To,

The Economist Intelligence Unit, ICANN Community Priority Evaluation Panel

Re: GMO Registry, Inc.'s application for .Shop

Comment to Community Priority Evaluation

Respected Panel,

This letter is meant to provide inputs to evaluate GMO Registry, Inc.'s application for .Shop (Application ID: 1-890-52063). GMO was invited to participate in CPE on 8th October 2014 (see: http://newgtlds.icann.org/en/applicants/cpe)

We make this submission on behalf of Radix Registry, whose subsidiary DotShop Inc. also has applied for .Shop. We understand that this letter and comment will be published on ICANN's official correspondence page, https://www.icann.org/resources/pages/correspondence-2012-09-24-en, where it will be available for consideration.

Thank you for your consideration.

Sincerely,

Shweta Sahjwani Asher

Radix Registry

GMO Registry, Inc.'s Application for .Shop

Comment to the Community Evaluation Panel

AGB Criteria

The CPE is comprised of four criteria, each of them divided into sub-sections that are individually evaluated. They are:

+ Community Establishment

+ Nexus between Proposed String and Community

+ Registration Policies

+ Community Endorsement[1]

Each of the sub-sections is scored on a basis from 0–4 points, allowing the possibility of scoring a maximum of 16 points overall. 14 points are required to successfully pass CPE.

Introduction

- This evaluation of the GMO Registry, Inc.'s ("GMO") community application for .shop (Application ID: 1-890-52063) is offered to the Community Priority Evaluation (CPE) Panel in the hope that it will be of use.

- Although this evaluation is offered by a party with vested business interests in this discussion, it is offered in the spirit of the multi-stakeholder model. It must be insisted upon that all CPE Panels rely solely on the rigorous criteria put forth in the AGB.

- The AGB is a document created by the ICANN multi-stakeholder community over many years of drafts and conversations. The AGB as it stands was agreed to by all applicants by virtue of their applications and must be adhered to.

- Due to the fact that a successfully rated Community Application achieves supremacy over other applications for the same string, strict interpretation of AGB is required by the Community Priority Evaluation panel.

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[1] AGB §4.2.3

- GMO could have chosen a relatively more unique string such as .onlinebusiness, or .ecommerce. Instead, it applied for the easier to find, more globally used and generic term: .shop – a good decision from a business standpoint but sacrificing nexus and uniqueness in order to obtain that name.

- Furthermore, GMO has tried to manufacture a community where none existed and use the community priority process to circumvent the appropriate contention set resolution process defined by ICANN.

- From the AGB §4.2.3

  - 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."

  - The scoring process is conceived to identify qualified community-based applications, while preventing "false positives" (awarding undue priority to an application that refers to a "community" construed merely to get a sought-after generic word as a gTLD string).

  - "The threshold for winning is intentionally set with a view to prevent gaming attempts and identifying true Community applications. The risk for "false negatives" in the scoring can be moderated by a lowering of the threshold, but this has to be balanced against an increased risk for "false positives". In cases of generic words submitted as Community based strings, test runs by [ICANN] staff have also shown that the threshold is difficult to attain…"[2]

- In relation to the above, we request the Panel to take note of the Community Priority Evaluation result for .Music which was recently completed by an EIU panel and published (https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf). Specifically this finding by Panel is noteworthy: "The Panel determined that this application refers to a proposed community construed to obtain a sought-after generic word as a gTLD. Moreover the applicant appears to be attempting to use the gTLD to organize the various groups noted in the application documentation, as opposed to applying on behalf of an already organized and cohesive community. As previously stated, the community as defined in the application does not have awareness and recognition among its members. Failing this kind of

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[2] http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf

"cohesion," the community defined by the application does not meet the AGB's standards for a community."[3]

- This is not to say that the GMO application is poor, it is not. We are just saying that the GMO application does not approach meeting the criteria for a community TLD. The generically worded TLD name, .shop, does not clearly identify a community, nor does a cohesive community described by GMO as "business entities or organizations that deploy commercial activities in an online or offline environment or provide information in relation thereto over the Internet" exist. (Note that GMO has never once named the targeted community, or referred to a "shop community") "[A]finding by the panel that an application does not meet the scoring threshold to prevail in a community priority evaluation is not necessarily an indication the community itself is in some way inadequate or invalid."[4]

