

**DETERMINATION
OF THE BOARD GOVERNANCE COMMITTEE (BGC)
RECONSIDERATION REQUEST 16-6**

21 JULY 2016

The Requester, DotKids Foundation Limited, seeks reconsideration of the Community Priority Evaluation (CPE) panel's report, and ICANN's acceptance of that report, finding that the Requester's community-based application for .KIDS did not prevail in CPE (CPE Report).

I. Brief Summary.

The Requester submitted a community-based application for .KIDS (Application). The Requester was invited to, and did, participate in CPE. The Application did not prevail in CPE, and therefore remained in contention with two other applicants, one for .KID and one for .KIDS.

The Requester seeks reconsideration of the CPE Report. Specifically, the Requester claims that reconsideration is warranted because the CPE panel that issued the CPE Report (CPE Panel) misapplied the CPE criteria in evaluating its Application. The Requester further contends, as it did in a previous request for reconsideration (Reconsideration Request 14-29), that CPE panels should be comprised of subject-matter experts.

The Requester's claims do not warrant reconsideration. The Requester does not identify any misapplication of policy or procedure by ICANN staff or the CPE Panel. Rather, the Requester simply disagrees with the CPE Panel's determination. Substantive disagreements with the CPE Report, however, are not proper bases for reconsideration. Furthermore, no policy or procedure exists that would require CPE panels to include subject matter experts. Because the Requester has failed to show that either ICANN staff or the CPE Panel acted in contravention of established policy or procedure, the BGC concludes that Reconsideration Request 16-6 (Request 16-6) be denied.

II. Facts.

A. Background Facts.

On 13 June 2012, the Requester submitted a community-based application for .KIDS (Application).¹ The Application was placed into a contention set with two standard (meaning, not community-based) applications, one for .KID and one for .KIDS.²

On 16 April 2014, ICANN invited the Requester to participate in CPE – a method to resolve string contention, which is described in section 4.2 of the Guidebook. CPE occurs only if a community application is in a contention set and the applicant elects to pursue CPE.

On 11 June 2014, the Requester filed a request for reconsideration (“Request 14-29”). Among other things, the Requester took the position that the Guidebook established an “expectation” that CPE panels would include subject matter experts.

On 22 August 2014, the BGC issued its Determination on Request 14-29, which concluded that “the Requester ha[d] not stated proper grounds for reconsideration, and therefore denie[d] Reconsideration Request 14-29.” The BGC explained that the Guidebook does “not require the constitution of a CPE panel with particularized knowledge of the issues involved with each proposed community.”³

On 3 December 2014, the Requester filed a complaint with the Ombudsman regarding the BGC’s Determination on Reconsideration Request 14-29. As a result, the Requester’s Application was placed on hold until the Ombudsman complaint was closed on 15 October 2015. Soon thereafter, in October, the Requester’s Application was taken off hold and the Requester was again invited to participate in CPE.

¹Application Details: Application ID: 1-1309-46695, *available at* <https://gtldresult.icann.org/applicationstatus/applicationdetails/161>.

² See Contention Set Status, *available at* <https://gtldresult.icann.org/applicationstatus/contentionsetdiagram/215>.

³ Determination of the BGC Reconsideration Request 14-29, pgs. 7, 14, *available at* <https://www.icann.org/en/system/files/files/determination-dotkids-22aug14-en.pdf>.

On 10 November 2015, the Requester sent a letter to the ICANN Board regarding “Update and Input to the Community Priority Evaluation (CPE) for the .kids Community TLD application” (November 2015 Letter).⁴ The letter provided a “refinement of [the Requester’s] response to Question 18 and 20” of its Application. Specifically, the Requester sought to modify the original community defined by its Application (which included children, children’s organizations, parents, and educational institutions) to a different community “consistent with the children rights approach considered by the United Nations Committee on the Rights of the Child, [because] kids do not exist independently in the community.”⁵ The November 2015 Letter also added a new “Appeal Mechanism” to the Application’s proposed “Protection Scheme.”⁶

On 11 November 2015, the Requester elected to participate in CPE. The evaluation process began shortly thereafter.

On 8 April 2016, the CPE Panel issued its CPE Report, informing the Requester that the Application did not prevail in CPE.⁷

On 23 April 2016, the Requester filed Request 16-6 seeking reconsideration of the CPE Report.

