InterNetX GmbH   Maximilianstr. 6   93047 Regensburg   Germany

Internet Corporation for Assigned Names and Numbers

12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094

USA

February 20th, 2014

Re: Letter of Opposition on Community Priority Evaluation for .LLP (1-880-35508)

Dear ICANN,

InterNetX GmbH, as the parent company of myLLP GmbH, an applicant for .LLP, would like to take the opportunity to submit a letter of opposition for the Community Priority Evaluation of Dot Registry LLC's .LLP application. Thank you for reviewing our attached statement and forwarding this document to the CPE Panel.

Sincerely,

Thomas Mörz,

CEO of InterNetX GmbH
CEO of myLLP GmbH

INTRODUCTION

We understand that ICANN is fully aware of the critical significance in the case of an inadequately delegated gTLD to a non-legitimate community applicant. According to the Applicant Guidebook (AGB), it "should be noted that a qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application...." (AGB 4.2.3, p. 4-9)[1]

Therefore, we appreciate the establishment of the Community Priority Evaluation (CPE) Panel and support a strict examination of community applications, whereby the evaluation has to be handled very precisely in order to reach ICANN's goals for the New gTLD Program, since all the TLDs are meant to be operated in a non-discriminatory way.[2]

Dot Registry's application deliberately excludes numerous companies from many countries such as "Canada, China, Germany, Greece, India, Japan, Kazakhstan, Poland, Romania, Singapore and the United Kingdom", as the applicant Dot Registry admitted in its application (Dot Registry, Application ID: 1-880-35508, 20(d)).[3] Entities from these countries are excluded in a discriminatory way as they indeed have the same legal form as US based companies but are not allowed to register domains within the TLD .LLP. Therefore, and for the reasons mentioned below, the Dot Registry application has to fail the CPE and should be treated as regular application according to the AGB.

---

[1] hts://newgtlds.icann.org/en/applicants/agb (retrieved Februar 03, 2014)
[2] https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-25jun13-en.htm (retrieved January 23, 2014)
[3] https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1808 (retrieved January 23, 2014)

Criterion # 1: Community Establishment

In accordance with the AGB an application can score a total of 4 points in this Criteria: 2 points relating to "Delineation" and 2 for the sub-criterion "Extension".

Definition

Following the Community Priority Evaluation Guidelines (CPEG), a "clearly delineated, organized and pre-existing community" (Criterion 1-A, CPEG, p. 3)[4] must exist (up to 2 points) being a "community of considerable size and longevity" (Criterion 1-B, CPEG, p. 5)[5] to score up to 4 points. Following the criteria definitions, an applicant needs a "clear and straight-forward membership definition" (Criterion 1-A, CPEG, p. 4)[6] to score high while an "unclear, dispersed or unbound definition scores low" (Id.).

Analysis

Dot Registry cannot deliver the necessary facts needed to score more than one point in this criterion. Dot Registry purports to create a community of Limited Liability Partnership (LLP) companies limited to the borders of the US and its territories. Although the applicant mentions the existence of LLPs in other countries, it excludes these companies from his community by referring to different formation regulations in countries other than the United States (Dot Registry, Application ID: 1-880-35508, 20(d)).[7]

The applicant obviously has also ignored the fact that even within the United States there are no homogeneous regulations regarding the formation of LLPs. Indeed there are completely different regulations in different states, e.g. in Texas, regarding the professional activities of partners who pretend to form an LLP (Texas Business Organizations Code, Title 4, Sec. 153.351)[8] as well as in Illinois (805 ILCS 206/1001).[9] In the state of New York partners who happen to be "professionals authorized by law" can only form an LLP (N.Y. PTR. LAW § 121-1500 (a)(I)). [10] California limits LLPs to the professional fields of architecture, public

