If Community scoring rules are loose a very large portion of all TLD bids will be Community bids. It would encourage gaming of the process and likely would lead to disputes and potential litigation.

In order to support legitimate Community bids and reduce such gaming abuses we propose the following clarifications to Section 4.2.3. For Criterion 1: Community Establishment there should be clear definitions of the terms *‘organized’, ‘size’* and *‘longevity’*. We believe *‘organized’* should require documented evidence of Community objectives, processes, operations and activities that were not associated purely with the pursuit of the TLD. In our view *‘size’* should require tens of thousands of Community members (at a minimum) and *‘longevity’* should require that the Community have been *‘organized’* for at least two years prior to the TLD bid. In all cases the tests should be applied to the actual Community cited in the application and not to individual members who have coalesced to form the Community.

For Criterion 4: Community Endorsement a score of 1 for Support currently states: *“Documented support from at least one group with relevance, but insufficient support for a score of 2”.* Our interpretation of this is that if the string is potentially relevant to more than one possible group the Evaluator will apply a score of 1 (unless all possible groups have joined to form the applying Community). We think our interpretation is logical because to define it otherwise would guarantee a Support score of 2 to any applicant. It would be useful guidance for applicants to include a note explaining– *If the string is potentially relevant to more than one possible group the evaluator will apply a score of 1 (unless all possible groups have coalesced to form the applying Community).*

In our view String Nexus is the most important criterion. We applaud the new language that brings Nexus scoring more into line with a Community’s *‘name’* and *‘identity’* as opposed to just *‘association’* or *‘relevance’* (as it appeared in prior drafts). We think an *‘I am a \_\_\_\_\_\_’* test is a good indicator whether an applicant should score a 2 or more on Nexus. Under this test the applicant, or a member of the applicant’s Community, should be able to complete the sentence *“I am a \_\_\_\_\_\_”* where the TLD string fills in the blank. If the subsequent sentence makes grammatical and logical sense we think a Nexus score of 2 or more is possible. If the sentence does not make grammatical or logical sense a score of 2 or more would not be achieved.

While we also support the new ‘Uniqueness’ score, we believe Uniqueness is so important that applicants who meet this test should get 2 points instead of the proposed 1 (i.e. there would be a 2 or 0 score for Uniqueness). We believe such scoring would be consistent with the February 2009 Analysis of Public Comment that concluded: “*There is merit in considering uniqueness in the nexus between string and community as a main factor for achieving a high score. To be an unambiguous identifier****, the "ideal" string would have no other associations than to the community in question“****[our emphasis].*

Increasing the Uniqueness component to 2 points would make a total of 5 possible points for Nexus, which we believe is appropriate given the previously agreed importance of this criterion. The maximum overall points would then become 17 instead of the current 16. In conjunction with this we strongly recommend that the current 13 points to pass the threshold be returned to its previous level of 14 except that whereas previously a score of 14 out of 16 was required for Community now there would be a 14 out of 17 pass threshold. Even if the total number of points is not increased from 16 to 17 as we suggest above, we strongly recommend the point total to achieve community be changed back to 14 (as it was in the prior DAG) so as to align Community with its true objective – ‘*to prevent the misappropriation of a string that uniquely or nearly uniquely indentifies a well established and closely connected group of people or organizations’.*

**Contract Specification 4: WhoIs**

As a result of the IRT Report this new DAG version includes a mandatory Thick WhoIs requirement. The IRT Report stated: *“the provision of WHOIS information at the registry level under the Thick WHOIS model is essential to the cost-effective protection of consumers and intellectual property owners”.* As the COM and NET registries, which hold 84% of all gTLD registrations, are not Thick the logical conclusion of the IRT Report is that cost effective trademark protection is not possible in COM and NET. Given that Thick WhoIs has been mandated for new TLDs this must be seen as a major victory for the IRT and a significant reduction in trademark protection costs versus COM and NET.

**Contract Specification 5: Schedule of Reserved Names**

We endorse the proposed expansion of reserved names in Mod 2 to include initial protection of country and territory names at the second level. This new contract provision satisfies the GAC Principles Regarding New gTLDs as related to geographic names.