Reconsideration Request

Introduction

Pursuant to Article IV, Section 2 of the Bylaws for ICANN, the American Institute of CPAs ("AICPA" or "Requester") hereby requests reconsideration of various actions and inactions of ICANN staff related to the September 3, 2015 Community Priority Evaluation Report for the .CPA gTLD application submitted by AICPA (Application ID: 1-1911-56672), shown at https://www.icann.org/sites/default/files/tlds/cpa/cpa-cpe-1-1911-56672-en.pdf (hereinafter: the "CPE Report").

The AICPA is the world's largest professional accountancy organization, and represents the interests of CPAs worldwide. The AICPA has a long history of helping to regulate the CPA industry worldwide, directly and through sister organizations, and has broad and deep relationships with the relevant regulatory bodies. We believe there is no organization in the world better suited to monitor, regulate and administer the .CPA gTLD to avoid confusion and protect consumers of CPA services. That is the function the AICPA already serves in the real world, and it is the function the AICPA seeks to serve in the online world through administration of the .CPA gTLD.

The CPE Report contains several material policy and procedural defects resulting in an improper conclusion that AICPA did not prevail in its Community Priority Evaluation. Requester AICPA respectfully requests that the Board reverse the conclusion of the CPE Report and issue a decision that AICPA's application has satisfied the criteria for Community Priority Evaluation.

1.   Requester Information

Name: *American Institute of Certified Public Accountants (AICPA)*

Address: Contact Information Redacted

Email: *Barry Melancon -* Contact Information Redacted *, Erik Asgeirsson –* Contact Information Redacted

Counsel: *Eugene L. Chang –* Contact Information Redacted *; Amir Ghavi –* Contact Information Redacted *; Bart Lieben –* Contact Information Redacted

2.   Request for Reconsideration of (check one only):

___ **Board action/inaction**

 x   Staff action/inaction

3.   Description of specific action you are seeking to have reconsidered.

The CPE Report concludes:

> *"After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel has determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation."*

Despite the Disclaimer contained in the CPE Report that "[…] these Community Priority Evaluation results do not necessarily determine the final result of the application," ICANN has changed the "Contention Resolution Status" of its community-based gTLD .CPA, (Application ID: 1-1911-56672, Prioritization Number: 974; see https://gtldresult.icann.org/ application-result/applicationstatus/applicationdetails/208) (hereinafter referred to as the "Application") to "Active", and the "Contention Resolution Result" into "Into Contention", apparently following the publication of the CPE Report.

AICPA seeks reconsideration of the actions and inactions of the ICANN staff in issuing the CPE Report, and in ICANN accepting the CPE Report and amending the Application's Contention Resolution Status to Active. These actions and inactions are described in more detail below, in particular in response to questions 8 and 10.

4.   Date of action/inaction:

September 3, 2015.

5.   On what date did you became aware of the action or that action would not be taken?

September 4, 2015.

6.   Describe how you believe you are materially affected by the action or inaction:

Requester is the applicant for the Application. Requester has elected to participate to Community Priority Evaluation or "CPE" in accordance with the provisions set out in the Applicant Guidebook. The CPE Report states that the Requester's application for the .CPA gTLD "did not prevail in Community Priority Evaluation." Thus, the actions and inactions of the ICANN staff described in this submission, and resulting in the determination set forth in the CPE Report, have materially affected Requester's ability to prevail in Community Priority Evaluation for the .CPA gTLD.

As discussed above in the introduction, the AICPA is the world's largest professional accountancy organization and thus has a vested interest in the protection and success

of the CPA community. The CPE Report, and denial of CPE status for Requester's Application, could also undermine the public trust, as discussed in the Section 8.1, and thus harm the CPA community and the AICPA.

7.   Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.

As discussed in greater detail in Section 8.1 below, the public trust may be substantially and adversely affected by the policy and procedural errors related to the CPE Report. CPAs are a regulated profession that are held by the public in a special position of trust. Improper administration could result in members of the public, and the CPA profession as a whole, suffering significant and irreparable harm from fraud or misrepresentation.