B. Relief Requested.

The Requester asks ICANN to:

1. “[S]et aside the current DotKids CPE Report and to appoint new evaluators to conduct a new CPE for the application”, and
2. “[E]ither seek directly or ask the CPE Panel to seek advice or input from

⁴ November 2015 Letter, dated 10 November 2015 (Attachment to Request 16-6).

⁵ November 2015 Letter, dated 10 November 2015, Appendix 3, § 18(b) (Attachment to Request 16-6).

⁶ *Id.*, § 18(c).

⁷ CPE Report, Pg. 1, *available at* <https://www.icann.org/sites/default/files/tlds/kids/kids-cpe-1-1309-46695-en.pdf>.

children’s rights community expert[s] in considering the CPE to best understand the DotKids community application.”⁸

III. The Relevant Standards For Reconsideration Requests And CPE.

A. Reconsideration Requests.

ICANN’s Bylaws provide for reconsideration of a Board or staff action or inaction in accordance with specified criteria.⁹ The Requester challenges staff action. Dismissal of a request for reconsideration of staff action or inaction is appropriate only if the BGC concludes, and the Board agrees to the extent that the BGC deems that further consideration by the Board 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 Economist Intelligence Unit (EIU), where it is asserted that a panel failed to follow established policies or procedures in reaching its determination, or that staff failed to follow its policies or procedures in accepting that determination.¹⁰

In the context of the New gTLD Program, the reconsideration process does not call for the BGC to perform a substantive review of CPE panel reports. Accordingly, the BGC is not evaluating the substantive conclusion that the Application did not prevail in CPE. Rather, the

⁸ Request, § 9, Pg. 17.

⁹ Bylaws, Art. IV, § 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
(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.

¹⁰ See <http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-booking-01aug13-en.doc>, BGC Recommendation on Reconsideration Request 13-5.

BGC's review is limited to whether the CPE Panel violated any established policy or procedure.

B. Community Priority Evaluation.

The standards governing CPE are set forth in Section 4.2 of the Guidebook. In addition, the EIU – the firm selected to perform CPE – has published supplementary guidelines (CPE Guidelines) that do not alter the CPE standards, but provide more detailed scoring guidance, including scoring rubrics, definitions of key terms, and specific questions to be scored.¹¹

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 process.¹² CPE is performed by an independent panel appointed by the EIU.¹³ A CPE panel's role is to determine whether the community-based application satisfies 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 CPE, an applicant must receive at least 14 out of 16 points on the scoring of the foregoing four criteria, each of which is worth a maximum of four points.

IV. Analysis and Rationale.

The Requester does not identify any misapplication of policy or procedure by ICANN staff or the CPE Panel. Rather, the Requester disagrees with the CPE Panel's determination and scoring of the Application. Substantive disagreements with the CPE Report, however, are not proper bases for reconsideration.¹⁴

¹¹ For CPE Guidelines, see <http://newgtlds.icann.org/en/announcements-and-media/announcement-27sep13-en>.

¹² Guidebook, § 4.2.

¹³ *Id.* at § 4.2.2.

¹⁴ While this Request 16-6 was pending, SAPA Indonesia, CRC Asia, and MAGCRP sent ICANN letters in support of Request 16-6. In particular, these organizations expressed their disagreement with the CPE Panel's determination and scoring of the Requester's Application. See Letter from SAPA Indonesia, dated 29 June 2016; Letter from CRC Asia, dated 7 July 2016; and Letter from MAGCRP, dated 11 July 2016, available at

A. The CPE Panel Properly Evaluated The Community As Defined By The Requester’s gTLD Application.

The Requester claims that the CPE Panel should have evaluated the Requester’s Application based on the community definition provided in the Requester’s November 2015 Letter, rather than the community definition set forth in the Requester’s Application.¹⁵ In its Application, which was submitted in June 2012, the Requester identified four distinct subgroups within the proposed community including: (i) children; (ii) organizations that “promote the well-being of children”; (iii) “[p]arents and educators”; and (iv) “[e]ducational institutions.”¹⁶ On 10 November 2015, the Requester submitted the November 2015 Letter to “provide [an] update and input to the CPE Priority Evaluation process for the .kids Community TLD application from the DotKids Foundation.”¹⁷ In that letter, the Requester submitted a “refinement of [its] Response to Question 18 and 20,” which sought to change the defined community for .KIDS to be “consistent with the children rights approach considered by the United Nations Committee on the Rights of the Child, [because, in the Requester’s view,] kids do not exist independently in the community. They are supported and also represented by those who are no longer kids but are intricately involved with kids to protect, promote and advocate their rights for their best interests.”¹⁸ In so doing, the Requester effectively sought to remove “parents and educators” and “educational institutions” from the community as originally defined in the Requester’s Application.

