

**THE INTERNATIONAL CENTRE FOR EXPERTISE OF THE
INTERNATIONAL CHAMBER OF COMMERCE**

CASE No. EXP/462/ICANN/79

AMERICAN ASSOCIATION OF INDEPENDENT MUSIC (A2IM)

(USA)

vs/

CHARLESTON ROAD REGISTRY INC.

(USA)

(Consolidated with Cases No.

EXP/463/ICANN/80

AMERICAN ASSOCIATION OF INDEPENDENT MUSIC (A2IM) (USA) vs/
DOT MUSIC LIMITED (GIBRALTAR)

and

EXP/467/ICANN/84

AMERICAN ASSOCIATION OF INDEPENDENT MUSIC (A2IM) (USA) vs.
DOTMUSIC INC. (UAE)

and

EXP/470/ICANN/87

AMERICAN ASSOCIATION OF INDEPENDENT MUSIC (A2IM) (USA) vs/
ENTERTAINMENT NAMES INC. (BRITISH VIRGIN ISLANDS)

and

EXP/477/ICANN/94

AMERICAN ASSOCIATION OF INDEPENDENT MUSIC (A2IM) (USA) vs/
VICTOR CROSS, LLC (USA))

This document is a copy of the Expert Determination rendered in conformity with the New gTLD Dispute Resolution Procedure as provided in Module 3 of the gTLD Applicant Guidebook from ICANN and the ICC Rules for Expertise.

gTLD opposed: .MUSIC

Nature of objection: Community

American Association of Independent Music (“A2IM”)

Objector

-v-

Charleston Road Registry Inc.

Applicant

The Applicant: Charleston Road Registry Inc., 1600 Amphitheatre Parkway, Mountain View, CA 94043, USA,

represented by Sarah Falvey of 1011 New York Ave, Second Floor, Washington DC 20005, USA, sarahfalvey@google.com, and Brian Winterfeldt of Katten Muchin Rosenman LLP, 2900 K Street NW, North Tower - Suite 200, Washington, DC 20007-5118, USA, brian.winterfeldt@kattenlaw.com. Also to be copied: tas-contact9@google.com; newgtld@kattenlaw.com.

The Objector: American Association of Independent Music (A2IM) of 132 Delancey Street, 2nd Floor, New York, New York 10002, USA,

represented by Constantine G. Roussos of DotMusic, 950 S. Flower Street #1404, Los Angeles, CA 90015, USA, costa@music.us, and Jason Schaeffer of ESQwire.com P.C., 1908 Route 70 East, Cherry Hill, NJ 08003, USA, jschaeffer@esqWire.com.

The Panel: The Rt. Hon. Professor Sir Robin Jacob of The Faculty of Laws, UCL, Endsleigh Gardens, London WC1E 0EG, UK, rjacob@ucl.ac.uk, appointed on 9th June 2013 and file transferred to him on 12th August 2013 shortly after payment of all relevant fees.

EXPERT DETERMINATION

General Procedural Matters and Applicable Rules

1. The Applicant made its application for the gTLD .music on 13th June 2012 (ID 1-1680-18593). The Objection was lodged on 13th March 2013 and the Response on 22nd May 2013.
2. On 7th May 2013 the International Centre for Expertise of the ICC (“Centre”) consolidated this case with cases EXP/463/ICANN/80 (*A2IM v Dot Music Limited*), EXP/467/ICANN/84 (*A2IM v DotMusic Inc.*), EXP/470/ICANN/87 (*A2IM v Entertainment Names Inc.*) and EXP/477/ICANN/94 (*A2IM v Victor Cross, LLC*) because the applied for string, .music, and Objector were the same in all cases. The effect of consolidation is not to

make evidence in one case evidence in all – it is merely to ensure consistency and achieve some time savings. I must give a separate decision in relation to each case based on the evidence and submissions in that case.

4. All communications between the parties, and myself have been electronic (Art. 6(a) of the Procedure) and in English (Art. 5(a) of the Procedure). I did not find a hearing necessary. The draft Expert Determination was submitted for scrutiny to the Centre in accordance with Art. 21(a) and (b) of the Procedure.