8.   Detail of Board or Staff Action – Required Information

Staff Action: If your request is in regards to a staff action or inaction, please provide a detailed explanation of the facts as you understand they were provided to staff prior to the action/inaction presented to the staff and the reasons why the staff's action or inaction was inconsistent with established ICANN policy(ies). Please identify the policy(ies) with which the action/inaction was inconsistent. The policies that are eligible to serve as the basis for a Request for Reconsideration are those that are approved by the ICANN Board (after input from the community) that impact the community in some way. When reviewing staff action, the outcomes of prior Requests for Reconsideration challenging the same or substantially similar action/inaction as inconsistent with established ICANN policy(ies) shall be of precedential value.

Board action: If your request is in regards to a Board action or inaction, please provide a detailed explanation of the material information not considered by the Board. If that information was not presented to the Board, provide the reasons why you did not submit the material information to the Board before it acted or failed to act. "Material information" means facts that are material to the decision.

If your request is in regards to a Board action or inaction that you believe is based upon inaccurate, false, or misleading materials presented to the Board and those materials formed the basis for the Board action or inaction being challenged, provide a detailed explanation as to whether an opportunity existed to correct the material considered by the Board. If there was an opportunity to do so, provide the reasons that you did not provide submit corrections to the Board before it acted or failed to act.

Reconsideration requests are not meant for those who believe that the Board made the wrong decision when considering the information available. There has to be identification of material information that was in existence of the time of the decision and that was not considered by the Board in order to state a reconsideration request. Similarly, new information – information that was not yet in existence at the time of the Board decision – is also not a proper ground for reconsideration. Please keep this guidance in mind when submitting requests.

Provide the Required Detailed Explanation here:

(You may attach additional sheets as necessary.)

Summary of Requester's Arguments

In the CPE Report, ICANN staff has committed material procedural errors, and failed to give weight to critical policy concerns. AICPA respectfully submits that the following errors justify reconsideration and reversal of the conclusion in the CPE Report:

1. *The CPE Report fails to give proper weight to ICANN policy, as set forth in its communiqué (the "Beijing Communiqué"), that is critical in the context of a gTLD associated with a regulated profession like .CPA.*

2. *The ICANN staff improperly deferred consideration of AICPA's December 2014 Change Request, including changes made to reflect the principles of the Beijing Communiqué and that would specifically impact Criterion #2 (Nexus).*

3. *ICANN has been inconsistent in its application of Criterion #2 (Nexus).*

4. *AICPA's Application has a proper enforcement procedure, including an appropriate appeal process.*

5. *ICANN's use of Clarifying Questions was procedurally deficient.*

6. *ICANN's changing interpretation of CPE criteria is procedurally improper.*

A more detailed discussion of the errors of policy and procedure associated with the CPE Report is set forth below.

8.1   ICANN Staff improperly ignored ICANN policy regarding regulated strings in the CPE Report

The Beijing Communiqué specifies that, for strings that are linked to regulated or professional sectors, due to the level of implied trust from consumers, additional safeguards should apply. In particular, the Beijing Communiqué further advises the ICANN Board that the registry operator must verify and validate the registrants' licenses and/or other related credentials, and conduct periodic post-registration checks to ensure validity. The CPE Report should have, but did not, give weight to this ICANN policy as it is critical in the context of the .CPA gTLD, particularly when evaluating Criterion #2 (Nexus). (See Section 2.11 of ICANN's Bylaws, stating: "[w]hile remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations".) That is a policy conflict warranting reversal.

Consistent with the ICANN policy outlined in the Beijing Communiqué, if awarded, AICPA will administer the .CPA gTLD as a regulated gTLD, only open for CPAs who are working under the rules and oversight of a governmental body. Only those parties who qualify under the standards and criteria defined by a governmental accounting body that

issues the title of CPA should be entitled to a .CPA domain name —any other result would result in the consumer harm addressed in the Beijing Communiqué. In the words of the Beijing Communiqué, the term "CPA" invokes a level of implied trust from Internet users in general, and consumers in particular. All over the world, CPAs are not only serving clients directly, but are also indirectly fulfilling the role of a trusted third party in the context of the establishment, review and attestation of financial information and financial statements of such clients.

AICPA notes with approval the views and concerns expressed by the Honorable Edith Ramirez, Chairwoman of the US Federal Trade Commission, who has urged ICANN to "take steps to address the serious issues implicated by sensitive gTLDs in highly regulated industries", such as CPAs. In this letter, Ms Ramirez shared ICANN's Governmental Advisory Committee ("GAC") recommendation to require "the screening of owner credentials for these sensitive domains to ensure owners are what they purport to be before they do business with the public." (See https://www.icann.org/en/system/files/correspondence /ramirez-to-jeffrey-27may15-en.pdf). If anyone with a credit card could register and use a domain name in the .CPA gTLD, many consumers could be duped and the CPA community worldwide could lose the trust and faith that is essential to their profession. The AICPA Application makes clear that the .CPA domain will be operated on a globally cooperative basis for the benefit of CPAs worldwide, whether they are located in the United States, in Australia, or elsewhere as future CPA national body agreements are developed.