In the Requester’s “refinement” of its response to Question 18, the Requester also sought to add a new process to its proposed Protection Scheme. Specifically, the new Protection

<https://www.icann.org/resources/pages/reconsideration-16-6-dotkids-request-2016-05-06-en>. SAPA Indonesia, CRC Asia and MAGCRP further expressed their concerns that the children’s community is unique and requires special protection. In this regard, all three organizations’ supplemental submissions fail to identify any misapplication of any policy or procedure by ICANN.

¹⁵ Request, Pgs. 7-8.

¹⁶ Application, § 18(b).

¹⁷ 2015 Letter to ICANN, dated 10 November 2015, Pg. 1 (Attachment to Request 16-6).

¹⁸ *Id.* at 7.

Scheme detailed in the Requester’s November 2015 Letter included an “Appeal Mechanism” that was not included in the Requester’s Application.¹⁹

As an initial matter, applicants seeking to modify their gTLD applications must use the Change Request Process set forth in Section 1.2.7 of the Guidebook. However, even if the Requester had submitted a proper Change Request, the Guidebook does not (nor does any other policy or procedure) permit the type of modification that the Requester sought. The Guidebook permits applicants to modify gTLD applications only under specified circumstances, namely, if “information previously submitted by an applicant becomes untrue or inaccurate.”²⁰ Here, the Requester did not seek to *correct* inaccurate information from its Application. Rather, the Requester sought to *change* the community definition set forth in its Application.

Moreover, established policies and procedures required ICANN to defer consideration of the Requester’s proposed amendments to its community definition until after the Requester completes CPE. On 30 September 2014, ICANN issued a New gTLD Advisory (Change Request Advisory) documenting its policy that “requested changes to community definition and registration policies are deferred until after the completion of CPE.”²¹ ICANN adheres to this policy because “[a]pproval of a change request to update a community definition and registration policies would allow a CPE applicant to update its application based on learnings from previously posted CPE results. This causes issues of unfairness to the first applicants that went through CPE and did not have the benefit of learning from others.”²² Here, CPE was not complete when the Requester submitted the November 2015 Letter proposing modifications to

¹⁹ Compare 2015 Letter to ICANN, dated 10 November 2015, Appendix 3, § 18(c) (Attachment to Request 16-6) with Application, § 18(c).

²⁰ Guidebook, § 1.2.7.

²¹ New gTLD Advisory, dated 5 September 2014, available at <https://newgtlds.icann.org/en/applicants/advisories/change-request-set-05sep14-en>.

²² *Id.*

its community definition. Because ICANN’s practice and procedure regarding these sorts of change requests is to defer them until CPE is complete, the CPE Panel properly evaluated the community as defined by the Application when reaching its CPE determination

B. No Reconsideration Is Warranted With Respect To The CPE Report.

The Requester challenges the CPE Panel’s determination that the Application did not qualify for community priority. As discussed below, the CPE Panel adhered to the applicable policies and procedures in rendering the CPE Report. Accordingly, no reconsideration is warranted.

1. The CPE Panel Applied The CPE Criteria In Accordance With Established Policies And Procedures.

The Requester objects to the CPE Panel’s decision to award only six of the possible sixteen points to the Application. The reconsideration process does not permit evaluation of the CPE Panel’s substantive conclusion, but only whether the CPE Panel (or ICANN staff) violated any established policy or procedure. The Requester does not identify any policy or procedure violation with respect to the CPE Report, and therefore reconsideration is not warranted.

a. The CPE Panel Properly Applied the First CPE Criterion.

The Requester claims that the CPE Panel improperly awarded the Application zero out of four points on the first criterion, which assesses the community identified in the Application. Specifically, this criterion evaluates “the community as explicitly identified and defined according to statements in the application” through the scoring of two elements—1-A, delineation (worth two points), and 1-B, extension (worth two points).²³

²³ Guidebook, § 4.2.3.

i. The CPE Panel Properly Applied Element 1-A.

