

**DATE**

25 March 2014

**BY EMAIL AND BY REGISTERED MAIL**

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**SUBJECT**

gTLD Process  
Community Priority Evaluation -.RADIO (1-1083-39123)

Dear Ms Willett,

Please find attached the European Broadcasting Union's (EBU) comments with respect to BRSMedia's letter of 5 March 2014 (published by ICANN on 13 March 2014), regarding the Community Priority Evaluation for .RADIO (1-1083-39123).

According to our interpretation of the Applicant Guide Book, we think that BRSMedia's letter should not be considered in the CPE process.

We note however that it has been published and therefore in order to provide the CPE panel with the most relevant information, we respectfully request that ICANN forward this communication and the attached EBU comments to the Community Priority Evaluation Panel.

Thank you in advance.



Heijo Ruijsenaars  
Head of Intellectual Property  
EBU

Annexe

## **European Broadcasting Union (EBU) comments in response to BRSMedia's letter of 5 March 2014 (published by ICANN on 13 March 2014)**

### **regarding the Community Priority Evaluation for .RADIO (1-1083-39123)**

To the extent that comments submitted by other applicants for the .radio gTLD, such as BRS Media, are permitted under the ICANN/CPE procedural rules and would necessitate an explanation of certain details of the EBU application, the EBU is of course prepared to provide any clarification that ICANN may wish to receive. In any event, the EBU finds that the comments raised by BRS Media (BRS) are unfounded and cannot give rise to any serious doubts with respect to the EBU's fulfilment of all the requirements for a Community gTLD, for the reasons set out below.

#### **1. Community Establishment**

The EBU application demonstrates an ongoing relationship with a clearly delineated, organized, and pre-existing community of considerable size and longevity. Radio broadcasters exist since more than a century and the EBU is recognized as the world's oldest and largest unions, covering over 100 member organisations in at least 75 countries worldwide. Furthermore its application is endorsed by all other broadcasting unions across the five continents within the WBU (World Broadcasting Unions), that brings together all the official counterparts of the United Nations system (UN ECOSOC, ITU, ILO, UNESCO) when a decision on radio and broadcasting needs to be taken.

Contrary to the claim by BRS, the EBU application neither states nor implies that mere access to the Internet, a computer and a microphone is sufficient to be part of the radio community. This claim makes no sense. Like any other industry, the radio sector evolves alongside new technologies. The fact that radio broadcasters have embraced digital technologies and the Internet as additional means of radio programme delivery does not deprive them of their original community status and professionalism, just as publishers or record labels do not lose their character simply by using websites as additional means to disseminate their articles or sound recordings. BRS's argument is tantamount to saying that the mere possibility of using the same delivery technology as a radio broadcaster is sufficient to deny the radio sector its specificity. If that were true, then many, if not most, industries in the world (also) using the Internet for business purposes would have sunk into oblivion - *quid non*.

Similarly, the inclusion of the Internet-only radio community into the EBU application does not in itself deprive the radio sector from being a single, specific community. The fact that Internet-only radio stations may not require an official license cannot be a decisive factor, since even for traditional radio stations licence requirements are far from being harmonized

worldwide. On the contrary, the EBU felt that it would be an unjustified arbitrary decision to exclude Internet-only radio stations from the community, especially since - on a technological level - Internet (or IP) based broadcasting is no longer distinguishable from the traditional means of radio programme delivery via terrestrial distribution technologies. In this context, it is worth noting that IMDA (Internet Media Device Alliance, representing world radio stakeholders specialized in interactive services and related equipment, endorses the EBU application. Finally, it is set out in the EBU application that Internet-only radio stations will also be subject to objective eligibility requirements (e.g. streaming quality, content production).

## 2. Nexus between proposed string and community

### *Meaning of the word "radio" when it appears as a TLD*

The .radio gTLD clearly and strongly relates to the specific radio community, and the notion of "radio" fully matches the name of this community. In fact, all dictionaries, including those quoted by BRS, reveal that "radio" refers to a specific industry. "*I have been on the radio*" is a typical expression that demonstrates the specific community in question.