Under ICANN policy, it is clear that the only appropriate entity to manage the .CPA gTLD is an entity that has an established nexus with the global CPA community, and understands the global and national issues relating to CPA certification and verification, in the real world as well as online. That entity should not be selected through an auction process. AICPA respectfully submits that it is the organization best suited to administer the .CPA gTLD consistent with the safeguards and principles set forth in the Beijing Communiqué.

8.2   ICANN's deferral of Requester's December 2014 Change Request is a procedural error that warrants reversal.

Almost a year after the AICPA submitted its original Application, GAC issued the Beijing Communiqué identifying specific safeguards and procedures that should be implemented for a gTLD in a regulated or professional sector, such as and specifically including the .CPA domain. AICPA then submitted a Change Request (attached as Annex A) amending its .CPA Application in part to clarify its procedures in light of the Beijing Communiqué. ICANN staff decided to defer consideration of that Change Request until after the application completes CPE, so the Change Request was not considered during the CPE process.

Prior to the Beijing Communiqué, in an effort to protect the public interest and comply with applicable laws regulating CPAs, the AICPA proposed in its Application as initially filed, an exclusive access registry in the first phase: to register all domain names in the .CPA gTLD in its own name, and grant licenses to such names to eligible CPAs, CPA

firms, and relevant supporting organizations. The AICPA viewed this as the best way to handle issues such as where a .CPA domain name holder is no longer qualified under the rules of his or her respective accounting body, is suspended or prohibited from practicing its profession, or passes away.

However, this view changed as a result of the Beijing Communiqué, which was published almost one year after the AICPA submitted its original Application and underscored that regulated professional sectors, and specifically the .CPA string, warrant special safeguards. In light of that substantive update, the AICPA and CPA Australia entered into an agreement whereby each organization would be allowed to register its members should the other organization be awarded the .CPA gTLD. In part to reflect that change, the AICPA submitted the Change Request amending its .CPA Application to clarify its procedures in light of the Beijing Communiqué to show its ability to protect the public and CPA community on an even broader scale. ICANN staff's decision to defer consideration of that Change Request until after the Application completes CPE is a procedural error that has affected the scoring of the AICPA's .CPA Application in the CPE Report, and has resulted in denial of CPE priority.

The intent of the Change Request was, in part, to clarify the registration process to ensure proper safeguards would be associated with administration of .CPA domains, consistent with the policy set forth in the Beijing Communiqué.

Applying the Change Request to the Community Priority Evaluation would result in a materially different score. By including CPA Australia and other sister organizations identified in the Change Request as those that are eligible to apply for .CPA subdomains, there can now be no question that the community set forth in AICPA's application essentially mirrors the global community of accountants that would be recognized as current, practicing CPAs.

The CPE Report bases its conclusion that the Application is not entitled to any points for Criterion #2 (Nexus) on incorrect factual inferences. In finding that that the string is "over-reaching substantially beyond the community," the CPE Report relies on two flawed inferences: (1) that there are "at least 200,000 CPAs in the US that are not included in the applicant's defined community," and (2) that "accounting professionals outside the US … are not included in the applicant's defined community." Both are demonstrably wrong. ICANN's Board has the authority to conduct whatever factual investigation is deemed appropriate under the ICANN Bylaws, Art. IV (Accountability and Review), Sec. 2, Subsection 3(d). A reconsideration of a clear factual error is appropriate here where it is cited as the primary basis for awarding 0 Nexus points and denying CPE status.

For the first point, the CPE Report's conclusion regarding a deficit of 200,000 CPAs in the US is based on state CPA license filings numbers from National Association of State Boards of Accountancy ("NASBA") from 2010. As discussed in more detail in Annex B, the reported number reflects the number of state licenses, but does not accurately reflect the number of CPAs in the US because CPAs often hold licenses from multiple states. Each CPA that holds a license from more than one state would get counted more than once. Moreover, AICPA estimates that 90% or more of CPAs in the US use

AICPA services, as many nonmember CPAs participate in AICPA training and purchase publications. CPAs that are not AICPA members can still qualify as part of the community defined in the Application (as modified by the Change Request) as International Associates, Non-CPA Associate Members, or Affiliate Members. The CPE Report fails to identify a single CPA in the US that would be excluded from the community defined in the Application, modified by the Change Request.