Pursuant to Section 4.2.3 of the Guidebook, to receive a maximum score for element 1-A, delineation, an application must identify a community that is: (a) delineated; (b) organized; and (c) preexisting.²⁴ In awarding the Application zero out of two points for element 1-A, the CPE Panel accurately described and applied the Guidebook scoring guidelines and scored the mandatory questions listed in the CPE Guidelines.

The CPE Panel first assessed whether the community defined by the Application was delineated. Under the CPE Guidelines, a maximum score requires “clear and straightforward [community] membership” and “awareness and recognition from [community] members.”²⁵ Here, the CPE Panel found that the Application’s community definition was “dispersed and unbound” and therefore did “not delineate a clear and straightforward membership.”²⁶ The CPE Panel also found that the proposed community’s general interest in “kids” was not “sufficient to demonstrate the requisite awareness and recognition of a community among its members.”²⁷ Thus, the CPE Panel concluded, “neither of the two conditions to fulfill the requirements for delineation” was met.²⁸

The CPE Panel next considered whether the community was “organized,” which, under the CPE Guidelines, requires “at least one entity mainly dedicated to the community” and “documented evidence of community activities.”²⁹ The CPE Panel described the purported community as “dispersed geographically [] across an array of kids-related individuals and entities.”³⁰ After considering “information provided in the application materials and the Panel’s

²⁴ *Id.*

²⁵ CPE Guidelines, Pg. 4.

²⁶ CPE Report, Pg. 2.

²⁷ *Id.*

²⁸ *Id.*

²⁹ CPE Guidelines, Pg. 4.

³⁰ CPE Report, Pg 3.

research,” the CPE Panel concluded that “there is no entity that organizes the community defined in the application in all the breadth of categories explicitly defined.”³¹ Therefore, the Application did not satisfy the organization requirement.

Finally, the CPE Panel inquired whether the pre-existence requirement was met, and specifically asked whether the “community has been active as such since before the new gTLD policy recommendations were completed in September 2007.”³² The CPE Panel concluded that this proposed community was “construed to obtain a sought-after generic word as a gTLD string” and was therefore “not active prior to September 2007.”³³

In challenging the CPE Report, the Requester does not identify any established policy or procedure that the CPE Panel misapplied in scoring element 1-A. Instead, the Requester argues that the CPE Panel ignored the United Nations Convention of the Rights of the Child (UNCRC) and the Committee on the Rights of the Child (CRC) (the organization that implements the UNCRC) when evaluating the Application. Specifically, the Requester disagrees with the CPE Panel’s application of the delineation requirement because, in the Requester’s view, “children’s rights organizations understand the UNCRC as the umbrella convention and therefore [the community] has a strong cohesion beyond a commonality of interest.”³⁴ The Requester also believes that the CPE Panel “inadvertently omitted” the CRC in concluding that “the community as defined by the applicant is not organized ... because the community includes parents, educators and third- sector organizations, which do not come together under a single umbrella organization.”³⁵

³¹ *Id.*

³² CPE Guidelines, Pg. 4.

³³ CPE Report, Pg. 3.

³⁴ Request, Pg. 10.

³⁵ *Id.* at 8-9.

The Requester's claims do not support reconsideration. In particular, the CPE Panel did not ignore the UNCRC or the CRC when evaluating the Application. Indeed, the UNCRC is cited twice in the CPE Report.³⁶ And, as the Requester admits, the CRC is "the UN committee commissioned to oversee the implementation of the UNCRC."³⁷ Thus, both the UNCRC and the CRC are effectively mentioned in the CPE Report. Furthermore, the Requester submitted a list identifying hundreds of children's organizations in support of its Application. No policy or procedure exists that would require the CPE Panel to explicitly name each of those organizations in the CPE Report, particularly where the CPE Panel made clear that it considered *all Application materials* to reach an informed decision.³⁸ Ultimately, the Requester has not submitted any evidence that would reasonably suggest that the CPE Panel "inadvertently omitted" the UNCRC or CRC from its analysis.

The Requester also opines that the community was active before September 2007 because "[t]he community is based on the UNCRC...[and the] UN General Assembly adopted the [UNCRC] and opened it for signature on 20 November 1989."³⁹ Although 10 November 1989 is a significant date for both the UNCRC and the CRC, it is irrelevant here. The CPE Panel is only asked to inquire when the community *defined by the applicant* was formed.⁴⁰ Here, the CPE Panel concluded that the community defined by the applicant was "construed to obtain a sought-after generic word as a gTLD string" and was therefore "not active prior to September 2007."⁴¹ Although the Requester disagrees with the CPE Panel's conclusion that the community was not

³⁶ CPE Report, Pgs. 2, 6.