- .shop is a generic word. ICANN specifically states that the community process should not be abused by applicants to get a sought-after generic word as a gTLD string. The scoring is set to be rigorous to prevent gaming and abuses.[5]

- The CPE Panel should take note of the fact that GMO has submitted two (2) separate applications for .Shop. The first is the application that is the subject of this CPE, and the other is a standard (non-community) application[6]. This is a perfect example of "gaming" the system to "TRY" to get priority using CPE, and if that fails, there is a back-up standard application with no eligibility restrictions whatsoever.

- GMO is manufacturing the existence of a community so that they may get priority. This is a rational act on the part of GMO, a low cost gamble with a great benefit if it succeeds.

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[3] Page 5 of https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf
[4] Applicant Guidebook §4.2.3
[5] http://www.icann.org/en/topics/new-gtlds/summary-analysis-proposed-final-guidebook-21feb11-en.pdf, p.117
[6] https://gtldresult.icann.org/applicationstatus/applicationdetails/1791

Section A: The GMO application does not meet the required criteria, starting with the fact that there is no such thing as a community of "business entities or organizations that deploy commercial activities in an online or offline environment or provide information in relation thereto over the Internet"

Introduction

- To answer the question in its application regarding "community name", GMO says, "The target community does not have one "name"". Needless to say, if the applicant cannot even name the community, it would be safe to say that there is no community at all.

- For the purpose of this CPE, we can use the description of the "community" identified by GMO in their application as the community of "business entities or organizations that deploy commercial activities in an online or offline environment or provide information in relation thereto over the Internet". GMO claims there is such a single global "community".

- We submit –
    - There is no "community" called the community of "business entities or organizations that deploy commercial activities in an online or offline environment or provide information in relation thereto over the Internet".
    - GMO then claims, "members have several common characteristics and features, and their activities (and industry) are generally referred to as "online shopping", "ecommerce", "ebusiness", etc."
    - We submit that online shopping, ecommerce, or ebusiness can be considered as sectors or industries (as GMO also concedes) but NONE of them can qualify as communities.
    - The GMO application never one calls out the existence of a 'shop' community. GMO has not been consistent or rigorous in the usage of their own terminology for their purported community. While this application would fall short of the CPE criteria in any case, GMO might have come closer to meeting those criteria if it had chosen .onlineshopping, .ecommerce, or .ebusiness instead of .shop.

Analysis

1. AGB Section 4.2.3 - definition of community

- The ICANN test for what constitutes a community is well defined in the AGB and must be strictly interpreted.
- From Section 4.2.3 in the AGB under criterion 1 Definitions
    - Definition of "Community": Usage of the expression "community" has evolved considerably from its Latin origin – "communitas" meaning "fellowship" – while still implying more of cohesion than a mere commonality of interest. Notably, as "community" is used throughout the application, there should be: (a) an awareness and recognition of a community among its members; (b) some understanding of the community's existence prior to September 2007 (when the new gTLD policy recommendations were completed); and (c) extended tenure or longevity—non-transience—into the future.

1.1 Cohesion

- Evident from the above, ICANN intended for a "community" to imply "more of cohesion" than a "mere commonality of interest"
- "Cohesion" is defined in the dictionary as "the act or state of cohering; tendency to unite; 1670s, from L. cohæsus, pp. of cohærere "to stick together"
- By this definition, according to ICANN, there would be a global or world "community" of "business entities or organizations that deploy commercial activities in an online or offline environment or provide information in relation thereto over the Internet" if all such business entities or organizations around the world cohere or tend to unite or stick together.
- GMO's application states, "As is the case with any community, "membership" is based on common features, characteristics, activities, interests, etc... Their common goal is to sell products and services to third parties, using the Internet as a direct or indirect sales channel."
- The Panel should note that GMO's application does not assert or demonstrate any "cohesion" between any businesses or organizations around the world, let alone every single such business or organization in the world.

