DETERMINATION
OF THE BOARD GOVERNANCE COMMITTEE (BGC)
RECONSIDERATION REQUEST 14-31

24 July 2014

The Requester, TLDDOT GmbH, seeks reconsideration of the Community Priority

Evaluation ("CPE") Panel's Report, and ICANN's acceptance of that Report, finding that the

Requester did not prevail in the CPE for .GMBH. In light of the CPE results, while the

Requester's application will not be given priority over other applications for the same string, it is

still in contention to ultimately be, following contention resolution, the prevailing application for

its string.

I.   Brief Summary.

The Requester submitted a community-based application for .GMBH ("Application").

The Application was placed in a contention set with other applications for .GMBH. As the

Application is community-based, the Requester was invited to, and did, participate in a CPE for

that string. The Requester's Application did not prevail in the CPE. As a result, the Application

now goes back into contention with the other applications for the same string; the contention will

be resolved by auction or some arrangement among the involved applicants.

The Requester claims that the CPE Panel ("Panel")[1] failed to comply with established

ICANN policies and procedures in rendering its CPE Report. Specifically, the Requester

contends that the Panel: (i) failed to validate all letters submitted in support of its Application;

(ii) failed to provide details regarding the independent research on which it relied; (iii) engaged

in improper "double counting" by factoring its assessment of certain specified CPE criteria into

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[1] The "Panel" includes those people who were: (i) involved in evaluating and scoring the Application;
(ii) validating letters of support and opposition; and (iii) issuing the "CPE Report" on the Requester's Application.

its assessment of other CPE criteria; (iv) failed to independently evaluate the Requester's Application; and (v) improperly applied the CPE criteria.

The Requester's claims do not support reconsideration. The Requester has failed to demonstrate that the Panel acted in contravention of established policy or procedure in rendering its CPE Report. The BGC therefore concludes that Request 14-31 be denied. CPE Panels are not required to provide details regarding their independent research, and contrary to the Requester's claims, the Panel did not engage in prohibited "double counting" in applying the CPE criteria. Further, the Requester has not demonstrated that the Panel: (i) failed to attempt to validate letters of support; (ii) failed to independently evaluate the Requester's Application; or (iii) did not properly apply the CPE criteria. The BGC therefore concludes that Request 14-31 be denied.

II.   Facts.

A.   Background Facts.

The Requester submitted a community-based application for .GMBH and the Requester's Application was placed in a contention set with other applications for .GMBH.

On 19 February 2014, the Requester was invited to participate in a CPE process for .GMBH. (*See* http://newgtlds.icann.org/en/applicants/cpe#invitations.) CPE is a method of resolving string contention, described in section 4.2 of the Applicant Guidebook ("Guidebook"). It will occur only if a community application is in contention and if the applicant elects to pursue CPE. The Requester elected to participate in the process, and its Application was forwarded to the Economist Intelligence Unit ("EIU"), the CPE provider, for evaluation.

On 11 June 2014, the Panel issued its report on the Requester's Application ("Report"). The Report explained that the Application did not meet the requirements specified in the

Guidebook and therefore concluded that the Application did not prevail in the CPE. (*See* Report, *available at* https://www.icann.org/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf.)

On 12 June 2014, ICANN posted the CPE results on its microsite. (*See* http://newgtlds.icann.org/en/applicants/cpe#invitations.)

On 25 June 2014, the Requester filed the instant Request, requesting reconsideration of the Report.

B.   The Requester's Claims.

The Requester contends that reconsideration is warranted because the Panel:

1. Failed to validate all letters submitted in support of the Application, (Request, § 8, Pgs. 4-5);

2. Failed to "cit[e] any sources or give[] any information about [] the substance or the methods or scope of the [Panel's] 'research,'" (*Id*., § 8, Pg. 4);

3. Violated the policy against "double counting," which provides that "any negative aspect found in assessing an application for one [CPE] criterion should only be counted there and should not affect the assessment for other criteria," (*Id*., § 8, Pg. 5);

4. Failed to independently evaluate the Application, (*Id*., § 8, Pgs. 5-6);

5. Failed to properly apply the CPE criteria in evaluating the Application, (Request, § 8, Pgs. 6-12).

C.   Relief Requested.

The Requester asks the Board to reverse the Report and grant its Application Community Priority status or, in the alternative, assemble a new CPE Panel to reassess its Application for Community Priority. (Request, § 9, Pg. 12.)