5. On 12th August 2013 the Objector sought leave to file an additional submission and new information and reply to the Applicant's Response. By an email of 20th August 2013 the Applicant contested the Panel's power to admit the new material and contended that, if there is such a power, the rules for its exercise did not apply here. If nonetheless I decided to admit the new material it sought a right of reply.

6. By my interim ruling of 21st August 2013 I decided I had power to admit the further material (my reasons can be found repeated in my decision in *A2IM v Red Triangle LLC* EXP/460/ICANN/77) and to admit it on the facts of this case. On 7th September 2013 the Applicant duly submitted an additional written statement dated 6th September 2013 with supporting exhibits.

7. The rules governing the substance of what I have to decide and the procedure to be applied are the Rules for Expertise of the ICC ("ICC Rules"), supplemented by the ICC Practice Note on the Administration of Cases ("ICC Practice Note") under the Attachment to Module 3 of the gTLD Applicant Guidebook, New gTLD Dispute Resolution Procedure ("Procedure") of the gTLD Applicant Guidebook ("Guidebook"). I collectively call these "The Rules", but where appropriate will identify the particular rule concerned.

8. Much more specifically the Rules as they apply to community objections are set out in a number of Articles of Module 3 of the Guidebook. For convenience I have gathered them all together as Appendix A to this determination. The broad structure is as follows:

- (1) The Objector must show it has standing as defined in Art. 3.2.2 and elaborated in Art. 3.2.2.4, and
- (2) The Objector must prove each of the four tests set out and elaborated in Art.3.5.4.

Both in respect of standing and each of the four tests the burden of proof lies on the Objector (Art. 20 (c) of the Procedure).

9. It is perhaps worth stating explicitly what my task is and more specifically what it is not. It is not to decide whether this or any of the other applicants in the consolidated cases should be awarded the gTLD .music. My task is more limited: to decide whether the Objector has standing and if so whether it has satisfied the four tests. If all these things are proved then a community objection is successful. If it is not then it will be for other procedures within ICANN to determine what happens next, I am not concerned with these.

Who the parties are and what they do or propose to do

The Applicant

10. The Applicant is a US company incorporated in Delaware but having its address in California at the headquarters of its parent company, Google Inc. In its Application it says:

In line with Google's general mission, Charleston Road Registry's mission is to help make information universally accessible and useful by extending the utility of the DNS while enhancing the performance, security, and stability of the Internet for users worldwide. Charleston Road Registry aspires to create unique web spaces where users can learn about products, services, and information in a targeted manner and in ways never before seen on the Internet. Its business objective is to manage Google's gTLD portfolio and Google's registry operator business. As discussed further in the responses to questions 23 and 31, Charleston Road Registry intends to outsource all critical registry functions to Google Registry Services.

The purpose of the proposed gTLD, .music, is to provide a dedicated domain space in which copyright holders and their authorized distributors and licensees can enact unique second-level domains that relate to the promotion, sampling, or purchase of music. Charleston Road Registry believes that registrants will find value in associating with this gTLD, in particular musicians and music distributors This mission will enhance consumer choice by providing new availability in the second-level domain space, creating new layers of organization on the Internet, and signalling the kind of content available in the domain.

And:

The goal of the proposed gTLD is to create a new Internet environment that provides registrants with the opportunity to associate with a meaningful term. Charleston Road Registry, as the registry operator, will define the specialized meaning of the term and, based on this definition, will identify criteria for registrants to operate in the proposed gTLD. Only entities that meet these criteria will be entitled to register for a domain in the gTLD. Specialization, therefore, arises from the Charleston Road Registry definition of a term, as well as through market dynamics as entities align their offering(s) with the term. This specialization will be maintained through intermittent

audits to ensure the relevancy of content in the proposed gTLD to the defined meaning of the gTLD.