---

[4] http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf (retrieved January 23, 2014)
[5] Id.
[6] Id.
[7] https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1808 (retrieved February 03, 2014)
[8] http://www.statutes.legis.state.tx.us/Docs/BO/htm/BO.153.htm#153.351 (retrieved January 23, 2014)
[9] http://law.onecle.com/illinois/805ilcs206/1001.html (retrieved January 23, 2014)
[10] http://codes.lp.findlaw.com/nycode/PTR/8-B/121-1500 (retrieved January 23, 2014)

accountancy, engineering, land surveying and law (California Corporations Code Sec. 16101, 8A).[11]

Without citing all different regulations to form LLPs within the United States it becomes clear that there are indeed tremendous differences between the different states and not only between the US and the rest of the world as stated by Dot Registry.[12] Besides this, there is more evidence that the community of LLPs is not limited to one specific country. The conceptual idea of LLPs was spread from the US to the United Kingdom (UK) in the 1990s. In particular, large international auditing companies like Deloitte from the US, PricewaterhouseCoopers from the UK, Ernst &Young from the UK and KPMG from the Netherlands (today known as "The Big Four" or as "The Big Six" back in the 1990s) started lobbying the concept of LLPs outside of the US due to their international business experience and necessities.[13] After the establishment of LLPs in the UK other countries followed the example. Today there are at least 75,000 LLPs located in Asian and European countries. Records show that more than 54,000 LLPs are registered in the UK[14], at least 9,300 LLPs are located in India[15], more than 8,200 LLPs can be found in Singapore[16] and at least 4,000 LLPs are active in Japan[17].

Conclusion

With regard to the aforementioned information it seems that the applicant Dot Registry did not give consideration to the global use of the LLP string when defining its own community.

It is obvious that a community of LLPs, if existing at all, cannot be restricted to only one country but needs to include all companies of the same type, regardless of the jurisdiction where the company is registered. Thus, Dot Registry has failed to score in the field "extension".

In light of all the significant differences of LLPs in the US, as listed in our analysis, LLPs most probably do not consider themselves as part of a community, at least not a community limited to the jurisdiction of the United States. Most probably they don't even recognize themselves as a

---

[11] http://www.leginfo.ca.gov/cgi-bin/displaycode?section=corp&group=16001-17000&file=16100-16114 (retrieved January 23, 2014)
[12] https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1808, number 20 d (retrieved January 23, 2014)
[13] Finch, Vanessa; Freedman, Judith (2002): The limited liability partnership: pick and mix or mix-up? In: Journal of Business Law, Sep, 475-512
[14]http://www.companieshouse.gov.uk/about/busRegArchive/businessRegisterStatisticsNovember2013.pdf (retrieved January 23, 2014)
[15] http://www.mca.gov.in/LLP/LLP_summary.html (retrieved January 23, 2014)
[16] http://appiqs.acra.gov.sg/acra_ar2012/#/46/ (retrieved January 23, 2014)
[17] http://browse.oecdbookshop.org/oecd/pdfs/product/2311601e.pdf, p. 41 (retrieved January 23, 2014)

community at all. Dot Registry fails to show evidence of this awareness – a necessity to score.[18] Therefore, the application should score very low.

Criterion # 2: Nexus between Proposed String and Community

In accordance with the AGB an application can score a total of 4 points in this Criteria; 3 for the sub-criterion "Nexus" and 1 point for "Uniqueness".

2-A Nexus

Definition

"For a score of 3, the essential aspect is that the applied for string is commonly known by others as the identification/name of community." (Criterion 2-A, CPEG p. 8)[19] The term 'others' "refers to individuals outside of the community itself" (Criterion 2-A, CPEG p. 7)[20] and 'identify' means "that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community" (Id.). At which 'over-reaching substantially' means "that the string indicates a wider geographical or thematic remit than the community has" (Id.).