III.   Issues.

In view of the claims set forth in Request 14-31, the issues for reconsideration are whether the Panel in rendering its Report, and ICANN staff in accepting that Report, violated established policy by:

1. Failing to validate all letters submitted in support of the Application, (Request, § 8, Pg. 4);

2. Failing to "cit[e] any sources or give[] any information about [] the substance or the methods or scope of the 'research,'" (*Id*., § 8, Pgs. 4-5);

3. Violating the policy against "double counting," which provides that "any negative aspect found in assessing an application for one [CPE] criterion should only be counted there and should not affect the assessment for other criteria," (*Id*., § 8, Pg. 5);

4. Failing to independently evaluate the Requester's Application, (*Id*., § 8, Pgs. 5-6);

5. Failing to properly apply the CPE criteria in evaluating the Requester's Application, (Request, § 8, Pgs. 6-12).

IV.   The Relevant Standards for Evaluating Reconsideration Requests and Community Priority Evaluation.

ICANN's Bylaws provide for reconsideration of a Board or staff action or inaction in accordance with specified criteria.[2] (Bylaws, Art. IV, § 2.) Dismissal of a request for

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[2] Article IV, § 2.2 of ICANN's Bylaws states in relevant part that any entity may submit a request for reconsideration or review of an ICANN action or inaction to the extent that it has been adversely affected by:
(a) one or more staff actions or inactions that contradict established ICANN policy(ies); or
(b) one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or

reconsideration of staff action or inaction is appropriate if the BGC concludes, and the Board or the NGPC[3] agrees to the extent that the BGC deems that further consideration by the Board or NGPC is necessary, that the requesting party does not have standing because the party failed to satisfy the reconsideration criteria set forth in the Bylaws. ICANN has previously determined that the reconsideration process can properly be invoked for challenges to determinations rendered by panels formed by third party service providers, such as the EIU, where it can be stated that the Panel failed to follow the established policies or procedures in reaching its determination, or that staff failed to follow its policies or procedures in accepting that determination.[4]

In the context of the New gTLD Program, the reconsideration process does not call for the BGC to perform a substantive review of CPE reports. Accordingly, the BGC does not evaluate the Panel's substantive conclusion that the Application did not prevail in the CPE. Rather, the BGC's review is limited to whether the Panel violated any established policy or procedure.

The standards governing CPE are set forth in Section 4.2 of the Guidebook. In addition, EIU – the firm selected to perform CPE – has published supplementary guidelines ("CPE Guidelines") that provide more detailed scoring guidance, including scoring rubrics, definitions of key terms, and specific questions to be scored.[5]

CPE will occur only if a community-based applicant selects CPE and after all applications in the contention set have completed all previous stages of the gTLD evaluation

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(c) one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.

[3] New gTLD Program Committee.

[4] *See* http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-booking-01aug13- en.doc, BGC Recommendation on Reconsideration Request 13-5.

[5] The CPE Guidelines may be found here: http://newgtlds.icann.org/en/announcements-and-media/announcement-27sep13-en.

process. (Guidebook, § 4.2.) CPE is performed by an independent community priority panel appointed by EIU to review these applications. (Guidebook, § 4.2.2.) The panel's role is to determine whether any of the community-based applicants fulfills the four community priority criteria set forth in Section 4.2.3 of the Guidebook. The four criteria include: (i) community establishment; (ii) nexus between proposed string and community; (iii) registration policies; and (iv) community endorsement. To prevail in a CPE, an applicant must receive a minimum of 14 points on the scoring of foregoing four criteria, each of which is worth a maximum of four points (for a total of 16 points).

V.   Analysis and Rationale.

A.   The Requester's Claim that the CPE Panel Failed to Validate All Letters of Support Does Not Support Reconsideration.