The specialization goal of the proposed gTLD is to create a new Internet environment that provides registrants with the opportunity to associate with the term "music" and to provide content and offerings related to music and/or targeted at users seeking music content.

The Objector

11. The Objector is the American Association of Independent Music ("A2IM"). Its Objection Form refers me to its website. What I quote now is taken from that, rather than the Form itself – which mixes argument along with a description of A2IM itself. I make no complaint about that but it is easier to separate out the basic facts about A2IM from its website. The website says under the heading Mission:

The Independent Music Sector has introduced, developed and supported nearly every new musical form which has impacted our society since the beginning of the recording industry. In the present day – perhaps more than ever – the independents are vital to the continued advancement of cultural diversity and innovation in music.

A2IM is a not-for-profit trade organization serving the Independent music community as a unified voice representing a sector that, according to Billboard Magazine, comprises over 34.5% of the music industry's market share in the United States (and approximately 40% of SoundScan digital album sales). The organization represents the Independents' interests in the marketplace, in the media, on Capitol Hill, and as part of the global music community.

12. The website indicates the sort of activities undertaken. It says:

During our first 8 years, A2IM has furthered our three part agenda of providing advocacy/representation for independents on issues affecting the music community, finding commerce opportunities for members, and providing member services which include education on issues, networking & presentation events, special offers and general business advice.

13. More specifically the website indicates that A2IM has acted as a spokesperson for its members in relation to negotiations with government about changes or possible changes in the law and represented independent labels in discussions with major telecom players such as YouTube, Amazon and others. And it has a general "mission statement" which includes passages such as:

Fair Trade

A primary A2IM objective is to help independently owned music labels achieve commercial terms on par with the major recording companies. The association will constantly seek to level the playing field.

New Technology and Distribution

A2IM will relentlessly pursue a seat at the table for the launch of new technologies and distribution channels.

Access to Media

Independent music is underrepresented on mainstream radio and television. A2IM shall be a constant reminder to media broadcasters and elected officials that the ownership of the airwaves stem from the public trust and that cultural diversity is in the public interest and that the fair and equitable treatment of independent music creators will benefit the very media companies that would overlook or under-estimate the value of this content.

Legislative

A2IM will represent the Independent sector's interests in government and legislative issues.

A2IM will be visible on issues where our position diverges from that of the majors, and for which the Independents need a central voice.

14. But there is no formal document indicating with precision what the extent of its mandate to speak for members actually is. This is a little surprising for two reasons: firstly the extent of such a mandate is obviously highly relevant to this case and secondly the Rules (specifically Rule 3.2.2.4 of the Guidebook) themselves indicate that one of the factors to be taken into account in considering standing (albeit in the context of *established institution*) is “the presence of a formal charter, or national or international registration”.

15. A2IM has two sorts of member: “Labels” and “Associate Members”. Labels are what in the pre-digital world were called “record companies”. They are still so called though of course much of what they produce is delivered digitally. Typically it is the Label which has the contracts with performers and music and lyric writers. A Label is what in the book world would be called a publisher. The Label members of A2IM are so-called “Indies”, that is to say smaller companies in contrast to major Labels such as Sony or Warner. There are 210 A2IM Label members, nearly all of whom are American which is hardly surprising since it is the American Association of Independent Music. Associate membership is open to companies that “work with, rely upon, or otherwise support independent labels”. There are

131 Associate Members, some of whom are large and well known such as Spotify and iTunes.

16. A2IM's Objection is being conducted by Mr Constantinos Roussos whose own company is itself seeking the gTLD .music. This is not without significance for it makes plain that A2IM does not object to the gTLD .music in principle, merely to this Application and those in the other .music cases I have to decide. That is not fatal to the Objection for A2IM might nonetheless have a valid community objection of its own. But it causes me to examine the Objection with particular care. And it means that A2IM cannot contend (as indeed it does not) that a .music string is inherently objectionable – that no-one should have it.

The Fresh Evidence and submissions about it

17. I turn to consider the effect of this first. It consists principally of the 11th April 2013 Beijing Communique of the GAC (Government Advisory Committee) to ICANN.