- The businesses or organizations referred to by GMO may have common interests or goals in terms of the fact that each business seeks to sell products and services, but they do not "tend to stick together".

- Even GMO's assertion about common goals/ interests may not hold true given that each of the businesses that are targeted by GMO for .Shop have a goal of maximizing only their own profit, which is often at the expense of other similar businesses, making each business' goal conflict with that of another business.

1.2 Awareness and Recognition

- To prove that the alleged global community is a "community", there needs to be "an awareness and recognition of a community" among its "members".

- Firstly the definition presupposes the existence of "members". The dictionary definition of the word "member" states - "A distinct part of a whole"

- Hence a "business entity or organization that deploys commercial activities in an online or offline environment or provides information in relation thereto over the Internet" would qualify as a "member" of the alleged global community if it was a "distinct part" of such a community

- Just being a "business entity or organization that deploys commercial activities in an online or offline environment or provides information in relation thereto over the Internet" does not make these entities or organizations "member/s" of an alleged "community".

- If this were the case then by extension of this logic one could argue that every decision to carry out a certain business creates a community –
  - For eg: can every company in the world that provides janitorial services be construed to be a "member" of a "global janitors community"
  - OR can every arbitrator or dispute resolution service provider be construed to be "members" of a "global dispute resolution service providers community"
  - AND can all of the above entities anywhere in the world who have undertaken "commercial activities in an online or offline environment" together be part of GMO's purported "community" simply because each of them chose to undertake such commercial activities?

- The answer is very clear – no. A mere decision by an entity to undertake a certain business or activity does not make it a member of a community.

- Additionally ICANN states that - for there to exist a global "community" there must exist among all such business entities and organizations, an awareness and recognition of such a community (i.e. an awareness of cohesion)

- There is no evidence existing or presented by GMO of any such "awareness and recognition" amongst any such business entities and organizations, let alone amongst all such business entities and organizations in the world, of the existence of a global "community" of which they are "members".

- Business entities merely share a common attribute i.e. undertaking a certain business activity. Sharing a common attribute does not make them members of a community.

1.3 Existence prior to 2007

- To prove that the alleged community is a "community" as per the AGB, there needs to be "some understanding of the COMMUNITY's existence prior to September 2007".

- GMO states in its application, "Since the community is not represented by a single organization, there is no one establishment date."

- GMO has not provided any evidence of the existence of a "community" prior to 2007, or ever for that matter.

2. AGB Section 3.5.4 – clearly delineated community

- Section 3.5.4 of the AGB covers the guidance ICANN offers to an objection review panel to determine if an invoked community exists as a delineated community. The section offers 5 factors. We draw your attention to four (4) of those –
    o The level of public recognition of the group as a community at a local and/or global level;
    o The level of formal boundaries around the community and what persons or entities are considered to form the community;
    o The length of time the community has been in existence;
    o The number of people or entities that make up the community.
- We submit that there is no public recognition of the purported community

- As such GMO has failed to provide any evidence of such public recognition at a global level of the existence of a community of "business entities or organizations that deploy commercial activities in an online or offline environment or provide information in relation thereto over the Internet"

- There aren't consistent formal boundaries as to what persons or entities are considered to be part of the purported community
    - There are no global regulations, licensing processes, guidelines and laws around the activity of simply deploying commercial activities in an online or offline environment, let alone around the activity of providing information in relation thereto over the Internet.
    - For instance, anyone wishing to sell any product or service only can set up a website and start selling within hours of making the decision to do so. And they could just as easily stop deploying the commercial activity within minutes after deciding to do so. There is no certain way to identify what entity is and is not a member of the alleged community, and there is definitely no certain way to ensure that the said entity continues to remain a part of the alleged community during the tenure of the registration of the domain name in .Shop.
    - Furthermore, websites and online market-places such as eBay enable any individual anywhere in the world to sell anything within minutes. It is extremely debatable whether such individuals who have "deployed a commercial activity in an online environment" would qualify as a member of the purported community.
    - Given the lack of any formal boundaries around the purported community and the ambiguity inherent in identifying what entities or persons are considered to form the purported community, there is no consistency with respect to what entities are considered as members of the alleged community.