The CPE Panel is required to validate all letters submitted in support of or in opposition to an application "to ensure that the individuals who have signed the documents have the authority to speak on behalf of their institution." (*See* CPE FAQs, *available at* newgtlds.icann.org/en/applicants/cpe/faqs-31oct13-en.pdf.) Here, the Requester argues only that it is "unknown to [Requester] if all [the letters submitted in support of its Application] have been successfully validated by the [] Panel. . . ." (Request, § 8, Pg. 4.) The Requester's claims do not support reconsideration.

In its Request, the Requester did not specifically identify any letters that the Panel allegedly failed to validate and, further, provided no evidence that would support the conclusion that the Panel did not in fact validate all letters of support. The evidence submitted by the Requester following its Reconsideration Request actually disproves the Requester's claims. Specifically, on 17 July 2014, the Requester forwarded ICANN an email chain reflecting that on 2 May 2014, the Panel sent an email to the German Federal Ministry for Economic Affairs and

Energy, attempting, for the *second time*, to validate the Ministry's letter of support for the Requester's Application. The email also reflects that the Ministry did not respond to the Panel's 2 May email until 15 July 2014, but at that time affirmatively validated the Ministry's letter of support. If anything, the Requester's "evidence" demonstrates that, in accordance with established policy, the Panel attempted to validate all letters of support it received. The fact that one of the Requester's supporters failed to timely respond to the Panel's repeated attempts to comply with procedure and validate its letter does not support reconsideration.

As such, the Requester has not stated grounds for reconsideration with respect to the Panel's validation of letters submitted in support of the Application.

B.   The CPE Panel is Authorized to Conduct Research and is Not Required to Publish Information Regarding that Research.

The Requester argues that the Panel improperly conducted and relied upon independent research while failing to "cit[e] any sources or give[] any information about [] the substance or the methods or scope of the 'research.'" (Request, § 8, Pgs. 4-5.) Section 4.2.3 of the Guidebook expressly authorizes the CPE Panel to "perform independent research, if deemed necessary to reach informed scoring decisions, and the Requester concedes that it "does not take issue with the Panel conducting independent research." (Guidebook § 4.2.3; Request, § 8, Pg. 4.) The Requester cites to no established policy or procedure (because there is none) requiring the CPE Panel to disclose details regarding the sources, scope, or methods of their independent research. As such, the Requester's argument does not support reconsideration.

C.   The Requester's Claim that the CPE Panel Engaged in "Double Counting" in the CPE Criteria Does Not Support Reconsideration.

The Guidebook states that in developing the CPE criteria, "[t]he utmost care [was] taken to avoid any 'double counting'—any negative aspect found in assessing an application for one

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criterion should only be counted there and should not affect the assessment for other criteria."
(Guidebook § 4.2.3; Request 14-30, § 8, Pgs. 8-9; Request 14-32, § 8, Pgs. 6; Request 14-33, § 8,
Pg. 6.) The Requester claims that the Panel engaged in improper "double counting" in its
consideration of certain of the CPE criteria because: (i) "awareness and recognition of a
community . . . among its members" is a requirement for both elements of the first CPE
criterion—1-A, "delineation," and 1-B, "extension;" and (ii) in order to be eligible for a score of
one point on element 2-B, "uniqueness," an application must score at least two out of three
points on element 2-A, "nexus." (*Id*.)

The Requester is not alleging that the Panel violated any established policy or procedure.
To the contrary, the Requester alleges that the Panel *did* adhere to established policy or
procedure, namely by applying the CPE criteria as the Guidebook required. (*See* Guidebook
§ 4.2.3, CPE Panels are to "review and score . . . community-based applications having elected
the community priority evaluation against [the] four [CPE] criteria" set forth in the Guidebook.)
As such, the Requester has not demonstrated a basis for reconsideration.