Consumer Protection, Sensitive Strings, and Regulated Markets:

The GAC Advises the ICANN Board:

- Strings that are linked to regulated or professional sectors should operate in a way that is consistent with applicable laws. These strings are likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm. The following safeguards should apply to strings that are related to these sectors:

1. Registry operators will include in its acceptable use policy that registrants comply with all applicable laws, including those that relate to privacy, data collection, consumer protection (including in relation to misleading and deceptive conduct), fair lending, debt collection, organic farming, disclosure of data, and financial disclosures.

2. Registry operators will require registrars at the time of registration to notify registrants of this requirement.

- 3...

4. Establish a working relationship with the relevant regulatory, or industry self-regulatory, bodies, including developing a strategy to mitigate as much as possible the risks of fraudulent, and other illegal, activities.

- 5...

In the current round the GAC has identified the following non-exhaustive list of strings that the above safeguards should apply to:

- Intellectual Property

Here are listed a number of strings. .music is one of them

18. What difference does this make? The GAC has not said that .music should not be allowed at all (as it has in the case of some other proposed gTLDs). Nor has ICANN yet taken any action on the advice. Whether it does or not does not appear to me to matter. For what is clear is that none of the Rules which I have to apply have been changed. They are now as they were when “enacted” in 2012. The advice in no way alters the meaning of any of the Rules.

19. Moreover the advice does not suggest ICANN should change any of the Rules as to a Community objection. If ICANN decides the advice should inform it how to proceed generally, then it will act accordingly. The advice is not for a Panel.

20. I accordingly hold that the GAC advice is irrelevant to what I have to decide, namely whether the Objector has standing and if so whether a community objection is successful.

21. The remainder of the late material which I admitted does not relate to new facts. It, along with the responsive Additional Written Submission, helps focus the issues. It is to these I now turn.

Standing

22. The Applicant says the Objector lacks standing. It concedes that “A2IM is arguably an *established institution*” so I need not consider that aspect of standing further. It makes what I think is a bad point: it is that because A2IM claims to represent “independent entities” it cannot be representative of them by reason of their very independence. But “independent” here is essentially a term of art – a record Label which is not a major – an “Indie”.

23. The Applicant bases its main attack as regards standing on the requirement that the Objector must be “associated with a clearly delineated community”.

24. So what the A2IM must show is that there is such a thing as a *music community*, that that community is *clearly delineated* and that A2IM is *associated with* it. The burden lies on the Objector in relation to all these points.

25. I would add that the first test for a successful opposition overlaps with the test for standing. For the first test requires that the “The community invoked by the objector is a

clearly delineated community” (Rule 3.5.4 of the Guidebook) and the requirement for standing is that the objector “has an ongoing relationship with a clearly delineated community (Rule 3.2.2.4).

A “music community?”

26. I am not at all clear what A2IM says the music community is. It refers to the “independent music community” meaning independent music labels, but that cannot possibly constitute a global music community as a whole. In other places it invokes all its members and associate members. But even if you took them all as being a “community” (which I do not) they could only form a part of the global citizenry (nearly all mankind) which has an interest of any sort in music. In its additional submission A2IM suggests that the community consists of its membership in the context of the clear delineation requirement. But A2IM’s membership (even taken as a whole) cannot in any way be taken to amount to a global music community for all mankind.

27. I do not think that there is anything which can fairly be described as a “music community”. There is a vast range of different types of music in the world. Music appeals to nearly all mankind. Just because there is one word covering all kinds of music does not make a “community” – the word will not stretch that far. There is no cohesion or relationship between all those concerned with creating performing, recording or “consuming” music of all the different sorts known to mankind. There is no public recognition of such a thing as the “music community.” There are no boundaries, formal or informal for what it might be and how one says someone is within it or without it.

“Clearly delineated”

28. Moreover such a formless supposed community cannot possibly be “clearly delineated.” The supposed community is formless. I repeat: there are no boundaries, formal or informal for it – how one says one person is within it and another without.