While all words have many meanings, the determinant meaning is the one that naturally comes to mind when reading a string ending in ".radio". This meaning is undoubtedly "(live) audio broadcasting", where all listeners hear the same content at the same time. Radio is thus the name of an intrinsically communitarian concept: all listeners of a given radio broadcast will naturally share a feeling of simultaneous participation which is the key aspect of their common listening experience.

### *Relationship between nexus and the names of the community or institution*

It is important to note that the name or brand of the applicant has little to do with community nexus. The nexus arises from the purpose of the community, not from the name given to its institutions.

### *Relationship between nexus, community governance model and geographic diversity*

Furthermore, it is important to avoid possible misunderstandings with respect to the geographic scope of the community and its regional governance model. The institutions of the radio community have naturally evolved by way of local, regional and global integration of governance institutions. At the global level, the radio and broadcasting community functions largely by way of collaboration and consultation between the sister unions and their associate membership. In addition, regional unions' associate membership extends beyond the regions for the purpose of global integration and consultation. Many radio broadcasters are members of several regional unions as a way of participating globally in the community-based governance process. The sister unions collaborate closely through various channels,

including their global forum, the ITU, and the associate membership. Thanks to these mechanisms, the radio community has a global governance model that does not require the incorporation of a global radio broadcasting union, in order to preserve the diversity of the channels and their strong relationships with the communities they represent. As demonstrated in the context of community endorsement, the EBU acts on a fiduciary basis on behalf of the entire global radio community in applying for the ".radio" TLD, and not merely for its European segment.

## *Community accountability vs. land grabbing*

The very reason why the ICANN new gTLD policy calls for the community priority is to protect communities from a disruption of their governance processes that could be caused by the unaccountable operation of a TLD whose meaning goes to the heart of the community's purpose. BRS, as one of the non-community-based applicants for the ".radio" TLD, not only lacks accountability to the radio community but denies its very existence.

The CPE panel has a fiduciary duty towards the ICANN community, i.e. the Internet community at large. This means that it must not allow its determination to be made in isolation from the underlying purpose, namely, Internet governance in the public interest. The 16-point scoring system developed by ICANN is merely an attempt to reflect the underlying policy approved in June 2008 as well as ICANN's own principles of accountability and transparency. The scoring system does not replace them and must defer to them. As illustrated by the presence of the community priority concept in the 2008 policy, ICANN's own accountability can only function if accountability mechanisms of affected communities are preserved.

## *Community definition in objections, relationship between CPE and objections*

The CPE Panel must refer to the underlying ICANN policy on the basis of which the Applicant Guidebook was created (available on <http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part1-08aug07.htm>) and referenced in the Guidebook. In the context of objections (Implementation Guideline IG P), the policy provides the following guiding principle:

"c) **community** - community should be interpreted broadly and will include, for example, an economic sector, a cultural community, or a linguistic community. It may be a closely related community which believes it is impacted."

The word ".radio" cannot be dissociated from the governance model on which the public's experience is based. The public associates the word radio with adequate community-based governance. As a media, radio is different from streaming in as much as the word implies that the entire audience hears the same content at same time. This also makes radio highly powerful, but also a means of communication that is highly sensitive, with potentially disastrous consequences in case of abuse or carelessness. Radio has the ability to reach and influence many people at once and for this reason has always been subject to community-based rules. The misuse of radio can be extremely harmful. The public therefore

has a rightful expectation that names expressing an implicit relationship to the radio community are subject to a governance process with clear lines of accountability to the radio community. The fact that the word "radio" appears behind the dot, i.e. as a TLD, is not meaningless. It clearly shows the user that respective TLD has a specialized registry with power to manage its name space. If the ".radio" TLD is managed without proper accountability and without policy oversight, names ending in ".radio" can be misused to create a false sense of official authorization.

