

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

CASE No. EXP/460/ICANN/77

AMERICAN ASSOCIATION OF INDEPENDENT MUSIC (A2IM)

(USA)

vs/

RED TRIANGLE 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: .band  
Nature of objection: Community

**American Association of Independent Music (USA)**

Objector

-v-

**Red Triangle LLC (USA)**

Applicant

The Parties and their Representation

The Applicant: Red Triangle LLC of 427 North Camden Drive, Beverly Hills, CA 90210, USA ([erik@whatbox.co](mailto:erik@whatbox.co))

represented by Thomas Brackey, Stephen Crump and Joshua Zetlin of Freund & Brackey LLP, 427 North Camden Drive, Beverly Hills, CA 90210, USA. ([tbrackey@freundandbrackey.com](mailto:tbrackey@freundandbrackey.com); [scrump@freundandbrackey.com](mailto:scrump@freundandbrackey.com); [jzetlin@freundandbrackey.com](mailto:jzetlin@freundandbrackey.com))

The Objector: American Association of Independent Music (“A2IM”) of 132 Delancey Street, 2<sup>nd</sup> Floor, New York, NY 10002, USA ([rich@a2im.org](mailto:rich@a2im.org))

represented by DotMusic, Constantinos Roussos of 950 S. Flower Street #1404, Los Angeles, CA 90015, USA. ([costa@music.us](mailto:costa@music.us)) and Jason Schaeffer of ESQwire.com P.C., 1908 Route 70 East, Cherry Hill, NJ 08003, USA ([jschaeffer@esqwire.com](mailto: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](mailto:rjacob@ucl.ac.uk)), appointed on 12<sup>th</sup> June 2013, file transferred to him on 12<sup>th</sup> August 2013.

**EXPERT DETERMINATION**

**General Procedural Matters and Applicable Rules**

1. The Applicant made its application for the gTLD .band on 13<sup>th</sup> June 2012 (Application ID 1-856-54878). The Objection was lodged on 13<sup>th</sup> March 2013 and the Response on 19<sup>th</sup> May 2013.

2. On 12<sup>th</sup> August 2013 sought leave to file an additional submission and new information and reply to the Applicant's Response. By an emailed letter of August 15<sup>th</sup> 2013 the Applicant contested the Panel's power to admit the new material or if there is such a power whether a case for admission of the material was made out. The letter also provided a response to the new material if I decided it should be admitted. By email of 19<sup>th</sup> August 2013 Mr Crump confirmed that if I admitted the new material, the letter should stand as the Applicant's response to it. I could therefore render my decision on admissibility as part of my overall expert determination.

3. 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.

4. 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.

5. 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 altogether 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

6. 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).

7. It is perhaps worth stating explicitly what my task is and more specifically what it is not. It is not to decide whether the Applicant (or in the other .band case I have to decide) should be awarded the gTLD .band. My task is more limited: to decide whether the Objector concerned has standing and if so whether it has satisfied the four tests. If all these things are proved then a community objection is made out in the case concerned. If is not it will then be for other procedures within ICANN to determine what happens next. I am not concerned with these.

## **The Panel's Power to admit Fresh Evidence and Submissions**

8. Before I proceed to apply the Rules to this case I must deal with the question of the fresh evidence and submissions. I ruled on the Panel's powers in this regard in case EXP/474/ICANN/91 in an interim decision of 30<sup>th</sup> July 2013, (*International Federal of Arts Councils and Culture Agencies v .Music, LLC*). I need do no more there than quote what I said there:

“3.<sup>1</sup> Articles 17 and 18 of the Rules provide:

### **Article 17. Additional Written Submissions**

(a) The Panel may decide whether the parties shall submit any written statements in addition to the Objection and the Response, and it shall fix time limits for such submissions.

(b) The time limits fixed by the Panel for additional written submissions shall not exceed thirty (30) days, unless the Panel, having consulted the DRSP, determines that exceptional circumstances justify a longer time limit.

