November 21, 2009

Big Room Inc.
332 – 237 Keefer St
Vancouver BC Canada
V6A 1X6

Dear ICANN and the Internet Community,

Re: Big Room Inc. Comment to ICANN Draft Applicant Guidebook v3 (DAG3)

Big Room Inc., a Canadian company and prospective applicant for the Dot Eco Top Level Domain (TLD), has considered how the new TLD community track could be improved in order to prevent false positives and negatives.[1] The results are presented below. We encourage ICANN and the Internet community as a whole to consider this input going forward and integrate it as appropriate.

Furthermore, we urge ICANN to take the necessary time and care needed to ensure that its community-track is successful.

The following are areas the Big Room supports and encourages ICANN to maintain:

1. We welcome and support that 14 out of 16 are points needed to win a community evaluation. Since an applicant can write responses to the Community Establishment, String Nexus, and Registration Policies criterion themselves without any community engagement, a high bar here is appropriate.

2. We welcome and support the explanatory notes in Criterion #1 – Community Establishment. However, we have identified several risks, noted below.

3. We have no additional comment on Criterion #2 – Nexus.

4. We support ICANN's criterion for name selection, content and use, and enforcement in Criterion #3 – Registration Policies. We welcome efforts to strengthen this criterion, as it is critical to the long-term health of community-based TLDs. We have identified a risk, noted below.

5. We welcome and support the explanatory notes in Criterion #4 – Community Endorsement. We have identified several risks, noted below.

Thank you for the opportunity to comment on DAG v3.

---

[1] ICANN defines false positives and negatives in their application guidebook as: "false positives" (awarding undue priority to an application that refers to a "community" construed merely to get a sought-after generic word as a gTLD string) and "false negatives" (not awarding priority to a qualified community application).

BIG ROOM

Risk Assessment of ICANN DAG3 Community Evaluation Criteria

Big Room has identified the following risks with the community evaluation process as outlined in DAG3. We have also included proposals for mitigating those risks. We encourage an open discussion on both and welcome clarifications.

Criterion #1 – Community Establishment

Community Definition: what defines a community could benefit from additional specificity, particularly with regard to the scope of the community. For example, applicants are not currently required to state a geographic scope as part of defining their community (i.e., Global, Canada, or the City of Vancouver).

Risk 1: Capture by a particular stakeholder, cultural, linguistic, or geographic group. This is potentially a risk as a committed minority could establish support within a geographic region making efforts to consult with the entire affected geography or stakeholders. Further, establishment is directly linked to endorsement and therefore to evaluating the strength of the 'community endorsement' criteria.

For example, a dot wine application could have a global scope but an applicant could only consult with and be backed by vintners in North America. Because wine is produced and consumed around the world, it is clearly a TLD with global relevance. Therefore, a community applicant seeking to apply for dot wine should need to satisfy any evaluator that they have defined and approached their TLD community as global.

> **Proposed Resolution: Scope Requirement.** Further explain what qualifies as a 'clearly delineated, organised and pre-existing' community. Applicants could be required to clearly define their community.[2] This could include specifying geographic scope (i.e. Global, Europe, or New York City) at a minimum. The community delineation should also be expressed in the registration policies.

Risk 2: Inability to evaluate community endorsement due to differing delineation. It may be difficult to compare the level of community endorsement for two differently delineated communities.

For example, two dot wine applicants exist. One seeks to use the TLD to promote members of the International Wine Clubs Association. Another seeks to use the TLD to support the Caribbean dance community and is interested in promoting a style of dance. Both submit applications and have community support. A system needs to be developed whereby dot wine can be allocated most effectively in this case.

---

[2] The International Social and Environmental Accreditation and Labelling (ISEAL) Alliance Code of Good Practice for Setting Social and Environmental Standards, Section 7.1 states that "Standard-setting organisations shall ensure that participation reflects a balance of interests among interested parties in the subject matter and in the geographic scope to which the standard applies."

Proposed Resolution: Relevance Evaluation Mechanism. Establish a mechanism that can be employed by an independent evaluator in situations where two differently defined communities are applying for the same string. This should be established in such a way that the most relevant definition can be identified and prioritised. Relevance could be established through a legal opinion, and/or consultation with and/or a survey of panel of linguistic and topical experts.

Criterion #3 – Registration Policies

Risk: Ongoing Governance: Applicants currently do not need to create a policy that covers ongoing registry policy governance and administration by the community. Not requiring an ongoing governance process to be put in place for community TLD policies could allow a community minority or the TLD registry operator itself to create or change registration policies in the future without consulting the delineated community.

For example, a single North American winery could seek to run dot wine and claim to have the support of the winemaking community. Because there is no need for an ongoing governance policy, this group could then operate dot wine for their own benefit by only allowing the wineries they prefer to register dot wine domains.

Proposed Resolution: Governance Policy Requirement. All community applicants could be required to outline how the community can engage in the ongoing governance of policies and practices of the community TLD.

Criterion #4 – Community Endorsement

There is currently no mechanism for distinguishing between levels of support for and non-opposition from, as well as consultation with, a defined community for a particular community TLD application. Applicants currently are not required to demonstrate that they have identified, sought to engage with, and build consensus for their proposed registration policies within the stakeholder groups that constitute their community before applying.

Risk 1: Inability to Compare. It may be difficult to compare the level of community support, especially in the case that there are two different communities applying for the same strong.

Proposed Resolution: Evaluate Community Establishment and String Nexus First. We recommend that community establishment and string nexus should be evaluated prior to evaluating registration policies and community endorsement. Indeed, it may be the case that contention sets can be reduced simply on the basis of these two criterions. This is because two applicants for the same string may be found to be representing different communities as a result of this evaluation, thus rendering a 'community endorsement and registration policy'

evaluation irrelevant. Furthermore, because endorsement is dependent on establishment, this emphasises the need to strengthen the community definition component of criterion #1 – Community Establishment.