29. A2IM does not focus on “clear delineation” save in its Additional Submission. As I have said there it suggests delineation by virtue of membership of A2IM. True it is that membership or not provides a clear delineation of some sort, but it is not a clear delineation of those targeted by the proposed gTLD, not the right sort of “clear delineation.”

Is A2IM associated with the community?

30. And even if there were a “music community”, A2IM can hardly claim to be associated with it. Indeed I reject the implied suggestion that A2IM is representative of independent record labels as whole. Its members form a fraction of the Indies of the USA, still less that of the world. It does not have an ongoing relationship with anything more than its own members. That is not enough to constitute an ongoing relationship with a “music community.”

31. There are other problems with the suggested association. Firstly A2IM as such only has a relationship with its members. Only if it has the authority to act and speak for all its members in relation to .music could there be a wider association, even supposing an association between the A2IM’s members and the a “music community” were enough – which I do not think it is.

32. I elaborate. Firstly I do not think it is proved that the Objector speaks for all its Indie members in relation to the proposed .gTLD. Only a minor proportion of its members have been willing to write letters of support (the letters form Appendix H, although the Objection refers to exhibit A). As regards that minor proportion I am not satisfied that they have any real objection to this particular Application – none of the letters indicate much more than general concern about what might happen if there is a mismanaged .music gTLD which fails to control piracy. None of the letters indicate that the author has even read the Application form. It is not indeed clear that the authors are aware that A2IM is supporting (or tacitly supporting by not opposing) Mr Roussos’ company’s application.

33. Secondly at best the Objector’s Indie membership is only a minor proportion of American Indies, and a much more minor proportion of the Indies of the world and a still lesser proportion of the world’s record companies. This matters because I can see no difference between any concern an Indie company might have about .music and that which a major might have – they are all record companies interested in the suppression of copyright infringement. Viewed in that light the Objector’s members form a very minor proportion of the world’s record companies – not a significant proportion of those who stand in the same case, namely all the members of the global record industry. A2IM’s association with the world record industry (taking that to be the community for a moment) is limited indeed.

34. Thirdly A2IM's members are not themselves musicians of any kind at all. Its members doubtless have an interest in the commercial exploitation of the music of bands or groups signed to them, but A2IM's interest is only indirect. A2IM does not represent or even purport to represent musicians of any sort. There are no letters of support from any actual musicians – indeed musicians cannot be members of A2IM.

35. As to A2IM's associated members, whilst they very probably support some of the work which A2IM does, I cannot see that merely by becoming an associate member a party thereby confers on A2IM to speak for it in relation to any specific matter and specifically for this Objection. It is unthinkable, for instance, that A2IM have authority to speak for Apple (iTunes) or Spotify.

36. In these circumstances I conclude that it is not proved that there is such a thing a music community or that A2IM is "associated" with any musicians at all, still less with a "clearly delineated community" of them.

37. I therefore hold for all these reasons that A2IM lacks standing to make this Objection. The Applicant therefore prevails.

Further Observation

38. Even if that were wrong, I am satisfied that the Objector has failed to satisfy the detriment test, namely whether:

"the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted."

39. The string is targeted at anyone interested in music – nearly the whole world. One can envisage a subset consisting those who might want a .music address - say those who are interested professionally in music. Even so the class is huge, going much wider than the recording industry of the world. Is any significant portion of that subset, or even of the world recording industry, likely to suffer a material detriment to its rights or legitimate interests?

40. I think the answer on the evidence is clearly no. I start with points which I have largely already gone into and merely list here:

- (1) It is not proved that the Objector speaks for all its Indie members.

- (2) Only a minor proportion of its members have been willing to write letters of support.
- (3) As regards that minor proportion I am not satisfied that have any real objection to this particular application;
- (4) The Objector's Indie membership is only a minor proportion of American Indies, and a much more minor proportion of the Indies of the world;
- (5) There is no reason to single out Indie record companies from majors – all record companies are concerned about piracy;
- (6) So the Objector's members form a very minor proportion of the world's record companies.