### **Article 18. Evidence**

In order to achieve the goal of resolving disputes over new gTLDs rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the Panel may require a party to provide additional evidence.

4. The parties are in dispute as to the effect of these Rules. In summary, the Applicant contends that further submissions can only be admitted in an "exceptional circumstances." The Objector contends that neither Art. 17 nor Art. 18 contain any reference to an "exceptional circumstances" as governing the admissibility of additional written submissions. The reference to "exceptional circumstances" is only about justifying a longer period than 30 days for submission of additional written submissions.

5. The Objector further contends that Rule 17 must be construed liberally. At the very least there must be a power to admit Submissions in Reply to the Applicant's Response, but the power is wider than that. It goes on to say that its "Additional Submissions" are indeed essentially in Reply to the Response.

6. I accept the Objector's submissions about the power to admit further submissions. Although the procedure is intended to speedy, it is also flexible but under the control of the Panel. It is wholly improbable that there is no right of reply or restriction on augmentation of a case save for "exceptional circumstances." On its face Art. 17 (1) looks forward only and can only be initiated by the Panel (decide .... shall submit") but if there is power in the Panel to call for submissions in the future, there must be

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<sup>1</sup> This paragraph was also numbered as "4." in the original decision.

power to admit submissions already provided. The greater must include the less. That power is not circumscribed by any requirement of "exceptional circumstances."

7. I therefore hold that a Panel has power to admit additional submissions of a party without there having to be "exceptional circumstances."

8. It does not of course follow that additional submissions can be submitted and admitted as of right. There must be a case for their admission. The power is to be exercised taking into account all the circumstances of the particular case concerned - as with any other procedural power in a court or tribunal. The following factors at least will be relevant:

(a) Whether the opposite party will suffer any prejudice by admission of the further submissions;

(b) Whether the admission of the submissions would cause delay;

(c) At what stage of the proceedings the admission is sought;

(d) The relevance of the further submissions. If they are clearly irrelevant they will be denied, but if they are arguably relevant that may be enough at the admission stage;

(e) How far the submissions raise entirely new matter or change the complexity of the case;

(f) The extent to which the further submissions are in reply to matter pleaded by the opposite party.

(g) Whether there is a public interest involved - either in registration or its refusal. If there is (or may be) then there is likely to be a stronger case for admission of new material than in what might be called "merely a private fight."

Of these factors (a) and (b) are particularly important, for if there is no prejudice and no likely delay, it is difficult to see what harm would result from their admission.

9. There is also this. At the stage of determining admissibility the Panel will not go deeply into the merits of the case: that is for the final determination. All that has to be considered is the prima facie relevance of submissions."

9. So I think there is power to admit fresh evidence and submissions. It is not confined to "exceptional cases" but nonetheless a case for its admission must be made out. The real question is whether the power should be exercised on the facts of the case under consideration.

### **Admission of the Fresh Submissions in this Case**

10. Here the application for admission was made effectively as soon as it could be –on the same day as the files in this case were transferred to me. Mr Crump for the Applicant does not suggest there is any procedural prejudice if the material is admitted.

11. Part of the material sought to be admitted clearly could not have formed part of the original objection because it happened after that was submitted. This is the information concerning the GAC Beijing Communique issued on 11<sup>th</sup> April 2013. The Objector says it is relevant, the Applicant not. That is a matter I determine below, but it seems to me that the point is one fairly to be considered and that is a good reason for its admission.

12. The remainder of the material is said to be in reply to the Applicant’s Response. Some of it could probably have been put in originally but I consider it, along with Mr Crump’s Answer, helpfully to refine the argument and I therefore admit it.