For the second point, the Change Request makes clear AICPA's sister organizations in other countries (including CPAA in Australia) are included in the community. In fact, the membership definition in Requester's Application includes members of many international CPA associations, and thus would be part of the community as "International Associates", including:

- *Australia – Institute of Chartered Accountants in Australia (ICAA)*
- *Canada – Canadian Institute of Chartered Accountants (CICA)*
- *England and Wales – Institute of Chartered Accountants in England and Wales (ICAEW)*
- *Germany – Institut der Wirtschaftsprüfer in Deutschland e.V. (IDW)*
- *Hong Kong – Hong Kong Institute of Certified Public Accountants (HKICPA)*
- *Ireland – Chartered Accountants Ireland (CAI)*
- *Japan – Japanese Institute of Certified Public Accountants (JICPA)*
- *Mexico – Instituto Mexicano de Contadores Publicos (IMCP)*
- *New Zealand – New Zealand Institute of Chartered Accountants (NZICA)*
- *Scotland – Institute of Chartered Accountants of Scotland (ICAS)*
- *South Africa – South African Institute of Chartered Accountants (SAICA).*

In fact, for clarity, AICPA commits not to exclude any practicing CPAs that are certified by the relevant national authority, anywhere in the world, from participating in the .CPA gTLD string. Accordingly, taking into account the AICPA's Change Request, the Community Priority Evaluation should properly result in an award of 3/3 points for the AICPA rather than 0/3 points awarded in the CPE Report because the Change Request was not considered.

Once awarded the appropriate Nexus points in light of the Change Request, it follows that the AICPA should also receive 1 point for Uniqueness. CPA has no other significant meaning beyond identifying the community of qualified, regulated processional accountants, and the CPE Report denied awarding the point solely because the Application failed to receive 2 or 3 Nexus points.

8.3   ICANN has inconsistently applied the CPE Guidelines, and in particular Criterion 2 (Nexus)

Criterion 2 of the CPE Guidelines evaluates the nexus between the Proposed String and the Community ("Criterion 2") and is described as follows:

> *Nexus:*
> *3= The string matches the name of the community or is a well-known short-form or abbreviation of the community.*

2= String identifies the community, but does not qualify for a score of 3.
0= String nexus does not fulfill the requirements for a score of 2.

Further, under the section titled 'Definitions',

"Identify" means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community.

"Over-reaching substantially" means that the string indicates a wider geographical or thematic remit than the community has.

Prior CPE reports issued by ICANN for other strings have applied different standards to this criterion. In the CPE report for the applied-for string .spa of 22 July 2015 (the "SPA CPE Report"), despite the .spa string extending beyond the Community, to the tune of hundreds of thousands of google search results indicating other uses for the word SPA, as well as the community extending beyond the string itself, the CPE Panel nonetheless determined that the applied-for string met all criteria for nexus and scored 3/3.

Similarly, in the CPE report for the applied-for string .art of 10 September 2014 (the "ART CPE Report"), the .art application stated that "any individual, organization or company that already belongs to one of the art community categories that have been established by e-flux … is considered a member of the art community". Registration of a domain name requires one to be a "member" of the art community, as determined solely by the applicant. Further, in the ART CPE Report, the panel places particular importance on all of the members of the community matching the string, as opposed to recognizing that there may be members which match the string which do not form part of the community. While the Application ultimately failed the CPE, it was awarded 2 out of 3 points for nexus, highlighting a significant inconsistency in the treatment of the evaluation criteria.

In neither of the above examples does the EIU provide a substantial justification as to how, why or at what point the extent of the "over-reaching of the string" becomes an impediment for satisfying the nexus criterion. Setting a numeric limit at which the community "over-reaches" is inconsistent with and extends beyond the Applicant Guidebook ("AGB") (published 4 June 2012, available at www.newgtlds.icann.org/en/applicants/agb), which does not require the community to include all people covered by the string nor describe some numeric test for determining the extent of such over-reaching.

In conclusion, the EIU's standards for determining nexus have become inconsistent as against both the precedent set by other applications and the AGB. As a result, established policies of fairness, transparency and consistency, have not been adhered to.