Further, the Guidebook's provision on double counting states that a "negative aspect
found in assessing an application for *one criterion* . . . should not affect the assessment *for other
criteria*." (Guidebook § 4.2.3) (emphasis added.) Double counting did not occur here. There
are only four criteria set out for CPE (Community Establishment; Nexus between Proposed
String and Community; Registration Policies; and Community Endorsement). Each criterion has
sub-parts; for example, Community Establishment is broken into two parts—1-A (Delineation)
and 1-B (Extension). Double counting may be present only when a single negative aspect is
used to determine scores in more than one of the four criteria. Here, however, the alleged
"double counting" cited by Requester is based upon the use of the same negative aspect in

scoring each of the subparts of a single criterion; it did not affect the assessment of *other* criteria.

For example, the Requester alleges that the Panel assessed "awareness and recognition of a

community . . . among its members" in scoring both element 1-A and element 1-B of the first

CPE criterion. The Requester *does not* allege (nor do the Panel Reports demonstrate) that the

Panel's assessment of the Applications' "awareness and recognition of a community . . . among

its members" affected its assessments of the other three CPE criteria. Similarly, the Requester

alleges that the Panel's score on element 2-A of the second CPE criterion affected its score on

element 2-B of that same criterion, but that too is not double counting. Here again, there is no

demonstration that the score on element 2-A affected the Panel's assessments of any criteria

other than the second CPE criterion. As such, the Requester has not shown that the Panel

violated any policy or procedure against "double counting."

> **D. The Requester's Claim that the Panel Failed to Independently Evaluate the Requester's Application Does Not Support Reconsideration.**

ICANN procedure requires that "each application [filed by a gTLD applicant] will be

treated individually." (*See* http://newgtlds.icann.org/en/applicants/customer-service/faqs/faqs-

en.) The Requester alleges that the Panel evaluating its Application and the panels evaluating

Dot Registry LLC's applications for .LLC, .INC, and .LLP were "working in concert" and that

the Panel therefore failed to consider the Requester's Application individually. (Request, § 8, Pg.

6.) The Requester notes that each Panel awarded the application it was evaluating an identical

score, five out of sixteen points, and that the four Reports have "virtually identical language and

reasoning" and appear to rely on the same independent research. (*Id*.)

The Requester cites to no policy or procedure that would prevent a CPE Panel evaluating

different gTLD applications from consulting with another CPE Panel and sharing resources. As

the Requester's Application states, .GMBH represents an "abbreviation for . . . the most common

type of legal [business] entity in Austria, Germany, Liechtenstein and Switzerland." (.GMBH

Application, § 18(a), *available at* https://gtldresult.icann.org/application-

result/applicationstatus/applicationdetails/1080.) Similarly, as Dot Registry LLC's applications

for .LLC, .INC, and .LLP state, those strings each represent "commonly used abbreviation[s] for

[business] entity types." (.LLC Application, § 20(d), *available at*

https://gtldresult.icann.org/applicationstatus/applicationdetails/1804; .INC Application, § 20(d),

available at https://gtldresult.icann.org/applicationstatus/applicationdetails/1805; .LLP

Application, § 20(d), *available at*

https://gtldresult.icann.org/applicationstatus/applicationdetails/1808.) The community

definitions in all four applications include businesses organized as the relevant legal entity, e.g.

GmbHs or LLCs. (.GMBH Application, § 20(a); .LLC Application, § 20(a); .INC Application, §

20(a); .LLP Application § 20(a).) Given these similarities, it is not surprising that the

community definitions in the Applications raised some similar issues, and that the panels might

collaborate in researching and addressing those issues.

In all events, the Requester presents no evidence that this alleged collaboration prevented

the Panel from independently evaluating its Application. To the contrary, the Report clearly

reflects that the CPE score addressed the specific features of the Requester's Application. For

example, in scoring "delineation," element 1-A of the first CPE criterion, the Panel quoted the

community definition in the Application and found that that community was "not clearly

delineated, because it [was] broadly defined." (Report, Pg. 2.) The Panel scoring element 1-A

of DotRegistry's .LLC Application, on the other hand, quoted the community definition in that

application and found that "[w]hile broad, the community [was] clearly defined." (.LLC Report,

Pg. 2.) Further, although the Requester's Application was awarded the same total score as DotRegistry's three applications—five out of sixteen points—it was not awarded the same score on each individual CPE criterion. The Requester's Application was awarded two out of four points on the third criterion, "Registration Policies," and three out of four points on the fourth criterion, "Community Endorsement." (Report, Pg. 1.) DotRegistry's three applications, on the other hand, were awarded three out of four points on the third criterion and two out of four points on the fourth criterion. (*See, e.g.*, LLC Report, Pg 1.)

