BRSMedia

March 5, 2014

Ms. Christine Willett
Vice President, gTLD Operations
The Internet Corporation for Assigned Names and Numbers (ICANN)
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
USA
Via email: christine.willett@icann.org

Re: Community Priority Evaluation – .RADIO (1-1083-39123)

Dear Ms. Willett,

Attached please find BRS Media comments regarding the community status of the European Broadcast Union's Application for .RADIO. We respectfully request that ICANN forward this communication and the accompanying documents to the Community Priority Evaluation Panel.

Thank you in advance.

 Best regards,

Sincerely,

George T Bundy
CEO/President
BRS Media, Inc.

 Cc: newgtld@icann.org

Introduction

ICANN's Applicant Guidebook (AGB) provides a mechanism by which an applicant that originally identified their string as a Community Application at the time of filing could elect to undergo a Community Priority Evaluation (CPE). The rules set forth in the AGB are followed; many community priority applications for generic strings will fail given that ICANN has set the entry barrier quite high. So high that, (i.e. scoring less than fourteen points out of a possible sixteen points) it is *not a community* as contemplated by the AGB and must fail CPE. This barrier is so strict because of the high risk of having a TLD claim to serve a community for which the community either does not exist or does not agree to the applicant claiming to represent it. The European Broadcast Union (EBU) is claiming a very generic term as its community name and the CPE process was designed to prevent this. As would be expected, EBU's application should fail CPE.

As set forth below, BRS Media (BRS) supports Minds + Machines (M+M) Comment to Community Priority Evaluation *"European Broadcast Union's Application for .radio +++ Comment to Community Priority Evaluation";* emailed to ICANN March 3, 2014 (attached)

Criterion

As a point of reference, BRS would like to emphasize the following Analysis Comments provided my M+M:

A. *Community Establishment & Delineation:* The EBU's application proclaims that it is applying on behalf of the global Radio community and goes on to define that as all those entities and individuals related to audio content distributed mainly by broadcasting to wide communities of listeners throughout the world. Delineation relates to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low.

    The EBU's application proclaims that it is applying on behalf of the global Radio community[1] and goes on to define that as all those entities and individuals related to audio content distributed mainly by broadcasting to wide communities of listeners throughout the world. The EBU's application expands upon its initial definition in later questions, saying that the Radio industry keeps evolving and today, many stations are not only broadcasting in the traditional sense, but also webcasting and streaming their audio content via the Internet. Some are not broadcasters in the traditional sense: Internet radios are also part of the Radio community. [2] Here, the EBU makes its claimed community ever larger by including Internet radio. Previously, the EBU had stated that licensed radio broadcasters as well as their associations, federations and unions would qualify for purchase of a domain name in their community-only .RADIO. However, since Internet radio broadcasters need not be licensed or even tracked, how will the EBU determine whether an Internet broadcaster is a member of its alleged community or not? *The simple answer is that it cannot.*
    The EBU cannot purport to claim that its community is everyone in the world with access to the Internet, a computer and a microphone. [3]

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[1] Public portion of the European Broadcasting Unions application for .radio (EBUs Application), available at: https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1468

[2] EBU's Application. Answer to Question 20(a). Provide the name and full description of the community that the applicant is committing to serve.

[3] Step by Step Instructions on Starting a Free Online Radio Station. http://voices.yahoo.com/step-step-instructions-starting-free-online-4051727.html

B. _Extension:_ Assuming, for the moment, that the community defined by the EBU can be considered a community for the purposes of scoring under Extension, the EBU has defined a community of considerable size indeed, it encompasses the entire globe and anyone with access to the Internet and a computer who desires to be a part of it.

Further, radio as we know it was invented sometime in the late 1800s[4]. If we take this to be the community proposed to be represented by the EBU, it can definitively be said to have longevity. The EBU itself was founded only in 1950, much later. One wonders what the community of radio broadcasters did without the EBU to represent it. Since longevity is an ambiguous term, it may or may not be the case that the community the EBU purports to represent can be considered to have longevity under the AGB.

C. _Uniqueness_: The word "radio" does not conjure to mind a community of any kind. Rather, the word is most often used to refer to the device that receives radio frequencies. In addition, the term Internet radio refers mainly to the transmission of audio via the Internet and not to the community of people who participate in such transmission. The definition of the word radio does mention the purported community the EBU is attempting to create around itself, but only as a subsidiary definition. [5]

The applied-for string in this case does not match the name of the community, stated by the EBU to be the global Radio community. Without that extra word, the statement is vastly different: the global Radio. It is not a short-form or abbreviation. It does, however, identify the community.

The EBU's attempt to restrain and redefine the term "radio" and to impose its use online **will create material harm to a significant portion of the radio industry** by preventing legitimate radio members / operators from within the industry, from using .RADIO in the domain space.

The AGB cites the situation of the EBU as an example of an application that does _not_ qualify as a community:

As an example, a string could qualify for a score of 2 if it is a noun that the typical community member would naturally be called in the context. If the string appears excessively broad (such as, for example, a globally well-known but local tennis club applying for ".TENNIS") then it would not qualify for a 2.

The EBU would have us believe that its members "would naturally be called" "radio" or "radios". **Further, the European Broadcast Union, as much as it may well be a large entity, is nonetheless a local union within Europe.**

D. _Registration Policies_: Eligibility for registration in the EBU's .radio namespace must be "restricted to community members".