CPEG states that "... for a score of 2, the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community." (Criterion 2-A, CPEG p. 8)[21] Again "over-reaching substantially"' means "that the string indicates a wider geographical or thematic remit than the community has" (Criterion 2-A, CPEG p. 7).[22]

Analysis

Issue 1: "Does the string capture a wider geographical/thematic remit than the community has?" (Criterion 2-A, CPEG p.8)[23]

Dot Registry LLC's definition of the LLP Community:

---

[18] http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf, page 5 (retrieved January 23, 2014)
[19] http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf (retrieved February 03, 2014)
[20] Id.
[21] Id.
[22] Id.
[23] Id.

"Members of the community are defined as businesses registered as Limited Liability Partnerships with the United States or its territories." (Dot Registry, Application ID: 1-880-35508, 20(a))[24]

- ➢ The string .LLP captures a wider geographical range because Limited Liability Partnerships (abbreviated with LLP) exist also outside of the United States, for example in:
  - o **The United Kingdom**, as stated by the Companies register managed by the Companies House:
    - ▪ http://www.companieshouse.gov.uk/infoAndGuide/llp.shtml (retrieved December 11, 2013)
    - ▪ http://www.companieshouse.gov.uk/about/busRegArchive/businessRegist erStatisticsNovember2013.pdf (retrieved December 11, 2013)
  - o **India**, as stated by the Ministry of Corporate Affaires:
    - ▪ http://www.mca.gov.in/LLP/ (retrieved December 11, 2013)
    - ▪ http://www.mca.gov.in/LLP/LLP_summary.html (retrieved December 11, 2013)
  - o **Singapore**, as stated by the Accounting and Corporate Regulatory Authority Singapore:
    - ▪ http://appiqs.acra.gov.sg/acra_ar2012/#/46/ (retrieved December 11, 2013)
  - o **Japan**, as stated by the OECD in a report about Japan:
    - ▪ http://browse.oecdbookshop.org/oecd/pdfs/product/2311601e.pdf, p. 41 (retrieved December 11, 2013)

Issue 2: "An Internet search should be utilized to help understand whether the string identifies the community and is known by others." (Criterion 2-A, CPEG p. 8)[25]

- • Search engine "Google", language settings "English", search word "LLP" (retrieved December 11, 2013):
  - o 1st hit: Wikipedia
  - o 2nd & 3rd hit: Lifelong Learning Program of the European Commission
  - o 4th hit: Music Label

---

[24] https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1808 (retrieved February 03, 2014)
[25] http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf (retrieved February 03, 2014)

- 5th hit: KPMG LLP (Company Homepage)
  - 6th hit: Local Language Program by Microsoft
  - 7th hit: LLP Group (non-LLP Company located in Prague)
  - 8th hit: PwC (Company Homepage)
  - 9th hit: Ernst &Young (Company Homepage)
- Search engine "Google", language settings "German", search word "LLP" (retrieved December 11, 2013):
  - 1st hit: Wikipedia (LLP in British and American Law)
  - 2nd hit: Lifelong Learning Program of the European Commission
  - 3rd hit: English LLP, located in Berlin, Germany
  - 4th hit: English LLP located in the US
  - 5th hit: Music Label
  - 6th hit: American LLP, located in Berlin, Germany
  - 7th hit: Lifelong Learning Program of the European Commission
  - 8th hit: English LLP, located in Berlin, Germany
  - 9th hit: University Dortmund (Homepage)
  - 10th hit: English LLP, located in Berlin
- Search engine "Google", language settings "English", search word "Limited Liability Partnership" (retrieved November 29, 2013):
  - 1st & 2nd hit: Wikipedia
  - 3rd hit: Companies House UK
  - 4th hit: Companies House UK
  - 5th hit: Newspaper article about innovations regarding LLPs in India
  - 6th hit: Dictionary Linguee
  - 7th hit: Legal Dictionary
  - 8th hit: unofficial informative pages regarding LLPs in the US
  - 9th hit: LLPs in Malaysia
  - 10th hit: LLP in UK (official informative page regarding LLPs in UK by the government)
  - 11th hit: German magazine for lawyers about UK Limited Liability Partnership

These Internet searches demonstrate that the string "LLP" does not "identify" a discrete community, contrary to what Dot Registry LLC has claimed. The first hits contain information

about LLPs in countries outside the US. Third parties do not associate the string with the self-defined "Dot Registry community".