### **Who the parties are and do or propose to do**

#### *The Applicant*

13. The Applicant is a Californian company. Its mission/purpose according to its application form reads:

“Red Triangle, LLC, the applicant for the “.band” gTLD (the “Registry”), will serve all persons with an interest in music. Across the globe, there currently more than 8 million bands, powering a music industry that generates approximately \$30 billion dollars in fan-driven commerce annually. With the market for music consumption increasingly shifting online and growing globally, bands now market themselves through websites, to connect with existing fans and further develop their base. Newly formed bands seek to develop their online presence. Consequently, the formation of a new band often results in the registration of a domain name and related website. Ideally, these websites create a platform for bands to connect with their fans, through band-related information, socialization and commerce; but in practice this process is fragmented and? inefficient. By contrast, established bands have already created online communities, with whom they strive to communicate more effectively. The Registry will provide a mechanism for accomplishing this goal. As for the general public, the present structure of the music industry obscures the relationship between the performer and the listener. .band will allow for direct interaction. The Registry will thereby serve all who possess this most significant passion – a love of bands and their music.

The gTLD will become an online space dedicated to the fan experience and the efforts of bands to reach their fans through music, information and merchandise. Bands and their fans will now have a dedicated and dynamic online community.

The Registry will also provide the bands themselves with an invaluable resource to protect and disseminate their original content. By building communities around bands, key geographies and music genres, the Registry will enhance communication, searchability and access to relevant information; thereby fostering innovation, job creation, economic growth and creative opportunities among registrants, internet users and other interested parties”.

14. The application explains this in more detail:

“What the proposed gTLD anticipates adding to the current space, in terms of competition, differentiation, or innovation: Competition:

The proposed gTLD will promote competition by creating a digital environment dedicated to all social, informational and commercial aspects of bands and their fans. There are currently over 107,000 active domain names that include “band” in their string. Of these, “band.” currently resides in roughly 66,000 registered domains immediately preceding various TLDs (e.g. www.rockband.com). The “.band” TLD will shorten the string length for these existing domains (e.g. www.rock.band) and provide an appealing and intuitive opportunity for registrants. With a dedicated platform for the band sector, new, improved, and/or shorter domain names will be sought by participants; thereby contributing to competition in the current space by offering consumers more choices and registrants more marketable domain names. Additionally, a huge market exists for newly formed bands to create their own band website and develop their own music communities with a .band TLD. As the public increasingly accepts new gTLDs, the Registry envisions registrants will seek out TLDs that describe their nature or activities. Accordingly, new bands will look to the .band TLD first, when establishing their web presence. These bands will register domain names as tools to collect and disseminate information to fans and service providers, plan concert tours, showcase their music, share photos and news, link to various social networks, sell merchandise, etcetera.

Differentiation:

The fundamental difference between .band and all other gTLDs is its dedication to organizations and participants associated with musicians. The proposed gTLD will create a space exclusively devoted to musical artists and interests. To achieve this differentiation, beyond simply providing domain names, the Registry will, in accordance with Specification 9 of the Registry Agreement, proactively develop and maintain innovative websites to create and enhance industry specific communities dedicated to bands of all sizes and those who appreciate their music. Innovation: The proposed gTLD will catalyse innovation by creating an online community devoted to bands, their music and their fans. Registrants and users will in turn take advantage of the opportunities for increased communication, access to information, visibility and commerce to develop new methods of advancing their interests. All will benefit from this vibrant and dynamic collaborative process. For example, category and geography-based search vehicles will connect more consumers, businesses and other resources, allowing for a more robust and efficient exchange of information. In addition, .band will allow for the following innovations:

- Search: optimized and customized
- Community-specific premium names that will be utilized for the benefit of all interested parties
- Targeted and more cost-effective advertising
- The ability to create and analyze community metrics
- Lay the foundation for a community-specific e-commerce platform
- The increasing use of domains for bands – as a planning, communication and commerce tool
- Intellectual Property protection mechanisms
- Development of interactive applications

These innovations will add new experiences and opportunities to the space, directly benefiting registrants and indirectly benefiting users and others”.