³⁷ Request, Pg. 9.

³⁸ CPE Report, Pgs. 2, 3.

³⁹ Request, Pgs. 10-11.

⁴⁰ Guidebook, § 4.2.3 (the first CPE criterion "relates to the community as explicitly identified and defined according to the statements in the application.")

⁴¹ CPE Report, Pg. 3.

active before September 2007, the Requester’s disagreement is not a proper basis for reconsideration.

In challenging the CPE Panel’s scoring of element 1-A, the Requester further argues that the “CPE Panel misread the [Guidebook] requirement that community organizations[] cannot be community members also.”⁴² However, the Guidebook provides that “a community can consist of [legal entities, individuals, or logical alliance of communities] provided the requisite awareness and recognition of the community is at hand among the members.”⁴³ Put differently, the CPE Panel *may* – but is not required to – consider legal entities as community members.⁴⁴ Here, the CPE Panel did consider legal entities as potential community members,⁴⁵ but determined that there was insufficient commonality of interest and recognition amongst these entities to form a “community,” as defined by the Guidebook. As the CPE Report explained, “the number of individuals and entities included in the defined community ... cannot be said to have the cohesion required by the [Guidebook]. For example, a state government institution focused on children’s health does not have a demonstrable awareness and recognition of a community with a charity focused on children’s literacy.”⁴⁶ In sum, the CPE Panel *did* consider whether organizations were community members, even though it was not required to do so under the Guidebook. The Requester, therefore, has not identified any policy or procedure violated by the CPE Panel and, as such, has not stated a proper basis for reconsideration.

⁴² Request, Pg. 8. The Requester purports to raise this argument as part of its challenge to the CPE Panel’s substantive determination regarding element 2-A, nexus. However, this issue pertains to the CPE Panel’s evaluation of the first element, community establishment, and is accordingly addressed here.

⁴³ Guidebook, § 4.2.3.

⁴⁴ *Id.*

⁴⁵ See e.g., CPE Report, Pg. 4 (“Moreover, the application does not clearly define the other two membership categories. For example, “Government institutions that work on the well-being of children” is unclear and unbound. This category could include a ministry of education and/or a state or provincial level health care service aimed at children and young people”).

⁴⁶ CPE Report, Pg. 2.

ii. The CPE Panel Properly Applied Element 1-B.

The Requester also objects to the CPE 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.”⁴⁷

In awarding zero out of two points for element 1-B, the CPE Panel accurately described and applied the Guidebook scoring guidelines and scored the mandatory questions listed in the CPE Guidelines.⁴⁸ The CPE Panel found that while the community defined in the Application was “of considerable size, both in terms of geographical reach and number of members,” the community did not “show evidence of awareness and recognition among its members” as required by the Guidebook and, therefore, failed to satisfy the size requirement.⁴⁹ The CPE Panel also determined that the community defined in the Application did not demonstrate longevity because the community was “construed to obtain a sought-after generic word as a gTLD,” and “as a construed community, the proposed community cannot meet the Guidebook requirements for longevity.”⁵⁰ Because “the application did not fulfill the requirements for size, nor demonstrate the longevity of the community,” the CPE Panel awarded it zero points for this element.⁵¹

The Requester argues that the CPE Panel erred in evaluating element 1-B by:

(1) “refer[ring] to the inadvertent misreading (that because children’s rights organizations are not ‘kids’ they do not form a coherent community)”;

(2) omitting the CRC “in concluding that

⁴⁷ Guidebook, § 4.2.3.

⁴⁸ CPE Report, Pgs. 3-4.

⁴⁹ *Id.* at 4; *see also* Guidebook, § 4.2.3.

⁵⁰ *Id.*

⁵¹ *Id.*

the community does not show evidence of awareness and recognition.”⁵² The Requester raises both arguments elsewhere in its Request and, as applied to this element, neither argument supports reconsideration. First, as discussed above in connection with element 1-A, contrary to the Requester’s assertions, the CPE Panel did consider whether community organizations were members of the community, even though it was not required to do so under the Guidebook. Second, also as discussed above in connection with element 1-A, there is no evidence suggesting that the CPE Panel “omitted” the CRC from its analysis. Rather, the CPE Report explicitly mentions the CRC’s foundational document, the UNCRC. As such, the Requester does not identify any established policy or procedure that the CPE Panel misapplied in scoring element 1-B, and substantive disagreement with the CPE Panel’s finding is not a proper basis for reconsideration.

b. The CPE Panel Properly Applied the Second CPE Criterion.

