

To: Economist Intelligence Unit, ICANN Community Priority Evaluation Panel

Subject: Community Priority Evaluation for .SHOP (Commercial Connect LLC, Application ID # 1-1830-1672).

This comment is being submitted on behalf of Donuts Inc. (“Donuts”). Donuts fully supports the analysis and conclusions of DotShop Inc. and its corporate parent, Radix FZC (collectively, “Radix”) submitted to ICANN regarding the above-referenced Community application (“Application”) by Applicant Commercial Connect LLC (“Commercial Connect”) for the .SHOP top-level domain name (“TLD”), and would like to briefly highlight the following additional points:

- 1) With respect to the first criterion in ICANN’s New gTLD Applicant Guidebook (“AGB”) “Community Establishment,” the Application fails to demonstrate either “delineation” or “extension” and should not be awarded full points. As to “Delineation,” Commercial Connect cannot show that its purported “community” of “eCommerce operators who directly sell to the general public on the Internet” (*see* Appln., Response to Ques 20(a)) is clearly delineated, organized and pre-existing. *Inter alia*:
 - It seems highly unlikely that “eCommerce Operators” have *ever* had any “awareness and recognition” of being part of a discrete “community,” much less one that has existed prior to 2007. *See* EIU Community Priority Evaluation Final Guidelines, dated 27 Sept. 2013 (“EIU Guidelines”) at 3; *see also* CPE Evaluation re: .music LLC (.MUSIC, 18 June 2014) at 2.
 - There also does not appear to be “at least one entity mainly dedicated to the community” or any “documented evidence of community activities.” *See* EIU Guidelines at 4; *see also* CPE Evaluation re: Taxi Pay GmbH (.TAXI, 17 March 2014) at 2.

Because of these severe deficiencies, Commercial Connect cannot score a 2 (or even a 1) for “Delineation.” As to “Extension,” there would seem to be little (if any) real evidence of “cohesion” amongst “eCommerce operators,” regardless of how numerous or geographically diverse they may be. *See, e.g.*, CPE Evaluation re: Dadotart Inc (.ART, 10 September 2014) at 4. Further, the community described in the Application should be considered as likely just a “construed community,” designed “merely to obtain a sought-after generic word as a gTLD string). *Id.*, at 4-5. As such, Commercial Connect must also score a zero or 1 for “Extension,” making for ***a total score of no more than zero or 1 for the entire criterion.***

If (as here) a CPE applicant scores a zero or a 1 for any single criterion, it cannot obtain the full 14 out of 16 points required for CPE and the entire Application must fail. *See* AGB at 4-10.

- 2) As to the second criterion, “Nexus Between Proposed String and Community,” there does not seem to be any direct “match” between a community of “eCommerce operators that directly sell to the general public on the internet” and a string such as “.SHOP,” meaning that the Application does not warrant a full three (3) scoring points for the “Nexus” subcriterion. *See* AGB at 4-12. Indeed, the instant case would seem to fall squarely within the (cautionary) example provided by ICANN in the AGB concerning “substantial overreach” by a community applicant. By way of example, Commercial Connect could be thought of as similar to the “local tennis club” (though not even one that is “globally well-known”) that is applying for an “excessively broad” string such as .TENNIS (or here, .SHOP). *See* AGB at 4-13; EIU Guidelines at 7. As such, Commercial Connect’s Application would likely not even warrant a score of two (2). If an application fails to score either 2 or 3 points for “Nexus,” it cannot be awarded a full point for “Uniqueness.” *See* AGB at 4-14; EIU Guidelines at 9-10. ***Commercial Connect should score a zero for the second criterion.***
- 3) On the third criterion, “Registration Policies,” we agree with Radix that the Application contains very little (if any) true restrictions on eligibility, name selection or content/use. Merely stating that the TLD would be limited to websites “offering goods and/or services under a Secure Sockets Layer (SSL) trusted connection,” and are “functional within 6 months” and that accept “credit card processing” hardly seems like much of a “restriction” at all. *See* Application, Ans. To Ques. 20(e). For example, a substantial number of websites on the Internet - including e-Mail providers, video/image sharing sites, social networks, etc. - utilize some form of SSL encryption (<https://en.wikipedia.org/wiki/SSL>) to facilitate secure hypertext transmissions even though they do not “sell” any goods/services to consumers in the manner described in the Application. Many of these take credit cards (and even comply with PCI DSS”) as well. Each one could conceivably apply for .SHOP domain, select virtually any name that they desire, and post content having nothing at all to do with selling items to consumers. While Commercial Connect does include some minimal discussion about proposed “enforcement” measures, this alone cannot offset the other defects endemic to this criterion. ***Commercial Connect should score a zero, or certainly no more than 1, for Registration Policies.***
- 4) Finally, as to the fourth CPE requirement, “Community Endorsement,” we share Radix’s concerns about the evidence proffered to demonstrate “support” for the Application. Many of the expressions of “support” are extremely dated (*e.g.* with several being addressed to “Esther Dyson” as “Chairman of the Board” of ICANN,” whose tenure ended over *fourteen years* ago) while others can only be described as mere “name dropping” with no associated documentation or evidence at all. *See* <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/114577?t:ac=307>. The voluminous list of companies provided by Commercial Connect does not include any details about the “process and rationale used in arriving at the

expression of support” (see AGB at 4-18) or, for that matter, even give the *names* of any specific person involved. For example, did a representative from Commercial Connect speak with the CEO of “Home Depot” or “Ace Hardware,” or merely a cashier or shipping clerk at a local store? When was each expression of “support” given, and does each company still hold the same view today? While it is acknowledged, *arguendo*, that Commercial Connect does state that additional detail would be provided “on request,” its complete failure to do so – when such information would seemingly be of tremendous usefulness – should cause the panel to view to such claims with a great deal of suspicion. While we agree that there does not appear to be any meaningful “opposition” of relevance, ***Commercial Connect should score no more than 1 or 2 for this criterion***, as the evidence of community “support” is severely lacking.

All of this makes for a likely ***grand total of no more than four (4) to five (5) points out of sixteen (16) possible***, placing the Application on similar footing as the CPE results on .IMMO (<https://www.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-en.pdf>), .GMBH (<https://www.icann.org/sites/default/files/tlds/gmbh/gmbh-cpe-1-1273-63351-en.pdf>), and .LLC (<https://www.icann.org/sites/default/files/tlds/llc/llc-cpe-1-880-17627-en.pdf>).

The panel should always keep in mind that community priority is meant to protect *bona fide* “communities,” such as indigenous peoples and cultural groups. It was not intended to cover any conceivable group of individuals or entities that might have some isolated “commonality of interest” but not the “cohesion” described and required in the Guidebook. See *TAXI* CPE Evaluation at 4. Even more importantly, CPE is also not a vehicle for parties that may have felt that they were not given due consideration in ***prior negotiations with ICANN*** to “revisit” their now defunct application bids. See Appln., Response to Ques. 20(b); see also <https://www.icann.org/resources/pages/14-11-2014-04-03-en>.

Donuts makes no specific comment here on the overall quality of the Application, or Commercial Connect’s fitness to run a TLD. Rather, we simply note that Radix has adequately and competently illustrated how the Application cannot pass the rigorous criteria described in the Guidebook and how this particular applicant will score particularly low. The bar has been set deliberately high by ICANN to avoid the use of the “community” label by those seeking to use it to exclude other legitimate applications. The Application does not (and cannot) describe a true “community” as contemplated by the New gTLD program. The CPE analysis performed by an independent panel should easily demonstrate that.

Sincerely,

Donuts Inc.