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[4] Invention of radio (Wikipedia) http://en.wikipedia.org/wiki/Invention_of_radio

[5] "3(b) specializing in radio or associated with the radio industry" - Merriam Webster online dictionary entry on radio: http://www.merriam-webster.com/dictionary/radio

In its answer to Question 20, the EBU addresses how it defines its "community" "for registration purposes":

1 Broadcasters' Unions
2 Licensed Radio Broadcasters
  2.1 International Broadcasters
  2.2 National Broadcasters
  2.3 Regional Broadcasters
  2.4 Local Broadcasters
  2.5 Community Broadcasters
3 Trademarks
  3.1 Trademarks used for radio related activities for example companies providing specific services, equipment, radio programmes, etc.
  3.2 Defensive registrations by non-eligible applicants
4. Internet radio stations
5 Licensed amateur radios and clubs
6 Radio professionals

The EBU includes "Internet radio stations" in its "community". It is relatively simple to start an "Internet radio station" and, indeed, many amateurs around the world have done so. All one needs is access to the Internet and a computer. This being the case, then, just as the EBU's "community" is not delineated, its criteria for eligibility for registration in its .RADIO namespace is also not well defined, as it must include anyone with access to the Internet and a computer. Many of these people might not even consider themselves to be part of a "radio community" since the bulk of what they do is online. Just as the EBU cannot purport to claim that its "community" is everyone in the world with access to the Internet and a computer, it also cannot claim that it is restricting eligibility in its namespace to everyone in the world with access to the Internet and a computer—this is likely the same group of people who are interested in purchasing a domain name.

The EBU recognizes this and notes, about Internet radio stations, that;

This category is much more fluid and less organized than the two previous ones.
No licensing system; no organized registration.

It does not, however, define what these are. It can, then be said that **the EBU has taken a "[l]argely unrestricted approach to eligibility,"** The EBU should in fact score 0 for Eligibility.

E. *Enforcement*: The EBU states that it will use "**vigorous Enforcement practices**" but then goes on to say nothing about what those practices are. It does say that they will involve "**random investigations**", which hardly seems vigorous. There appears to be a major disconnect between claims of vigorous Enforcement practices and the defined action of random investigations. When it does decide to outline the Enforcement Policies, all it states is that it will have a launch phase, general availability, technical implementation, and human resources. This list of the phases of a TLD is woefully insufficient to define any kind of enforcement in the EBU .RADIO namespace.

F. *Community Endorsement*: The EBU lists support from five groups of radio broadcasters, implies the support of its own members, and hints at support from a group it is a member of. The EBU also attaches **mostly identical form letters from multiple groups that list their members**, implying support. However, the National Association of Broadcasters did *not* send a letter of endorsement and is *not* listed as supporting the application. [6]

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[6] CommLawBlog: .RADIO - A Look at the Four Contenders for Control of the TLD (September 8, 2012)
http://www.commlawblog.com/2012/09/articles/internet/radio-a-look-at-the-four-contenders-for-control-of-the-tld/

The EBU loses points first with the opposition filed in August 2012 by the International Radio Emergency Support Coalition (IRESC). [7] In it, the President of the IRESC, a group with special consultative status to the UN, **decries the form letter of support submitted by the International Amateur Radio Union (IARU), saying that this support does not reflect the views of all amateur radio operators globally**.

This opposition is relevant because it raises questions about the letters of support for the EBU's application. The form letters that were clearly sent around to various international groups for signature-and-support for the EBU's application may not have been signed onto with the support of each groups membership. Here, indeed, is a group, the IRESC that was allegedly represented by the IARU, whose opposition to the EBUs application was not taken into account when the IARU submitted its form letter of support.

The opposition of the IRESC is of non-negligible size and importance, having consultative status with the United Nations, allowing it to actively engage with the UN's Economic and Social Council. It represents members from more than 40 countries. [8]

BRS Media respectfully submits that this communication constitutes relevant opposition from at least one group/organization of non-negligible size. BRS Media is currently one of the longest standing top-level domain (Brand Registry Service) providers, launching the ccTLD .FM (The Federated States of Micronesia) on the world stage in April 1998 at the National Association of Broadcasters (NAB) annual convention NAB '98.

Conclusion

In conclusion, BRS Media advocates that the comments above and the detailed document and evaluation submitted by Minds + Machines; emailed to ICANN March 3, 2014, provides clear and indisputable proof that EBU is ineligible of scoring the requisite fourteen points to prevail at CPE.

The term radio is **not a fellowship or membership community**. It is a general term that has been in use for over a 100 years to describe a diverse and broad audio-based industry of individual broadcasters, amateur operators, high school and college educational institutions, public broadcasters, commercial broadcasting companies, Internet-based online webcasters, and many others. They share merely a commonality of interest and are not a community within the strict definition described by the AGB. Not only that, the EBU does not represent any such community and, in fact, there is strong opposition to its purported representation.

The EBU's attempt to restrain and redefine the term radio and to suppress its use online will create material harm to a significant portion of the radio industry by preventing legitimate radio members / operators from within the industry, from using .RADIO in the domain space.

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[7] Public commented posted in the Application Comment section of ICANN's website. Available at: https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/6609.

[8] NGO Branch of the United Nations Department of Economic and Social Affairs' searchable list of consultative members, IRESC entry. Available at: http://esango.un.org/civilsociety/displayAdvancedSearch.do?method=search&sessionCheck=false