The Requester claims that the CPE Panel improperly awarded the Application zero out of four points on the second criterion, which assesses the nexus between the proposed string and the community.⁵³ 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).⁵⁴

i. The CPE 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.” In awarding zero out of three points for

⁵² Request, Pg. 11.

⁵³ Guidebook, § 4.2.3.

⁵⁴ *Id.*

element 2-A, nexus, the CPE Panel accurately described and applied the Guidebook scoring guidelines and scored the mandatory questions listed in the CPE Guidelines.

The CPE Panel found that that the “community defined in the application is a collection of categories of individuals and organizations, and because there is no single entity that serves all of these categories in all their geographic breadth, there is no ‘established name’ for the applied-for string to match.”⁵⁵ The Application was therefore ineligible for a full score on element 2-A. The CPE Panel further determined that while the “string identifies the name of the core community members (i.e. kids),” it did not identify the breadth of constituent groups that the Application purported to represent, including children’s organizations, parents, and educational institutions.⁵⁶ For example, the CPE Panel explained, “parents of children are not commonly known by others as ‘kids’, nor does the word ‘kids’ closely describe parents.”⁵⁷ The CPE Panel concluded that the “applied-for string does not match or identify the name of the community as defined in the application nor is it a well-known short-form or abbreviation of the community,” and awarded the Application zero points for element 2-A.⁵⁸

The Requester objects to the CPE Panel’s finding that “because there is no single entity that serves all of these categories in all their geographic breadth, there is no ‘established name’ for the applied-for string to match, as required by the [Guidebook] for a full score on Nexus.”⁵⁹ This, according to the Requester, reflects a misunderstanding of the Guidebook and a “lack of knowledge of how children’s rights organizations uphold the UNCRC, which forms a strongly cohesive and recognized community worldwide.”⁶⁰ The Requester does not, however, identify

⁵⁵ CPE Report, Pg. 5.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ CPE Report, Pg. 5.

⁵⁹ *Id.*

⁶⁰ Request, Pg. 11.

any established policy or procedure that the CPE Panel misapplied in reaching its determination. Again, the Requester's substantive disagreement with the CPE Panel's finding is not a proper basis for reconsideration.

ii. The CPE Panel Properly Applied Element 2-B.

The Requester next objects to the CPE 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." Section 4.2.3 of the Guidebook further states that in order to be eligible for a score of 1 on the uniqueness element, an application must have "identif[ied] the community," which means it must have scored two or three points on the nexus element.

Because the CPE Panel awarded the Application zero out of three points for nexus, it also awarded it zero out of one point for uniqueness. The Requester argues that the score for uniqueness was improper because it "appears both to be a misreading of the [Guidebook] and a lack of knowledge of how children's rights organizations uphold the UNCRC."⁶¹ This argument overlooks the interplay between element 2-A nexus and element 2-B uniqueness, as clearly set forth in the Guidebook. Because the Requester's arguments relating to the CPE Panel's evaluation of the nexus element do not support reconsideration, neither do Requester's claims concerning the uniqueness element.

c. The CPE Panel Properly Applied The Third CPE Criterion.

The Requester claims that the CPE Panel improperly awarded the Application only three out of four points on the third criterion, which evaluates an 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

⁶¹ Request, Pg. 11.

point).⁶² The Requester challenges only the CPE Panel’s evaluation of criterion 3-D, enforcement.