- With respect to the length of time the purported community has been in existence, we submit that the purported community has never existed –
    - In Question 20(a) of the application ICANN asks the applicant to provide the following description in their response
        - How the community is structured and organized. For a community consisting of an alliance of groups, details about the constituent parts are required.

- When the community was established, including the date(s) of formal organization, if any, as well as a description of community activities to date.
- The current estimated size of the community, both as to membership and geographic extent[7].

- We respectfully draw the panel's attention to the answer to Question 20(a) in the GMO application.
  - Community structure and organization
    - GMO does not describe the structure of the purported community. Is it one community? Does it comprise of an alliance of groups? What are its constituent parts?
    - GMO states, "On a national or regional level, community members are organizing themselves in an attempt to promote use of the Internet in commercial activities, and establish trust in ecommerce." Note that GMO itself concedes that the community members "are organizing themselves" on a "national or regional level". They aren't already "organized", and they are definitely nowhere close to being organized at a global level.
  - Community Establishment date
    - The ICANN AGB clearly asks for an explicit "date" when the community was established, including the date(s) of formal organization, as well as a description of community activities to date
    - GMO concedes in its application that "there is no one establishment date".
  - Community size
    - GMO does not in its answer provide any of the following for the alleged community –
      - Number of members
      - Geographic spread of members
    - GMO simply states that "currently about 40-50 million websites exist with commercial characteristics". We submit that the figure of 40-50 million websites is entirely irrelevant given that the definition of the purported community member is not "websites with commercial characteristics".

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[7] Q20 (a) as detailed in the AGB at Page 108

- GMO cannot even bring itself to state in its application a statement to the effect of – "The global community comprises of XXX members located in YYY countries"

- Last but not the least, it would be useful for the Panel to note that the AGB provides for a process called a "community objection" process wherein a particular application could be objected against by a legitimate community, and could succeed based on its merits. One key premise within that process is to prove that the objector has an ongoing relationship with a "clearly delineated community". One such objection was brought against an applicant for .Shop, and failed. Please note the finding of the Expert Panel appointed by the International Chamber of Commerce (the Dispute Resolution Service Provider for community objections) in this case, "The community for <.shop> is difficult to define. It would include not only shop owners, retailers, manufacturers, suppliers of goods and services, but also consumers, chambers of commerce, governmental entities which supervise and which may tax such goods and services, etc. Such an amalgam of interests could not serve as a delineated community."[8]

3. Summary

- We do not believe that GMO has established the existence of a community of "business entities or organizations that deploy commercial activities in an online or offline environment or provide information in relation thereto over the Internet". In order to demonstrate the existence of such a community, as per the AGB, GMO must demonstrate:
  o Cohesion amongst all business entities or organizations in the world and evidence that they tend to unite and stick together for a common cause world over.
  o Awareness and recognition amongst all such business entities and/or organizations that they are actually members of such an alleged "community".
  o Recognition locally and globally amongst the public at large of the existence of a global community of "business entities or organizations that deploy commercial activities in an online or offline environment or provide information in relation thereto over the Internet".

- GMO has not provided any evidence to prove the above.

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[8] See http://www.iccwbo.org/Data/Documents/Buisness-Services/Dispute-Resolution-Services/Expertise/ICANN-New-gTLD-Dispute-Resolution/EXP_450_ICANN_67_Expert-Determination/, p 16, point 72.

- GMO itself cannot state in its own application a start date of the community or its membership count, size etc.
- We submit that as per the AGB there is no community of "business entities or organizations that deploy commercial activities in an online or offline environment or provide information in relation thereto over the Internet".

Section B: Criterion 1 - Delineation (2 points)

Introduction

The GMO application should receive a score of zero for this criterion. To begin with, the purported "community" is not a "community" as defined by the AGB.