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8.4. The AICPA Application has proper enforcement procedures, including appeals process

According to the CPE Report:

> *"The Panel determined that the application does not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the AGB. The application provides specific enforcement measures but does not include a coherent and appropriate appeals mechanism. The application received a score of 0 point under criterion 3-D: Enforcement."*

Requester refers to the criteria for being considered a member of its community and therefore, eligible to register a .CPA domain, and the procedures for validating and appealing an adverse determination of such eligibility.

Requester, and its sister organizations worldwide, have in place various criteria and processes related to the credentialing of a CPA in accordance with the local governing rules of the registrant's relevant jurisdiction. Among other things, that credentialing includes the requirement to pass a written examination that is intended to prove the test taker's competence in the practice of professional accountancy and other licensing steps. As such, the Registration Policies are tied to such local rules worldwide in order to advance the public interest. The CPE Report agreed on this issue, providing a passing score for the Requester and validating the Requester's view that in order to be eligible to register a domain in the .CPA gTLD, one must be a vetted member of the global CPA community.

Because Requester is an organization comprised of CPAs worldwide, Requester already has in place processes to adjudicate member eligibility (i.e., providing that one is a CPA). For example, if a prospective member believes they have met the requirements of licensure yet their local governing body disagrees, the prospective member may file an appeal in accordance with the Requester 's appeals policy (See http://www.aicpa.org/BECOMEACPA/CPAEXAM/PSYCHOMETRICSANDSCORING/SCOREREVIEWANDAPPEALS/Pages/computer_faqs_rescore.aspx). The appeals process provides that the local accountancy board will receive a written appeal from the applicant and will forward the appeal to the AICPA for its review and determination. After the AICPA reviews the written appeal, it transmits the result to the applicant through the local accountancy board.

As the Requester's proposed eligibility criteria for registration of domains under the .CPA gTLD are identical to those of AICPA membership – that is, establishment of qualification as a qualified, regulated professional accountant in accordance with applicable law – Registrant will use its existing appeals mechanisms to review and determine denials of eligibility for domain registration under the String.

8.5. Clarifying Questions

According to the Applicant Guidebook:

> *"As part of the evaluation process, evaluators may request clarification or additional information during the Initial Evaluation period. For each application, clarifying questions will be consolidated and sent to the applicant from each of the panels. The applicant will thus have an opportunity to clarify or supplement the application in those areas where a request is made by the evaluators."*

According to ICANN's web page relating to the Clarifying Questions process, it is clear that such questions may be sent from the following panels:

- *Background screening*
- *Geographic name*
- *String similarity*
- *DNS stability*
- *Registry services*
- *Technical/Operational*
- *Financial*
- *Community priority evaluation (if applicable)* [1]

Furthermore, on ICANN's web page containing the Frequently Asked Questions regarding this Clarifying Questions process, the following answer is given to the question "Why have I received CQs?":

> *"You received CQs because the evaluation panel(s) did not have sufficient information to award a passing score. CQs are issued once the evaluation panels have completed an initial evaluation of your application and have found that additional information is needed before a passing score can be given."[2]*

It is therefore clear that if an evaluation panel is unable to give a passing score on the answer to a particular question given by an applicant for a new gTLD, the evaluation panel should issue a Clarifying Question in this regard.

ICANN has been sending clarifying questions throughout the Initial Evaluation and Community Priority evaluation phases. For instance, on July 7, 2015, ICANN and the evaluation panel issued two clarifying questions to Requester in relation to Criterion #3-B: Name Selection and Criterion #3-C: Content and Use. The Clarifying Questions issued by the evaluation panel and Requester's answers thereto have been attached to this Reconsideration Request as Annex C.

As is clear from the Clarifying Questions received, they did not relate to the answers provided by the Requester in its application on Criterion #2: Nexus or Criterion #3-D: Enforcement, which are the areas where ICANN and the evaluation panel did not award passing scores.

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[1] See: https://newgtlds.icann.org/en/applicants/clarification-questions.
[2] See: https://newgtlds.icann.org/en/applicants/clarification-questions/faqs.