Further consideration:

According to the experts of the International Chamber of Commerce, in charge of judging "community objections"[26] in the self-same application process, the evaluations of objections and community status share "common concepts … (such as community establishment and nexus between the string and the community)", even though the "standards are stricter" with community status evaluation through EIU (ICC Case No. EXP/507/ICANN/124, p. 11). [27] Therefore, there is at least to be drawn an analogy to a similar case (.insurance), where the US-based P&C Insurance claimed to be the string related community. The ICC panel has concluded in its evaluation process, that the "narrowness with which this community has been defined renders it very difficult to accept, that a global public (even restricted to English speaking countries) strongly associates the term insurance with the geographically-bound community of US P&C Insurances" (Id., p. 25).[28]

Conclusion

Dot Registry's community application for .LLP fails the criteria of nexus. 'Others' do not naturally associate the string .LLP with the community as defined by Dot Registry. The string .LLP as a corporate identifier has a wider geographical range than the self-defined community claimed by Dot Registry, which is geographically limited to the United States. Therefore, .LLP as a generic string is in fact substantially exceeding the Dot Registry's community. Like .INSURANCE, LLP is not a unique US legal form. It is internationally used but understood differently in particular regions. The string LLP is not "commonly known by others" to refer to the community Dot Registry has defined. For that reason, the application should receive 0 points for the criterion of nexus.

---

[26] http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf, Applicant Guidebook Module 3.2.1 (retrieved January 23, 2014)
[27] http://newgtlds.icann.org/sites/default/files/drsp/17jan14/determination-2-1-1512-20834-en.pdf (retrieved January 23, 2014)
[28] Id.

2-B Uniqueness

Definition

To achieve a score of 1, CPEG requires that the "string has no other significant meaning beyond identifying the community described in the application" (Criterion 2-B, CPEG p. 8).[29] CPEG further defines "significant meaning" to mean the "public in general" (Criterion 2-B, CPEG p. 9).[30]

Analysis

Applying the CEPG, the following questions need to be considered:

Issue 1: "Will the public in general immediately think of the applying community when thinking of the applied-for string?" (Id.)

➤ No, the public will not immediately think of the community as defined by Dot Registry. CPE Guidelines refer to a worldwide public, not only a user base limited to the United States. For evidence, please consider the analysis for criterion # 2-A.

Issue 2: "Is the geography or activity implied by the string?" (Id.)

➤ The string .LLP has no unique connection to any geographic identifier. For evidence, please consider the analysis above.

Issue 3: "Is the size and delineation of the community inconsistent with the string?" (Id.)

➤ As outlined in our Analysis # 2-A above, the string LLP does not signify a distinctly delineated community. Dot Registry has defined and restricted its community in particular to reduce its own efforts with no evident concern for the global body of existing LLPs.

➤ .

Conclusion

The abbreviation "LLP" does not uniquely identify the community as described by Dot Registry's application. It should score 0 points.

---

[29] http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf (retrieved February 03, 2014)
[30] Id.

Criterion # 3: Registration Policies

In accordance with the AGB an application can score a total of 4 points for this criterion, 1 point each for Eligibility, Name Selection, Content and Use, and Enforcement.

Definition

"An applicant for a community-based gTLD is expected to: [...] 3. Have proposed dedicated registration and use policies for registrants in its proposed gTLD…." (AGB 1.2.3.1. Definitions, p. 1-27)[31]

Analysis

The phrase "dedicated registration and use policies" requires a community applicant to provide a complete set of policies instead of a draft version of intentions (as provided by Dot Registry) to gain the exclusive right to administrate the respective string as a community–based gTLD.