Furthermore, even if it is assumed to be a community as per the AGB, the purported community is not one with clear boundaries, is not globally organized and is not "pre-existing" as it was invented as a matter of convenience for this application with the intent to gain a preference over other applicants.

From Section 4.2.3 of the AGB, Delineation is scored as follows

- For a score of 2: _Clearly delineated_, _organized_, and _pre-existing_ community.
- For a score of 1: Clearly delineated _and_ pre-existing community, but not fulfilling the requirements for a score of 2
- For a score of 0: Insufficient delineation and pre-existence for a score of 1

Analysis

1. Clearly Delineated

- The purported community is not "clearly delineated"
- The AGB states: "Delineation" relates to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low.
- The application needs to prove that there is "a clear and straight-forward membership definition" to be considered as a member of the alleged community.
- Quoting from GMO' application –
  - In Q 20a of the application, GMO states with respect to delineation, "Although it is a broad and heterogeneous community not defined by any geographical borders, limited to certain cultures or form of trade, the community can be delineated more specifically…"

- Note that GMO has conceded that the purported community is "broad", "heterogeneous", "not defined by any geographic borders", and not "limited to certain cultures or form of trade". This clearly points towards an unclear membership definition.

o The application continues, "community members deploy commercial activities with a certain continuity, whereas most Internet users only sporadically engage in commercial transactions, mainly as buyers (demand side);"

- We submit that this is not a clear definition at all. The terms "certain continuity" and "sporadically" are not defined – it allows for an individual who sells his personal belongings on eBay at a frequency of once per year or even less frequently, to be considered to be a member of the purported community.

- Furthermore, the use of the term "mainly" leaves the door wide open to consider even certain "buyers" as members of the purported community.

o The application says, "in some countries, to deploy commercial activities, registration with an official register is required prior to or shortly after engaging in such activities; and, in some countries, a VAT or sales tax number, or equivalent thereof is also required;"

- Note that GMO concedes that requirements such as registration with an official register, or a VAT or sales tax number are only applicable "in some countries", not all. This is not a clear definition.

- Additionally, GMO is even permitting entities "with an intention" to deploy commercial activities in future to register names in .Shop. Clearly there is no registration or VAT or sales tax number required to have such an "intention". And it is definitely not what differentiates a purported community member from a non-member as suggested by GMO.

o The application says, "those engaging in ecommerce related activities have 1 or more websites on which they offer products or services etc. Internet users in general do not usually have transactional websites, and use the Internet only for trading in their own name and for their own purpose. Also, generally, Internet users are not engaged in marketing activities or promotional campaigns for products or services;"

- The fact that GMO permits entities "with an intention" to deploy commercial activities in future to register names in .Shop means that it does not intend to

verify whether potential registrants "have 1 or more websites on which they offer products or services etc."

- o The application says, "in some countries, specific commercial activities are regulated by an official or non-official body. These activities are not organized by Internet users in general, although they can benefit from this supervision, regulations and soft-law.
    - Once again, GMO concedes that only "specific commercial activities" are regulated by an official or non-official body "in some countries". This is far from a clear membership definition.
- o None of these statements can be used to define who is and who is not a member of the purported community. Undoubtedly, these five (5) sentences which attempt to define the alleged community membership are far from clear, and represent a grossly "unclear" definition of the membership of the alleged community.

2. Organized

- The purported community is not "organized"
- The AGB states: "Organized" implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities.
- There is no entity mentioned in the application or existing which is mainly dedicated to the alleged community, with "documented evidence of community activities".
- In fact GMO concedes in its answer to Q 20 (a), "There is no worldwide coordinating body representing the entire community…". Regional bodies named by GMO cannot be considered to be "mainly dedicated" to the purported global community that GMO has invoked.

3. Pre-Existing

- The purported community is not "pre-existing;" it was invented as a convenience for this application.
- The AGB states: "Pre-existing" means that a community has been active as such since before the new gTLD policy recommendations were completed in September 2007.
- There is no evidence submitted by GMO to show that the alleged community has existed prior to 2007, or ever for that matter.