Therefore, in Requester's view, ICANN and the evaluation panel did not follow the policies and processes set out in the AGB in relation to Clarifying Questions, and this for the following reasons:

1) *ICANN and the evaluation panel have not provided Requester the opportunity to clarify or supplement its answers that – according to ICANN and the evaluation panels – did not contain sufficient information to award a passing score. The evaluation panel and ICANN have merely provided non-passing scores to the Requester's answers to Criteria #2: Nexus and #3-D: Enforcement; and*

2) *While it is reasonable that evaluation panels would have discretion to send clarifying questions to applicants if no maximum score can be given to the answer provided by the latter, such discretion cannot be used in an non-transparent and discriminatory manner, without providing some rationale for not doing so.*

Therefore, Requester is of the opinion that ICANN and the evaluation panel have not made decisions by applying documented processes neutrally and objectively, with integrity and fairness, as required by Section 2.8 of ICANN's Bylaws.

Furthermore, Requester is of the opinion that ICANN, as part of its decision-making process, has not obtained informed input from those entities most affected, being Requester in the case at hand. Consequently, Requester is of the opinion that ICANN has acted contrary to Section 2.9 of its Bylaws.

8.6. ICANN's use of amendments to the CPE criteria adopted after the Application was filed constitutes a procedural violation warranting reversal.

Since the time Requester submitted the Application, ICANN adopted substantial amendments to the criteria against which CPEs are assessed. These amendments include clarifying documents which impose new, more stringent requirements. Requester respectfully submits that ICANN staff's adoption and use of these new requirements in connection with the CPE Report, without an opportunity for Requester to supplement and/or clarify the Application, is a procedural error warranting reversal.

At the time the Application was filed, the AGB set forth the CPE criteria. The publication of the AGB was the result of extensive community input and supported by ICANN's general principles of fairness, transparency and non-discrimination and the GNSO's Principles, Recommendations and Implementation Guidelines ("GNSO's Guidelines"). Published in 2008, the GNSO's Guidelines direct as follows:

> *ICANN must implement a process that allows the introduction of new top-level domains.*

> *The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination.*

> *All applicants for a new gTLD registry should therefore be evaluated against*

transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.[3]

In addition to publication of the AGB, ICANN announced that the EIU would be responsible for determining CPEs to ensure consistency. ("Preparing Evaluators for the new gTLD application process" by Michael Salazar, published 22 November 2011 (available at http://newgtlds.icann.org/en/blog/preparing-evaluators-22nov11-en)).

Since the filing of the Application, the EIU has introduced no less than five (5) additional documents, guidelines and/or procedures. These have been published in a period running up to two (2) years after publication of the final AGB, with the first occurring approximately 16 months after applications were submitted. These consist of the following:

- *Community Priority Evaluation Guidelines, version 1.0 published on 13 August 2013 (the "First CPE Guidelines");*

- *Community Priority Evaluation Guidelines, version 2.0 published on 27 September 2013 (the "CPE Guidelines");*

- *Community Priority Evaluation Panel and Its Processes document, published on 6 August 2014;*

- *Updated CPE Frequently Asked Questions (FAQs), published on 10 September 2014; and*

- *CPE Processing Timeline, published on 10 September 2014,*

(together the "CPE Documents").

ICANN has described the purpose of the CPE Guidelines as "an accompanying document to the AGB, (…) meant to provide additional clarity around the scoring principles", and further that they "are intended to increase transparency".[4] To the extent the CPE Guidelines are unclear or ambiguous, transparency of process dictates that Requester be afforded an opportunity to respond and/or clarify the Application to demonstrate that Requester's Application deserves to prevail in Community Priority Evaluation, including with respect to Criteria #2 (Nexus) and #3-D:(Enforcement), as discussed in detail elsewhere in this Section 8.

9.   What are you asking ICANN to do now?

Requester has submitted a request to obtain further information under ICANN's Documentary Information Disclosure Policy ("DIDP") together with this Reconsideration Request, and Requester requests the right to submit additional arguments and

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[3] New gTLDs Summary – Principles, Recommendations & Implementation Guidelines, published 22 October 2008 (available at gnso.icann.org/en/issues/new-gtlds).

[4] https://newgtlds.icann.org/en/applicants/cpe

information following the outcome of their DIDP request. In view of these submissions, AICPA requests ICANN to:

- *suspend the process for considering this Reconsideration Request in view of possible supplementary arguments and information to be provided by Requester following receipt of ICANN's responses to Requester's DIDP request, attached hereto as Annex D; and*

- *suspend the process for string contention resolution in relation to the .CPA gTLD pending resolution of Requester's DIDP request and Reconsideration Request*

AICPA further respectfully requests an in-person hearing to address the matters set forth in this Reconsideration Request. Given the complexity and importance of the policy and procedural issues raised in this Reconsideration Request, including the effect on the public trust, AICPA submits that an in-person hearing would provide a full and fair opportunity to consider these critical issues.