15. The application form goes on to say:

“Goals the proposed gTLD has in terms of user experience:

The Registry envisions a greatly enhanced user experience by providing resources to its constituents, including interest-specific information, communication channels, markets, together with new collaborative and business opportunities. The quality of the user experience will improve as the Registry provides resources to its constituents, including interest-specific information, communication channels, markets, collaborative, philanthropic and business opportunities. Registrants will have the opportunity to contribute their own content to the space, thereby enhancing the community nature of the gTLD. The goal of the .band TLD is to be the destination and home for all band-oriented online activity. Moreover, ARI, the gTLD’s registry service provider, will ensure that all pertinent services consistently meet the levels prescribed in Specification 10 of the Registry Agreement, guaranteeing a top quality user experience. In addition, ARI will comply with any other applicable ICANN policy or procedure, thereby ensuring the user experience provided is both secure and stable. Strategic partner Melbourne IT will ensure top quality consumer interface and policy compliance.”

One more sentence from the Application form is sufficient to complete the picture for present purposes:

“The Registry will reach out to major bands and other music industry resources, as well as use community-building platforms to generate publicity for the proposed gTLD and will welcome all registrants seeking a “.band” domain.”

### *The Objector*

16. 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.

17. 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.

18. 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.

19. 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 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”.

20. 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.

### **The Fresh Evidence and submissions**

21. I turn to consider the effect of this first. It consists principally of the 11<sup>th</sup> April 2013 Beijing Communiqué 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. .band is one of them.

22. I am not sure whether ICANN has accepted this advice or not. The Objector says it has and the Applicant not. I do not think it matters. For what is clear is that none of the Rules which I have to apply have not been changed. They are now as they were when “enacted” in 2012. The advice in no way alters the meaning of the Rules.

23. Moreover the advice does not suggest ICANN should change any of the 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.

24. 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.

25. The Objector also relies on three recent reports. This is what it says about them:

Many new reports emphasize the clear likelihood of material harm that could arise from open sensitive music-themed strings:

a) Namesentry's recent Anti-Abuse TLD Report supports finding that restricted (i.e. community based) TLDs are safer than open TLDs

b) Verisign, the credible and recognized operator of .COM, recently warned about the "farreaching and long-lasting residual implications" on the global DNS and voiced its concerns over the "operational readiness for gTLD Registries" – in this case Portfolio applicants – and risks relating to "privacy, trust, confidence, or the overall security of the DNS" resulting in "large scale security and stability issues and hard-to-diagnose corner cases where consumer expectations are unaddressed or users are provided an unsafe or otherwise less than desirable experience."

c) The recent re-launch of .PW by Directi (Parent company of .MUSIC Applicant DotMusic Inc.) as an open string - with nearly identical open policies as its .MUSIC application with ID 1- 1058-25065 - serves as another strong indicator about the certainty of material harm in the case of open, sensitive and highly popular music-themed gTLDs. According to Symantec, .PW jumped to #4 in Symantec's TLD spam security rankings.<sup>59</sup> It was stated that almost 50% of all spam URLs contained .pw.<sup>60</sup>, and Namesentry's Anti-Abuse Report also confirms .PW as the most abused TLD this year. Experts warned that, despite the .PW registry, Directi, having "a fine set of rules forbidding spam and other evil" effectively-scaling compliance manually was unmanageable. Reactionary policies alone are vulnerable to increased compliance cases. The case of .PW "should be a lesson" for new open TLDs that managing abuse is no easy feat. Experts agree that open gTLD policies for sensitive strings compromise both trust and mitigating abuse the "problem is that they are reactive, as opposed to proactive."

26. I fail to see what these general reports have to do with the specific proposed .band string. They are not concerned with it – their concern is much more general- about open or closed strings. As Mr Crump tersely observed: "While each of these reports certainly raises issues that should inform the development of ICANN policies going forward, none of them specifically relates to .BAND's potential impact on the music industry."