Based on criterion 3 of the CPEG, a successful community applicant needs to conform to the criteria of 1) eligibility, 2) name selection, 3) content and use and 4) enforcement. All together these criteria need to be included as policies in paragraph 20(e) of the New gTLD application submitted to ICANN. A complete set of policies must be included, as they would appear on the website of the successful community-based gTLD applicant.

Criterion 3 of the Community Priority Evaluation Criteria claims that eligibility to become a registrant needs to be restricted. This means that policies of community-based applications require an explicit passage (preferentially in the beginning of the policy set) which defines who could become a registrant of the respective gTLD. This part is clearly missing in the policies provided by Dot Registry in chapter 20(e) of its LLP application (Dot Registry, Application ID: 1-880-35508, 20(e)).[32] Although the applicant mentions "LLP" in several parts of chapter 20(e), it does not provide a specific definition of eligible registrants. The applicant only mentions in other parts of the application that it is referring to Limited Liability Partnerships in the USA, but does not state so in its registration policies in chapter 20(e). Although, naturally a policy set for restricted gTLDs needs a definition of the possible registrants (which by the way is also a procedure executed by already existing restricted gTLDs like .museum or .aero).

Furthermore, community applicants are asked to include content and use policies in their

---

[31] https://newgtlds.icann.org/en/applicants/agb (retrieved February 03, 2014)
[32] https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1808 (retrieved February 03, 2014)

applications defined as "restrictions stipulated by the registry as to the content provided in and the use of any second-level domain name in the registry" (Criterion 3-C, CPEG p. 13).[33] Regarding this point the applicant failed again to deliver clear policies. There are no unique policies which deal with the aspects of content and use. A few aspects regarding content are mentioned at the end of question 20(e), but there are no explicit policies which would fulfill the "very stringent requirements for qualification" (AGB 4.2.3, p. 4-9)[34] neither the inclusion of those aspects into a different policy string could be considered as a "dedicated registration and use" policy.

Conclusion

The application for LLP leaves out necessary elements of registration policies that conform with the New Registry Application and the AGB. Moreover, only intentions are provided but not the requested policies. The application should therefore score no more than 2 points here.

Criterion # 4: Community Endorsement

In accordance with the AGB an application can score between 0 and 4 points for this criterion, including a score of 2 points for each sub-criterion (Support and Opposition).

Definition

With respect to "Support" the applicant can score a maximum of 2 points if they prove "documented support from the recognized community institution(s)/member organization(s) or has otherwise documented authority to represent the community" (Criterion 4-A, CPEG p. 16).[35] The Guidelines clarify the requirements:

> "Is the applicant the recognized community institution or member organization?"

To assess this question it has to be considered "whether the community institution or member organization is the clearly recognized representative of the community" (Id.).

If not, it has to be considered, "whether there is more than one recognized community institution or member organization" (Id.). "Recognized means institution(s)/ organization(s) that, through

---

[33] http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf (retrieved February 03, 2014)
[34] https://newgtlds.icann.org/en/applicants/agb (retrieved February 03, 2014)
[35] http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf (retrieved February 03, 2014)

membership or otherwise, are clearly recognized by the community members as representative of that community." (Criterion 4-A, CPEG p. 17)[36]

If the applicant could not prove to represent itself, CPEG demands that the applicant has "documented support from the recognized community institution(s)/member organization(s) to represent the community" (Criterion 4-A, CPEG p. 16).[37] This could be irrelevant if the applicant itself has "documented authority to represent the community" (Id.).

Analysis

Doubtlessly, Dot Registry itself does not have the authority to represent the community of all entities organized as limited liability partnerships, neither the self-declared US community nor the implicated worldwide LLP community. It does not even claim to.

Therefore, in a second step the panel has to analyze the documented support. If it is provided from "at least one group with relevance" (Id.), this may allow a score of 1 but does not suffice for a score of 2. The Guidelines further state, with respect to "Support" that if there would be proven support from "the only national association relevant to a particular community on a national level" (Criterion 4-A, CPEG p. 17)[38], it "would score a 2 if the string is clearly oriented to that national level, but only a 1 if the string implicitly addresses similar communities in other nations" (Id.).