- In fact GMO concedes in its answer to Q 20 (a), "Since the community is not represented by a single organization, there is no one establishment date."

4. Summary

- GMO has failed to prove the existence of a community
- That is, GMO has not provided any evidence that the alleged community is clearly delineated, organized and pre-existing.
- The proposed community was invented as a matter of convenience for this application.
- Thus the application should receive a zero (0) score for the sub-criteria of Delineation.

Section C: Criterion 1 – Extension (2 points)

Introduction

The GMO application should receive a score of zero for this criterion. To begin with, the purported "community" is not a "community" as defined by the AGB.

Even assuming that it does qualify as a community as per the AGB, given that the application does not provide size and longevity information on the purported community, (which was created specifically for purposes of this process,) it fails to meet the size and longevity criteria of community. The applicant's definition of membership does not enable the definition of size or longevity. The inability to quantify the size of the alleged community stems from the incapability to define the "membership" of the alleged community clearly.

From Section 4.2.3 of the AGB, Extension is scored as follows

- For a score of 2: Community of considerable size and longevity
- For a score of 1: Community of either considerable size or longevity, but not fulfilling the requirements for a score of 2
- For a score of 0: Community of neither considerable size nor longevity

Analysis

1. Size

- The purported "community" lacks considerable size
- The AGB states: "Size" relates both to the number of members and the geographical reach of the community, and will be scored depending on the context rather than on absolute numbers - a geographic location community may count millions of members in a limited location, a language community may have a million members with some spread over the globe, a community of service providers may have "only" some hundred members although well spread over the globe, just to mention some examples - all these can be regarded as of "considerable size."
- The application does not demonstrate the "size" parameter of the purported community.

- The application provide an extrapolated estimate of the number of websites that have "commercial characteristics" (40-50 million websites), but this does not relate even remotely to the actual size of the purported global community.

- GMO states, "it is difficult to demonstrate community size: statistics vary from hundreds of thousands to millions of entities who sell products and services using the Internet."[9] This inability to quantify the size of the alleged community stems from the incapability to define the "membership" of the alleged community clearly, and is therefore not surprising.

- Therefore, the application does not demonstrate the size of the alleged community.

2. Longevity

- The purported community lacks longevity

- This "community" was invented for the convenience of this application: to take advantage of the CPE to gain a preference.

- The AGB states: "Longevity" means that the pursuits of a community are of a lasting, non-transient nature.

- The application does not demonstrate this criterion either. In fact the application is entirely silent on what the "pursuits" of the purported community are, and whether they are of a lasting nature.

Summary

- GMO has failed to prove that the purported community demonstrates considerable size and longevity

- Thus the application should receive zero (0) score for the sub-criteria of Extension

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[9] Answer 20 (a)

Section D: Criterion 2 - Nexus (3 points)

Introduction

The GMO application should score zero points for Nexus criteria as defined in the Guidebook. There are many meanings to the word "shop". Even GMO does not once mention the existence of a "shop" community. In fact GMO could not even name the purported community.