41. The absence of complaint by about .music from the world's record companies or their industry association is telling indeed. Evidently everyone else in the world apart from A2IM does not think there is a likelihood of a material detriment or they would surely have opposed.

42. Further, as I have said the Objector cannot be heard to say that any .music gTLD will cause a material detriment for it does not object to Mr Roussos' application. Its position in logic must be that his application would cause no detriment but this would. That it has not tried to do.

43. The Objection contains a long diatribe about alleged iniquities of Google in relation to copyright infringement, patent infringement and a host of other things. This is denied by the Applicant. Moreover the Applicant rightly points out that "Google is not gatekeeper for the internet." I do not propose to go into this more. For as the Applicant points out they have no bearing on the operation of the .music TLD. That will have to be in accordance with ICANN requirements – and indeed the Applicant intends to go further than these. It says:

1. CRR plans to require all participants in the gTLD to agree that they are authorized to offer any copyrighted content within the gTLD. Specifically, CRR plans to require registrars to include language in their registrar-registrant agreement that the registrant must be authorized or licensed to post any content that the registrant introduces into the gTLD. CRR will reserves the right to adopt enforcement measures, including a request that registrars facilitate a user reporting method to log complaints and/or potential instances of misuse within the gTLD. To mitigate trademark abuse, in addition to the requirements mandated by ICANN, CRR has committed to double the length of the mandatory Sunrise Period and to extend the Trademark Claims Service indefinitely. In conjunction with the recent expansion of the Claims Service to incorporate up to 50 previously abused strings per Trademark Clearinghouse

submission, CRR's "enhanced" Claims Service should significantly reduce rights holders' burdens by reducing monitoring costs and by deterring potential cybersquatters. CRR's commitment to engage in pre-registration verification of potential domain name registrants should further serve to reduce fraudulent practices and to facilitate better communication between the parties to a dispute.

2. CRR plans to implement additional comprehensive anti-abuse mechanisms, including:
 - 1) Protection against abusive registration of geographic names by reserving to the registry in order to prevent registration; and
 - 2) Initially reserving from registration by any party names with national or geographic significance within the TLD during the TLD's Sunrise Period and Trademark Claims Period.

44. It is not for me to gainsay that. No doubt ICANN will have remedies if the Applicant does not keep its promises. What I can say is that the "detriment" relied upon is far from made out.

Costs

45. Pursuant to Art. 14(e) of the Procedure, upon termination of the proceedings, the Dispute Resolution Service Provider shall refund to the prevailing party, as determined by the panel, its advance payment in costs. The Applicant has prevailed, and thus shall have its advance costs refunded by the Centre.

Decision and Disposition

46. In accordance with Art. 21(d) of the Procedure, the Expert therefore renders the following Expert Determination:

1. The American Association of Independent Music's Objection is dismissed and the Applicant, Charleston Road Registry Inc., prevails.
2. Charleston Road Registry Inc. is entitled to refund of its advance payment of costs by the ICC pursuant to Art. 14(e) of the Procedure.

Date: ...18th February 2014

Robin Jacob

The Rt. Hon. Professor Sir Robin Jacob

Expert

Annex A

The Applicable Rules for Community Objections

gTLD Applicant Guidebook, Module 3

3.2.1 Grounds of Objection

A formal objection may be filed on any one of the following four grounds:

...

Community Objection – There is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

3.2.2 Standing to Object

Objectors must satisfy standing requirements to have their objections considered. As part of the dispute proceedings, all objections will be reviewed by a panel of experts designated by the applicable Dispute Resolution Service Provider (DRSP) to determine whether the objector has standing to object. Standing requirements for the four objection grounds are:

...