Dot Registry provides several letters including those of 15 Secretaries of State, one from a Limited Liability Partnership and two from NASS, the National Association of Secretaries of State. All of these letters are from an US origin. As mentioned before, the string addresses similar communities in other nations but the applicant does not have an endorsement from a single LLP outside of the US. Furthermore, neither the Secretaries of State as a group nor the NASS recommend Dot Registry as the only possible applicant for becoming the registry of a corporate identifier TLD like LLP.[39] They just refer to the importance of explicit policies regarding the ability to register a domain name to prevent confusion and distrust amongst consumers and future registrants.

---

[36] Id.
[37] Id.
[38] Id.
[39] https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/141592?t:ac=1808 (retrieved February 03, 2014)

Considering Dot Registry's own statement (Dot Registry, Application ID: 1-880-35508, 18(b))[40], in the majority of the 50 states of the US, Secretaries of State are the relevant authorities to register business entities. Assuming this as correct, Dot Registry has not even shown to have support from at least 1/3 of the self-defined "relevant authorities", having presented letters of support from only 15 different Secretaries of State in the US.

In fact it has to be doubted that Secretaries of State even "represent" this US community at all. It is mandatory for an entity in several US states to register with a Secretary of State, but this does definitely not signify that these Secretaries are in a position to "speak" for these companies, same as tax authorities cannot do so only because it is mandatory for the entities to pay taxes with them.

The requirement that "institution(s)/organization(s) representing a majority of the overall community addressed" (Criterion 4-A, CPEG p. 16)[41] fails by far. As stated in the CPE Guidelines, "a 0 will be scored on 'support' if the applicant fails to provide documentation showing support from recognized community institutions/community member organizations or does not provide documentation showing that it has the authority to represent the community" (Criterion 4-A, CPEG p. 18).[42]

Conclusion

Dot Registry can neither prove support from the majority of the relevant community institutions/members nor that it has the authority to represent the community. Therefore it should score 0 points for this criterion.

Overall Conclusion

Based on the aforementioned analysis, we consider the Dot Registry application for LLP a case of "false-positive" as defined in module 4.2.3 of the AGB—a string sought by an applicant who "refers to a 'community' construed merely to get a sought-after generic word as a gTLD string." (AGB 4.2.3, p. 4-9)[43] Dot Registry admits in its application that the string "LLP" holds meaning all around the world and not just in the United States. Yet it decided to apply for ".LLP" instead of ".LLPUSA" addressing the national level of the applied for US registered community.

---

[40] https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1808 (retrieved February 03, 2014)
[41] http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf (retrieved February 03, 2014)
[42] Id.
[43] https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf (retrieved February 03, 2014)

Considering that a positive CPE excludes all other applications, ICANN has thoughtfully implemented the Criteria and Guidelines in the AGB in order to give maximum transparency to this economically important issue (not only to the competing applicants but also to the community). Carefully applying ICANN's criteria for a community-based string, it is obvious that Dot Registry has not provided sufficient evidence to score for a positive CPE. Additionally the Dot Registry community application for .LLP fails to match the fundamental principles of ICANN's New gTLD Program as pointed out, amongst others, in the ICANN bylaws[44] as well as in the Approved Resolution of the NGPC in realization of the GAC Beijing advice.[45] Therefore Dot Registry's application for LLP should be rejected as a community-based string; as a standard application, it should have to participate in regular contention-set resolution processes on the same terms as all other applicants.

Sincerely,

Thomas Mörz,

CEO of InterNetX GmbH
CEO of myLLP GmbH

---

[44] http://www.icann.org/en/about/governance/bylaws (retrieved January 23, 2014)
[45] https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-25jun13-en.htm (retrieved January 23, 2014)