Pursuant to Section 4.2.3 of the Guidebook, to receive a maximum score for element 3-D, enforcement, an applicant’s policies must “include specific enforcement measures (e.g., investigation practices, penalties, takedown procedures) constituting a coherent set with appropriate appeal mechanisms.” In awarding zero out of one point for element 3-D, the CPE Panel accurately described and applied the Guidebook scoring guidelines.⁶³ The CPE Panel found that while the Application provided “specific enforcement measures for enforcing its policies, including a complaint-response system,” it did not “reference a dispute resolution process,” and consequently awarded the Application zero points for this element.⁶⁴

In challenging the CPE Report, the Requester quotes extensively from the enforcement mechanisms in its Application, and states that the CPE Panel “appears to have missed the Protection Scheme.”⁶⁵ The CPE Panel evaluated the Requester’s proposed Protection Scheme and determined that, because the Protection Scheme did not include a dispute resolution process, it merited zero points for criterion 3-D. The four pages of protection mechanisms cited by the Requester fail to remedy this flaw - the Requester cannot identify a dispute resolution process because the Application included no such process. The Requester’s belief that its proposed enforcement mechanisms are sufficient to satisfy element 3-D, even without a dispute resolution process, is a substantive disagreement with the CPE Panel’s decision and is not a proper basis for reconsideration.

⁶² *Id.*

⁶³ CPE Report, Pg. 7.

⁶⁴ *Id.*

⁶⁵ Request, Pgs. 12-17.

d. The CPE Panel Properly Applied the Fourth CPE Criterion.

The Requester claims that the CPE Panel improperly awarded the Application just three out of four points on the fourth criterion, which assesses community endorsement of an application.⁶⁶ This criterion evaluates community support for and/or opposition to an application through the scoring of two elements, each worth two points—4-A, support, and 4-B, opposition.⁶⁷ The Requester challenges only the CPE Panel’s evaluation of criterion 4-A.

i. The CPE Panel Properly Applied Element 4-A.

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 represent the community.”⁶⁸ In challenging the Report, the Requester does not identify any policy or procedure that the CPE Panel misapplied in scoring element 4-A. Rather, the Requester disagrees with the CPE Panel’s substantive conclusion that the Requester was not the recognized community institution, did not have documented authority to represent the community, and did not have the support of the recognized community institution, because there was no “evidence of a single such organization recognized by all of the defined community’s members as representative of the defined community in its entirety.”⁶⁹ The Requester’s disagreement with the CPE Panel’s finding does not support reconsideration.

C. The Guidebook Does Not Require the CPE Panel to Include Experts in the Particular Subject Matter of Each Community Application.

The Requester asks ICANN to “either seek directly or ask the CPE Panel to seek advice or input from children’s rights community expertise in considering the CPE to best understand

⁶⁶ Guidebook, § 4.2.3.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Request, Pg. 17 (quoting CPE Report, Pg. 8).

the DotKids community application.”⁷⁰ The Requester raised an identical argument in Reconsideration Request 14-29, expressing its opinion that the CPE Panel should include “experts in the kids community.”⁷¹ As the BGC explained to the Requester in its Determination on Reconsideration Request 14-29, “[w]hile the Guidebook contemplates the CPE panel may look outside an application if necessary, it does not require the constitution of a CPE panel with particularized knowledge of the issues involved with each proposed community. As such, the Requester has failed to demonstrate ICANN has violated any established policy or procedure by its alleged failure to appoint a CPE panel with expertise in the ‘kids community.’”⁷² Request 16-6 offers no new arguments on this point; the BGC’s previous rationale and determination stand.

V. Determination.

Based on the foregoing, the BGC concludes that the Requester has not stated proper grounds for reconsideration, and therefore denies Request 16-6. If the Requester believes that it has somehow been treated unfairly here, it is free to ask the Ombudsman to review this matter.

The Bylaws provide that the BGC is authorized to make a final determination for all Reconsideration Requests brought regarding staff action or inaction and that no Board consideration is required. As discussed above, Request 16-6 seeks reconsideration of a staff action or inaction. As such, after consideration of Request 16-6, the BGC concludes that this determination is final and that no further consideration by the Board is warranted.

In terms of the timing of this decision, Section 2.16 of Article IV of the Bylaws provides that the BGC shall make a final determination or recommendation with respect to a reconsideration request within thirty days, unless impractical. To satisfy the thirty-day deadline,

⁷⁰ *Id.*

⁷¹ Reconsideration Request 14-29, § 8, Pg. 5, *available at* <https://www.icann.org/en/system/files/files/request-dotkids-11jun14-en.pdf>.

⁷² Determination of the BGC Reconsideration Request 14-29, Pg. 7, *available at* <https://www.icann.org/en/system/files/files/determination-dotkids-22aug14-en.pdf>.

the BGC would have to have acted by 23 May 2016. However, due to the timing of receipt of the request, and the intervening ICANN Public meeting, the first practical opportunity for the BGC to consider Request 16-6 was 21 July 2016.