As the Requester has not demonstrated that the Panel failed to independently evaluate the Requester's Application, reconsideration is not supported.

E.   The Panel Properly Applied the CPE Criteria.

The Requester objects to the Panel's determination to award only five of the possible 16 points to the Application. As noted above, in the context of the New gTLD Program, the reconsideration process does not call for the BGC to evaluate the Panel's substantive conclusion that the Application did not prevail in CPE. Rather, the BGC's review is limited to whether the Panel (or staff) violated any established policy or procedure. As discussed below, insofar as the Requester claims that the number of points awarded by the CPE Panel for various criteria was "wrong," the Requester does not claim that the Panel violated established policy or procedure, but instead challenges the substantive determinations of the Panel. That is not a basis for reconsideration.

1.   The Panel Properly Applied the First CPE Criterion.

The Requester claims that the Panel improperly awarded the Requester's Application zero out of four points on the first criterion, which assesses the community identified in the gTLD application. (Guidebook, § 4.2.3; *see also* Request, § 8, Pgs. 6-10.) Specifically, this criterion evaluates "the community as explicitly identified and defined according to statements in

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the application" through the scoring of two elements—1-A, delineation (worth two points), and 1-B, extension (worth two points). (*Id.*)

a. The Panel Properly Applied Element 1-A.

Pursuant to Section 4.2.3 of the Guidebook, to receive a maximum score for the delineation element, an application must identify a "clearly delineated, organized, and pre-existing community." Section 4.2.3 also sets forth further guidelines for determining delineation. In awarding zero out of two points for element 1-A (delineation), the Panel accurately described and applied the Guidebook scoring guidelines and scored the mandatory questions listed the CPE Guidelines. (Report, Pg. 2.)

The Requester's Application defined the relevant community as involving three "layers"—"governments (oversight)," "chambers and associations (representation)," and "GmbH companies (operation)." (.GMBH Application, § 20(a).) The Panel found that that "community [was] not clearly delineated, because it [was] broadly defined and m[ight] not resonate with all the stakeholders it s[ought] to represent." (Report, Pg. 2.)   The Panel further found that the community did not have "have awareness and recognition of a community among its members" because: (i) GmbH companies—a type of business organization—"operate in vastly different sectors, which sometimes have little or no association with one another"; and (ii) the governments and associations "would likely have only a tangential relationship with the core GmbH community." (*Id.*) The Panel also found that the community defined in the relevant application had neither "at least one entity mainly dedicated to the community" nor "documented evidence of community activities." (*Id.*, Pgs. 2-3.) Finally, each Panel found that the relevant community had not been active prior to September 2007. (*Id.*, Pg. 3.)

In challenging the Report, the Requester does not identify any policy or procedure that

the Panel misapplied in scoring element 1-A. Instead, the Requester simply makes various

objections to the Panel's substantive conclusions. It argues that "while there may be a wide

variation of the type of business of companies that elected to be a GMBH, there are strong

commonalities and binding requirements for any GMBH registered," such as paying annual fees

and being subject to "equal operational, legal and tax issues." (Request, § 8, Pg. 7.) The

Requester further argues that "the relevant company registers and the relevant legislators conduct

regular activities together with the GMBH companies," including "[r]egular congresses and other

events" and "regular membership publications." (*Id*., § 8, Pgs. 7-8.) The Requester also argues

that the Panel was "not in the position to determine" that the community did not have at least one

entity mainly dedicated to the community and that "GMBHs have existed in all four countries

concerned long before September 2007." (*Id*., § 8, Pg. 8.) The Requester's arguments reflect

only substantive disagreement with the Panel's findings, and are not a proper basis for

reconsideration.

b. The Panel Properly Applied Element 1-B.