From Section 4.2.3 of the AGB, Nexus is scored as follows

- For a score of 3: The string matches the name of the community or is a well-known short-form or abbreviation of the community name
- For a score of 2: String identifies the community, but does not qualify for a score of 3
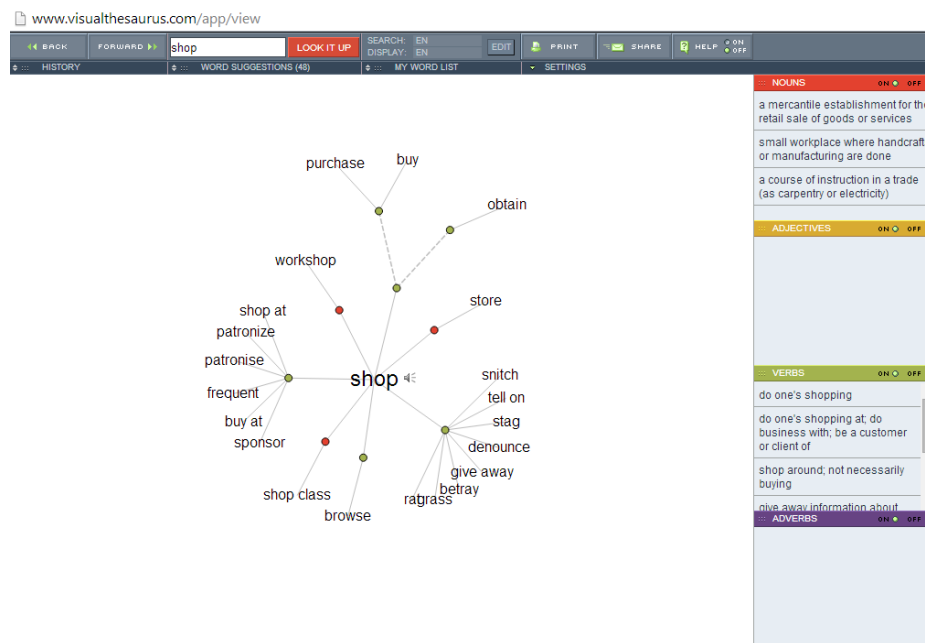- For a score of 0: String nexus does not fulfill the requirements for a score of 2

Analysis

- Nexus is the one criterion where GMO's application is the weakest. ICANN's AGB provides very clear and unambiguous guidelines on how Nexus is to be scored.
- GMO states with respect to the Community Name, "The target community does not have one "name", members have several common characteristics and features, and their activities (and industry) are generally referred to as "online shopping", "ecommerce", "ebusiness", etc."[10]
- With respect to Nexus, an application would score three (3) points if the string, i.e. "shop" MATCHES the name of the alleged community. Given that GMO has not "named" the purported community, obviously the string cannot match the name of the alleged community.
- The closest things to "names" that GMO could come up with for the purported community are "online shopping", "ecommerce", and "ebusiness". Needless to say, these do not match with ".Shop".
- Furthermore, GMO's description of the purported community and its proposed eligibility restrictions do not limit the alleged community to "online" businesses or "ecommerce" businesses, or "ebusinesses". It is open to offline businesses and to people who have an "intention" of carrying out any business (online or offline) in future, and to anyone providing

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[10] Answer 20 (a)

information in relation thereto. This is far from the proposed names that GMO has stated in its application.

- There is no "well-known short-form" for the purported community of "business entities or organizations that deploy commercial activities in an online or offline environment or provide information in relation thereto over the Internet". And it is definitely not "shop".

- The word "shop" is also not an "abbreviation" of the purported community.

- The AGB defines: With respect to "Nexus," for a score of 3, the essential aspect is that the applied-for string is commonly known by others as the identification / name of the community.

  o The AGB states: "Name" of the community means the established name by which the community is commonly known by others.

  o In other words, GMO needs to prove that the string "shop" is "commonly known by others" as the "established name" for the purported community of "business entities or organizations that deploy commercial activities in an online or offline environment or provide information in relation thereto over the Internet".

  o GMO has obviously failed to prove that.

- Additionally, the string "Shop" has the following meanings in the Merriam-Webster dictionary[11]:

  o a building or room where goods and services are sold

  o the place where a specified kind of worker works : a worker's place of business

  o a place for making or repairing goods, machinery, vehicles, etc.

  o a handicraft establishment

  o a building or room stocked with merchandise for sale

  o a commercial establishment for the making or repair of goods or machinery

  o a business establishment

  o to visit places where goods are sold in order to look at and buy things

  o to try to get a company to publish or produce (something)

  o to give information about the secret or criminal activity of (someone) to an authority (such as the police)

- Also see below a visual depiction of the various connotations of the word "Shop":

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[11] http://www.merriam-webster.com/dictionary/shop

- The word "Shop" clearly does not "match" a community. No definition provided by Merriam Webster refers to any community.