This is the main reason why the GAC of ICANN, in its Beijing resolution, included .radio among the TLDs needing specific protection and support. As the document states in its Annex 1, ".radio" falls in "**Category 1 - Consumer Protection, Sensitive Strings, and Regulated Markets.**"

In the GAC Beijing Resolution, it further advised the ICANN Board that: "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."

### 3. Community Endorsement

The EBU application includes multiple letters of strong support from recognized community institutions. The letters cover all existing regional broadcaster unions worldwide, and also include associations which are clearly part of the radio community, such as the Association Mondiale des Radiodiffuseurs Communautaires (AMARC), or that feel close to this community, such as the prestigious Metropolitan Opera of New York, that has broadcasted its concerts for the past 90 years on radios all over the world, using the EBU network, or the International Amateur Radio Union (IARU), the worldwide union of Radio amateurs that is the official counterpart of the ITU in this sector.

The EBU application does not give any indication that it would prevent a legitimate radio member from within the radio industry from using the ".radio" domain name. On the contrary - as requested by the GAC - it will guarantee that all radios' representative regional bodies will be represented in a World Radio Committee, where all relevant decisions for the whole Community will be taken.

Moreover, there is no opposition of relevance. The mere discovery of a single national broadcasters' union (NAB) refraining from sending a letter of support cannot signify "opposition". First of all, that situation is easily explained by the fact that BRS is a member of that particular union. On the contrary, the fact that NAB does not oppose the EBU application is a clear indication that BRS's position within that union is not supported by the majority of that union's membership. Moreover, there is no need for all national unions' support: The world's radio broadcasting sector is represented by eight *regional* unions (of which the EBU is one of the largest), which all encompass several national unions. For example, NAB is a member of the larger, regional union AIR-IAB, representing national broadcasters of North and South America, and which endorses the EBU application. Therefore, this argument from

BRS cannot be considered as having any relevance whatsoever.

Similarly, the letter by the President of the International Radio Emergency Support Coalition does not represent a significant group, as it is only a specialized segment of the Radio Amateur sector, where IARU (covering 166 countries) explicitly supports the EBU application.

It is further worthwhile recalling that the GAC of ICANN advised ICANN's board about the Community endorsement (*i.e.* sub e) of the Beijing final communiqué, on "Community Support for Applications") that "in those cases where a community, which is clearly impacted by a set of new gTLD applications in contention, has expressed a collective and clear opinion on those applications, such opinion should be duly taken into account, together with all other relevant information."

## 4. Policy principles, development, oversight and enforcement

As documented in response to Q20 of the EBU's application for the ".radio" TLD,

"Registrations under .radio are restricted to bona fide members of the Radio community and subject to the further requirement that the registrant's actions in the Radio community, as well as the registrant's use of the registered domain name, must be:

- (i) generally accepted as legitimate; and
- (ii) beneficial to the cause and the values of the radio industry; and
- (iii) commensurate with the role and importance of the registered domain name; and
- (iv) in good faith at the time of registration and thereafter."

The EBU ".radio" gTLD thus requires that domain name holders' activity and use of the domain name be commensurate with the role and importance of the domain name string. Contrary to the non-community-based proposals, which effectively define the registry's profit motive as the ultimate guiding principle, the EBU ".radio" TLD contains mechanisms of eligibility and name selection that will be led exclusively by community interests and not by the search for profit (none of the organizations supporting the EBU, nor the EBU itself, are for profit).

The prudential policies of the EBU .radio TLD go far beyond those required by ICANN, and for good reason. The Trademark Clearinghouse (TMCH), for instance, is generic in purpose and thus takes no account of other priorities than trademark rights. Community-based industry-specific priority criteria cannot be reflected in TMCH registrations. The ICANN-required RPM mechanisms are generic minima and as such remain insufficient for proper community-specific rights protection. They make no distinction based on the purpose of a TLD string and their relationship to trademark categories.



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More importantly still, EBU has in and itself a credible community-based governance structure. Based on its relationship with sister unions and global associate members, the EBU is not only able to, but also institutionally bound to act in the interest of the community, thus ultimately radio users worldwide.

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