27. I therefore hold that these reports are irrelevant to what I have to decide.

28. The remainder of the material does not relate to new facts. It, along with Mr Crump's reply, helps focus the issues. It is to these I now turn.

**Standing and “Clearly Delineated Community”**

29. Red Triangle contends, rightly in my view (and without demur by the Objector), that these two subjects are interrelated. To have standing a party must be an “established institution associated with a clearly delineated community”. And the first test which must be passed for one who has standing is whether “The community invoked by the objector is a clearly delineated community.” So if the “established institution” part of the standing test is passed (as I think is tacitly accepted here, after all A2IAM was established well before the possibility of seeking gTLDs was seriously considered and was established for reasons wholly unconnected with TLDs) is whether there is a clearly delineated community and if so whether the Objector is associated with it.

30. The Objector contends that there is such a community and that it is associated with it. The Applicant says not so.

31. The .band string is explicitly or implicitly targeted at groups of musicians who collectively perform music and who are described as “bands.” Not all such groups of musicians are so-described (e.g. orchestras or choirs are not called band) but many are – from bands of popular musicians to the town band or the brass bands of the North of England. Of course commercially speaking it is pop music bands which matter most – both from the point of view of making recordings and live performance but the targeting includes all sorts of band.

32. Can one fairly describe all the various disparate types of groups of performers around the world who might fall with the description “band” “a community?” I think not. Just because a group of musicians may be called a “band” does not mean it forms part of anything which can fairly be called a “community” of bands.

33. A2IM's members are not themselves bands at all. Its members doubtless have an interest in the bands signed to them, but that interest is only indirect. A2IM does not represent or even purport to represent bands of any sort. Although it exhibits letters of support from some of its members, there are none at all from any actual band or its manager so far as I can see – indeed bands themselves cannot be members of A2IM.

34. As to A2IM's associated members, whilst they very probably support some of the work which A2IM does, I cannot see merely by becoming an associate member a party thereby confers on A2IM to speak for it in relation to any specific matter. It is unthinkable, for instance, that A2IM have authority to speak for Apple (iTunes) or Spotify. Still less can one take it that A2IM speaks for any band which may be associated with any particular associate member.

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

36. I therefore hold that A2IM lacks standing to make this Objection. The Applicant therefore prevails.

### **Other points**

37. That being so it is not necessary for me to go further. I will, however, make findings about two of the other matters which A2IM needed to prove. Firstly, as Mr Crump rightly submitted, it has failed to show any opposition let alone substantial opposition, from bands of any sort. Some sort of support from some (6%) of A2IM's members is shown. But even that support is not targeted at the specific gTLD .band – as Mr Crump observes the word "band" does not appear in any of the "supporting" letters. Moreover the majority of A2IM's own members have not evinced support despite encouragement from A2IM to do so in relation to "music themed TLD applications" via its website. And A2IM's members are but a minor part of the number of Indie labels in the US, still less the World. The Rules set out some of the factors to be considered in judging substantiality. Substantial opposition as defined by these (see Rule 3.5.4 of the Guidebook) is not remotely proved.

38. Finally I am not satisfied 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* (Rule 3.5.4 of the Guidebook) There is a lot of general complaint about the levels of copyright infringement on the web generally, but no evidence that the Applicant will facilitate infringement. True it is that Red Triangle intends to leave .band unrestricted, but it by no means follows that it will be a haven for pirates. It is obviously not in its commercial interests to allow that. And there is nothing about how this specific gTLD would cause detriment (still less *material detriment*) to a

significant portion of music groups around the world who fall within the generic word “band”.

### **Costs**

39. Pursuant to Art. 14(e) of the Procedure, upon termination of the proceedings, the Dispute Resolution Provider shall refund to the prevailing part, 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**

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

1. The Objector, American Association of Independent Music’s Objection is dismissed and the Applicant, Red Triangle LLC prevails.
2. The Applicant, Red Triangle LLC, is entitled to a refund of its advance payment of costs by the Centre 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.