The Requester also objects to the Panel awarding the Application zero out of two points

on element 1-B (extension). Pursuant to Section 4.2.3 of the Guidebook, to receive a maximum

score for the extension element, the application must identify a "community of considerable size

and longevity." (Guidebook § 4.2.3.)

In awarding zero out of two points for element 1-B (extension), the Panel accurately

described and applied the Guidebook scoring guidelines and scored the mandatory questions

listed the CPE Guidelines. (Report, Pgs. 3-4.)   In particular, the Panel found that while the

community defined in each application was "of considerable size," it, again, did not "have

awareness and recognition of a community among its members" because "GmbH companies . . .

operate in vastly different sectors, which sometimes have little or no association with one another" and "the regulatory authorities and associations . . . would likely have only a tangential relationship with the core GmbH community." (*Id*., Pg. 4.) The Panel also found that the relevant community as defined in the Application did not demonstrate longevity. (*Id*.)

In challenging the Report, the Requester claims that the Guidebook and the CPE Guidelines "do not list the requirement that the community must display an awareness and recognition of a community among its members" in assessing size and longevity. (Request, § 8, Pg. 9.) Thus, in the Requester's view, the Panel should not have considered such "awareness and recognition" issues when assessing the size and longevity factors. However, contrary to what the Requester claims, the Guidebook does define "community" as involving "an awareness and recognition of a community among its members." (Guidebook, § 4.2.3.)

2. The Panel Properly Applied the Second CPE Criterion.

The Requester also claims that the Panel improperly awarded the Requester's Application zero out of four points on the second criterion, which assesses the nexus between the proposed string and the community. (Guidebook, § 4.2.3; *see also* Request 14-30, § 8, Pgs. 14-15; Request 14-32, § 8, Pgs. 11-14; Request 14-33, § 8, Pgs. 11-12.) This criterion evaluates "the relevance of the string to the specific community that it claims to represent" through the scoring of two elements—2-A, nexus (worth three points), and 2-B, uniqueness (worth one point). (Guidebook, § 4.2.3.)

a. The Panel Properly Applied Element 2-A.

Pursuant to Section 4.2.3 of the Guidebook, to receive a maximum score for the nexus element, the applied-for string must "match[ ] the name of the community or [be] a well-known short-form or abbreviation of the community name." (Guidebook, § 4.2.3.) In awarding zero out of three points for element 2-A (nexus), the Panel accurately described and applied the

Guidebook scoring guidelines and scored the mandatory questions listed the CPE Guidelines. (Report, Pgs. 4-5.)

In awarding the Application zero out of three points on element 2-A, the Panel determined that there was "a misalignment between the proposed string and the community as defined by the applicant" because "[w]hile the string identifies the name of the core community members (i.e. companies with the legal form of a GmbH), it does not match or identify the regulatory authorities, courts and other institutions that are included in the definition of the community." (Report, Pg. 5.)

In challenging the Report, the Requester does not identify any policy or procedure that the Panel misapplied in scoring element 2-A. Rather, the Requester argues that "community members and community oversight bodies by nature rarely have the same name" and that the Requester's "own research results lead to the strong statement that the general public in the relevant countries associates the string GMBH with companies incorporated with this identifier." (Request, § 8, Pg. 10.) Again, the Requester's substantive disagreement with the Panel's finding is not a proper basis for reconsideration.

b.   The Panel Properly Applied Element 2-B.

The Requester next objects to the Panel having awarded its Application zero out of one point on element 2-B (uniqueness). To fulfill the requirements for element 2-B, a string must have "no other significant meaning beyond identifying the community described in the application." (Guidebook, § 4.2.3.) Section 4.2.3 of the Guidebook further states that "[t]he phrasing '...beyond identifying the community' in the score of 1 for 'uniqueness' implies a

requirement 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.'"