For a Community ground objection only

An “established institution associated with a clearly delineated community” may object

3.2.2.4 *Community Objection*

Established institutions associated with clearly delineated communities are eligible to file a community objection. The community named by the objector must be a community strongly associated with the applied-for gTLD string in the application that is the subject of the objection. To qualify for standing for a community objection, the objector must prove both of the following:

It is an established institution –

Factors that may be considered in making this determination include, but are not limited to:

- Level of global recognition of the institution;
- Length of time the institution has been in existence; and
- Public historical evidence of its existence, such as the presence of a formal charter or national or international registration, or validation by a government, inter-governmental organization, or treaty. The institution must not have been established solely in conjunction with the gTLD application process.

It has an ongoing relationship with a clearly delineated community –

Factors that may be considered in making this determination include, but are not limited to:

- The presence of mechanisms for participation in activities, membership, and leadership;
- Institutional purpose related to the benefit of the associated community;
- Performance of regular activities that benefit the associated community; and
- The level of formal boundaries around the community.

The panel will perform a balancing of the factors listed above, as well as other relevant information, in making its determination. It is not expected that an objector must demonstrate satisfaction of each and every factor considered in order to satisfy the standing requirements.

3.5 Dispute Resolution Principles (Standards)

Each panel will use appropriate general principles (standards) to evaluate the merits of each objection. The principles for adjudication on each type of objection are specified in the paragraphs that follow. The panel may also refer to other relevant rules of international law in connection with the standards.

The objector bears the burden of proof in each case.

3.5.4 Community Objection

The four tests described here will enable a DRSP panel to determine whether there is substantial opposition from a significant portion of the community to which the string may be targeted.

For an objection to be successful, the objector must prove that:

- The community invoked by the objector is a clearly delineated community; and
- Community opposition to the application is substantial; and
- There is a strong association between the community invoked and the applied-for gTLD string; and
- The application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted.

Each of these tests is described in further detail below.

Community

The objector must prove that the community expressing opposition can be regarded as a clearly delineated community. A panel could balance a number of factors to determine this, including but not limited to:

- The level of public recognition of the group as a community at a local and/or global level;
- The level of formal boundaries around the community and what persons or entities are considered to form the community;
- The length of time the community has been in existence;
- The global distribution of the community (this may not apply if the community is territorial); and
- The number of people or entities that make up the community.

If opposition by a number of people/entities is found, but the group represented by the objector is not determined to be a clearly delineated community, the objection will fail.

Substantial Opposition

The objector must prove substantial opposition within the community it has identified itself as representing. A panel could balance a number of factors to determine whether there is substantial opposition, including but not limited to:

- Number of expressions of opposition relative to the composition of the community;
- The representative nature of entities expressing opposition;
- Level of recognized stature or weight among sources of opposition;
- Distribution or diversity among sources of expressions of opposition, including:
 - Regional
 - Subsectors of community
 - Leadership of community
 - Membership of community
- Historical defense of the community in other contexts; and
- Costs incurred by objector in expressing opposition, including other channels the objector may have used to convey opposition.

If some opposition within the community is determined, but it does not meet the standard of substantial opposition, the objection will fail.

Targeting – The objector must prove a strong association between the applied-for gTLD string and the community represented by the objector. Factors that could be balanced by a panel to determine this include but are not limited to:

- Statements contained in application;
- Other public statements by the applicant;
- Associations by the public.

If opposition by a community is determined, but there is no strong association between the community and the applied-for gTLD string, the objection will fail.

Detriment

The objector must prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. An allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment.

Factors that could be used by a panel in making this determination include but are not limited to:

- Nature and extent of damage to the reputation of the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string;
- Evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely, including evidence that the applicant has not proposed or does not intend to institute effective security protection for user interests;
- Interference with the core activities of the community that would result from the applicant's operation of the applied-for gTLD string;
- Dependence of the community represented by the objector on the DNS for its core activities;
- Nature and extent of concrete or economic damage to the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string; and
- Level of certainty that alleged detrimental outcomes would occur.

If opposition by a community is determined, but there is no likelihood of material detriment to the targeted community resulting from the applicant's operation of the applied-for gTLD, the objection will fail.

The objector must meet all four tests in the standard for the objection to prevail.