Risk 2: Stakeholder Marginalisation. The emphasis on applicants obtaining endorsements from alliances in the community could lead to disproportionate representation and inequitable evaluations by marginalizing those stakeholders who are disadvantaged from participating or lack the resources to join or form alliances[3].

> **Proposed Resolution:** We recommend removing the reference to alliances and encourage recognition for outreach to marginalised stakeholders. Applicants should be able to pursue support in line with how their community is organised and established. They should have to demonstrate extra effort to communicate with disadvantaged stakeholders. Independent evaluators should have the expertise to determine the overall level of community support that the applicant has been able to generate and the level of effort undertaken to reach out to their entire community.

Risk 3: Endorsement of a community-based application by materially affected parties.[4] Related to the Capture Risk in Criterion 3, endorsements from community members that have a material interest in the application evaluation and success could lead to a section of the community disproportionately influencing the string.

> **Proposed Resolution: Disclose Material Endorsements.** Applicants could disclose endorsements and community support that are materially affected. In determining community support, evaluators could consult with community members that are not materially affected by the outcome of the evaluation and awarding of the string.

---

[3] "Interested parties in developing countries often face additional hurdles to participation in the standard development process, including lack of expertise, knowledge of the existence of the standard, funds and infrastructure." Constraints on disadvantaged groups to participate effectively in standard development shall be addressed in the standard development process. Standard-setting organizations should consider how the influence of these groups could be increased, even if their participation rates cannot. Particular attention should be paid to the needs of developing countries and small and medium-sized enterprises. ISEAL Code Section 7.4.
http://www.isealalliance.org/document/docWindow.cfm?fuseaction=document.viewDocument&documentid=220&documentFormatId=1282

[4] "Materially affected parties are those that will be directly impacted by the application of the standard. The standard setting organisation should ensure that interest groups that are not materially affected, but that have an interest in the standard, do not make up a disproportionate segment of the participants. Ideally, the standard-setting organization should support the participation of materially affected parties that have relevant expertise in the subject matter of the standard. However, if this is not the case, the standard setting organisation should identify other participants with relevant expertise." ISEAL Code Section 7.1.
http://www.isealalliance.org/document/docWindow.cfm?fuseaction=document.viewDocument&documentid=220&documentFormatId=1282

332-237 Keefer Street
Vancouver, B.C.
Canada, V6A 1X6

T. +1 604 682 6673
F. +1 604 676 2724
www.bigroom.ca

4

Risk 4: Capture or Malicious Objection. Because this criterion only recognizes endorsement, and neither non-opposition nor evidence of consultation with opposing parties, an applicant that has not consulted broadly with their community and sought to reconcile opposing views could score as higher or higher on this criterion than an applicant who has made efforts to do this. Documented consultative efforts, along with robust governance policies, could also assist in resolving objections.

For example, this scenario assumes that this risk has been addressed: a dot wine applicant could consult broadly with the global wine making community. Wine-makers in Uruguay do not support the dot wine model, but they also do not oppose it. French wine makers firmly oppose the application because it is North American, but because the North American applicant has made efforts to consult with and address their concerns, and there is a clear process for ongoing policy governance, the evaluator rules that their objection should not prevent the application from moving forward.

> **Proposed Resolution: Prior Engagement Documentation and Material Endorsements.** Require community TLD applicants to provide documentation on how they have engaged stakeholders identified in their delineated community and the level of support that they have been able to obtain as a result of this engagement. Additionally, require applicants to disclose materially affected endorsements - those that would materially benefit should the applicant be successful in obtaining the string.
>
> Broader support should result in a higher score. As it is rare for any community to entirely agree on something, evidence of non-opposition (we-do-not-oppose) and broad consultation should also be considered as endorsement indicators.
>
> There are internationally recognised standards and norms for identifying and consulting with community members (often called "stakeholders" or "interested parties")[5]. In order to ensure that the relationship between the proposed gTLD and the relevant community is robust, we recommend that evaluators consider both the breadth (number of endorsements and supporters) and depth (extent of consultation or engagement with the application) with the relevant community members who will be affected by the new gTLD; and the processes by which they were consulted.
>
> Specifically, evaluators could consider:
>
> 1. The method by which applicants have defined and identified the relevant community members and stakeholders; and

---

[5] "Any person or group concerned with or directly affected by a standard." ISEAL Code Section 3.2. http://www.isealalliance.org/document/docWindow.cfm?fuseaction=document.viewDocument&documentid=220&documentFormatId=1282

5

2. The process by which community members were consulted in relation to the application for the new string, and the string's proposed registration policies.

Overall Evaluation Process

Evaluators may not necessarily have specialized knowledge about the communities that they are evaluating.

> *For example, evaluators would not be expected to know about the community, history, major actors, networks, within the global wine-making community.*

Risk: Inaccurate Evaluation. Lack of knowledge and understanding about the community the evaluators are assessing the application against could lead to ill-informed evaluation processes and misallocation of points.

> **Proposed Resolution:** Develop mechanisms for evaluation panels to better understand the breadth and depth of the communities they are evaluating by providing access to a diverse pool of experts and leaders, who could serve as interviewees or informational resources. Surveys, if correctly constructed, could also be useful here as a mechanism for checking the assertions of evaluators.

332-237 Keefer Street
Vancouver, B.C.
Canada, V6A 1X6

T. +1 604 682 6673
F. +1 604 676 2724
www.bigroom.ca

6