Finally, for the reasons stated herein and after full consideration of the merits of this Reconsideration Request, AICPA requests that ICANN reverse the determination of the CPE Report and find that the AICPA's CPE application for the .CPA gTLD string meets the requirements specified in the Applicant Guidebook, and prevails in Community Priority Evalution. In particular, AICPA requests that ICANN amend the CPE Report to award the following scores:

- *a score of 4 out of 4 points in relation to Criterion #2: Nexus between Proposed String and Community; and*

- *a score of 1 out of 1 points in relation to Criterion #3-D: Enforcement, for a total of 4 point for Criterion #3: Registration Policies.*

Alternatively, AICPA requests that ICANN remand the determinations of "Criterion #2: Nexus" and "Criterion #3-D: Enforcement" to the Community Priority Evaluation panel with instructions to reevaluate those scores consistent with the proper policies and procedures as set forth in this reconsideration request.

10.   Please state specifically the grounds under which you have the standing and the right to assert this Request for Reconsideration, and the grounds or justifications that support your request.

Requester is the applicant for the Application.

As stated above, ICANN published on September 3, 2015 its Determination on the basis of the CPE Report, stating that Requester's application for the .CPA gTLD did not meet the criteria for community-based applications, as defined in the Applicant Guidebook.

Consequently, ICANN has changed the status of this Application to "In Contention", which implies that this Application has been put in a contention set with various other applicants for the .CPA gTLD. This could ultimately result in ICANN organizing an

auction whereby:

- *the .CPA gTLD will be awarded to the highest bidder;*
- *the .CPA gTLD may be awarded to an entity that has not implemented the safeguards requested by the GAC in its Beijing Communiqué;*
- *in the latter event, irreparable harm would be incurred by Requester, who has spent significant human and financial resources in developing the Application and ensuring that the Application was reviewed by ICANN and its evaluation panels.*

In its capacity of applicant for a new gTLD, Requester has subscribed to the Top-Level Domain Application Terms & Conditions, which have been published on ICANN's website: https://newgtlds.icann.org/en/applicants/agb/terms.

Section 6 of these Top-Level Domain Application Terms & Conditions states, inter alia, the following and gives Requester standing to utilize the Reconsideration Request process:

> *"APPLICANT MAY UTILIZE ANY ACCOUNTABILITY MECHANISM SET FORTH IN ICANN'S BYLAWS FOR PURPOSES OF CHALLENGING ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION."*

11.   Are you bringing this Reconsideration Request on behalf of multiple persons or entities? (Check one)

____ Yes

__x_ No

11a. If yes, Is the causal connection between the circumstances of the Reconsideration Request and the harm the same for all of the complaining parties? Explain.

N/A

Do you have any documents you want to provide to ICANN?

If you do, please attach those documents to the email forwarding this request. Note that all documents provided, including this Request, will be publicly posted at http://www.icann.org/en/committees/board-governance/requests-for-reconsideration-en.htm.

[LIST ANY SUPPORTING DOCUMENTS]

1. *Annex A – Change Request.*

2. *Annex B – Letter from AICPA to ICANN, dated September 18, 2015.*

3. *Annex C – Requester's Answers to Clarifying Questions.*

4. *Annex D – DIDP Request.*

Terms and Conditions for Submission of Reconsideration Requests

The Board Governance Committee has the ability to consolidate the consideration of Reconsideration Requests if the issues stated within are sufficiently similar.

The Board Governance Committee may dismiss Reconsideration Requests that are querulous or vexatious.

Hearings are not required in the Reconsideration Process, however Requestors may request a hearing. The BGC retains the absolute discretion to determine whether a hearing is appropriate, and to call people before it for a hearing.

The BGC may take a decision on reconsideration of requests relating to staff action/inaction without reference to the full ICANN Board. Whether recommendations will issue to the ICANN Board is within the discretion of the BGC.

The ICANN Board of Director's decision on the BGC's reconsideration recommendation is final and not subject to a reconsideration request.

Respectfully Submitted,

/s/ Eugene L. Chang   September 18, 2015

Eugene L. Chang   Date

On behalf of AICPA