Because the Panel had awarded the Application a score of zero out of three points for "nexus," it awarded the relevant application a score of zero out of one point for "uniqueness." (.LLP Report, Pgs. 5; .INC Report, Pg. 5; .LLC Report, Pg. 5.) The Requester appears to argue that the Panel should have disregarded the Guidebook in scoring this element—it contends that "regardless, since 'GMBH' has no other significant meaning outside the US, the .GMBH Application should have been awarded 1 point for Uniqueness." (Report, § 8, Pg. 10.) That argument is clearly not a basis for reconsideration.

3.   The Panel Properly Applied the Third CPE Criterion.

The Requester claims that the Panel improperly awarded the Application three out of four points on the third criterion, which assesses an applicant's registration policies. (Guidebook, § 4.2.3; *see also* Request, § 8, Pg. 11.) This criterion evaluates the applicant's registration policies through the scoring of four elements—3-A, eligibility (worth one point); 3-B, name selection (worth one point); 3-C, content and use (worth one point); and 3-D, enforcement (worth one point). (Guidebook, § 4.2.3.)

The Requester challenges the Panel's evaluation of criterion 3-D, enforcement. (Request, § 8, Pg. 11.) Pursuant to Section 4.2.3 of the Guidebook, to receive a maximum score for the enforcement element, an applicant's policies must "include specific enforcement measures (e.g. investigation practices, penalties, takedown procedures) constituting a coherent set with appropriate appeal mechanisms." (Guidebook, § 4.2.3.) In awarding zero out of one point for element 3-D (enforcement), the Panel accurately described and applied the Guidebook scoring guidelines and scored the mandatory questions listed the CPE Guidelines. (Report, Pgs. 6-7.) The Panel found that while the relevant application "outlined policies that include specific

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enforcement measures constituting a coherent set," it "did not outline an appeals process." (*Id*., Pg. 6.)

In challenging the Report, the Requester does not identify any policy or procedure that the Panel misapplied in scoring element 3-D. Rather, the Requester argues that its Application does in fact outline appeals processes. (Request, § 8, Pg. 11.) Again, the Requester's substantive disagreement with the Panel's finding is not a proper basis for reconsideration.

4. The Panel Properly Applied the Fourth CPE Criterion.

Finally, the Requester claims that the Panel improperly awarded the Application two out of four points on the fourth criterion, which assesses community endorsement of an application. (Guidebook, § 4.2.3; *see also* Request, § 8, Pgs. 11-12.) This criterion evaluates community support for and/or opposition to an application through the scoring of two elements—4-A, support (worth two points), and 4-B, opposition (worth two points). (Guidebook, § 4.2.3.)

Specifically, the Requester challenges the Panel's evaluation of criterion 4-A, support. (Request, § 8, Pgs. 11-12.) Pursuant to Section 4.2.3 of the Guidebook, to receive a maximum score for the support element, the applicant must be, or "ha[ve] documented support from, the recognized community institution(s)/ member organization(s) or ha[ve] otherwise documented authority to support the community." (*Id*.) In challenging the Report, the Requester makes the same argument discussed above regarding the validation of letters of support. For the reasons already stated, that argument does not support reconsideration. (Report, § 8, Pgs. 11-12.) The Requester also disagrees with the Panel's substantive conclusion that the Requester's letters of support do not come from groups that "constitute the recognized institutions to represent the community, as they only represent the same geographic area in each case, and not similar communities in other nations" and even within those geographic areas, they "do not represent both the core GmbH companies as well as the other bodies and institutions that are included in

the community definition." (Report, § 8, Pg. 12.) The Requester's substantive disagreement with the Panel's finding is not a proper basis for reconsideration.

VI. Determination.

Based on the foregoing, the BGC concludes that the Requester has not stated proper grounds for reconsideration, and therefore denies Request 14-31. As there is no indication that either the Panel or ICANN violated any ICANN policy or procedure with respect to the CPE, or ICANN's acceptance of the CPE Report, the Request should not proceed. If the Requester believes that it has somehow been treated unfairly in the process, the Requester is free to ask the Ombudsman to review this matter.

In accordance with Article IV, Section 2.15 of the Bylaws, the BGC concludes that this determination is final and that no further consideration by the Board (or the New gTLD Program Committee) is warranted.

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