- Shop is not a "well-known short form" for the purported community of business entities or organizations that deploy commercial activities in an online or offline environment or provide information in relation thereto over the Internet.

- Also see http://dictionary.reference.com/browse/shop?s=t for more sources showing the various meanings of the word "Shop".

- Evident from the above, NONE of the above definitions and connotations suggests that the string "Shop" stands for or is commonly known as a "community of business entities or organizations that deploy commercial activities in an online or offline environment or provide information in relation thereto over the Internet".

- The AGB states: With respect to "Nexus," 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.

- This means that the application would score 2 on this criterion if the string "Shop" closely describes the purported community or the "members" of the purported community, without "over-reaching substantially" beyond the purported community.

- We submit the that evident from all the above-stated definitions, the string "Shop" does NOT describe the community of business entities or organizations that deploy commercial activities

in an online or offline environment or provide information in relation thereto over the Internet at all, let alone "closely describe" it.

- Also note the inclusion of the words "without over-reaching substantially beyond the community".

- As evidenced from the definitions and connotations above, the string "Shop" has several meanings and connotations under various contexts. Consequently it obviously over-reaches substantially beyond the purported community.

- GMO's contention that "Shop" signifies the purported community is substantially over-reaching.

4. Summary

- It is clear that the string "Shop" does not mean the community of business entities or organizations that deploy commercial activities in an online or offline environment or provide information in relation thereto over the Internet.

- GMO could have selected a name with greater nexus to its purported community or one approaching uniqueness such as .onlineshopping, .ecommerce, or .ebusiness, but made the business decision to sacrifice nexus and uniqueness in order to obtain an easier to find business name on the Internet.

- Thus the application should score zero (0) for Nexus.

Section E: Criterion 2 – Uniqueness (1 point)

Introduction

GMO's application should score zero points for Uniqueness criteria as defined in the Guidebook. There are many meanings to the word "Shop." Even GMO does not purport to represent the "Shop" community.

From Section 4.2.3 of the AGB Criterion 2, Uniqueness is scored as follows:

- For a score of 1: String has no other significant meaning beyond identifying the community described in the application
- For a score of 0: String does not fulfill the requirement for a score of 1

"There is merit in considering uniqueness in the nexus between string and community as a main factor for achieving a high score. To be an unambiguous identifier, the "ideal" string would have no other associations than to the community in question. This can arguably be achieved by using the community institution abbreviation as string, but there are other possibilities, for example by putting a prefix or suffix on a generic string to make it distinctly and uniquely associated with the relevant community (for example, prefixing "boy" to "scouts" for the community of boy scout organizations, or suffixing "growers" to "apple" for the associations of apple growers)."[12]

"'Uniqueness' relates to the meaning of the string."[13] Therefore, the analysis must focus on the meaning (more accurately, meanings) of the word "Shop."

Analysis

- The purported community of "business entities or organizations that deploy commercial activities in an online or offline environment or provide information in relation thereto over the Internet" does not meet the "Uniqueness" criterion requirements.
- As per the AGB for a score of 1 the string should have "no other significant meaning beyond identifying the community described in the application"

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[12] See, http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf, p.103.
[13] See, http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv3-15feb10-en.pdf, p65

- The AGB states: "Uniqueness" will be scored both with regard to the community context and from a general point of view. For example, a string for a particular geographic location community may seem unique from a general perspective, but would not score a 1 for uniqueness if it carries another significant meaning in the common language used in the relevant community location."

- Based on the explanation provided for "Nexus" in Section D, it is evident that the string "Shop" does not identify the alleged community at all.

- Further, it has several meanings beyond the purported meaning implied in GMO's application.

- Evidently, "shop" could mean any of the following:
    - a building or room where goods and services are sold
    - the place where a specified kind of worker works : a worker's place of business
    - a place for making or repairing goods, machinery, vehicles, etc.
    - a handicraft establishment
    - a building or room stocked with merchandise for sale
    - a commercial establishment for the making or repair of goods or machinery
    - a business establishment
    - to visit places where goods are sold in order to look at and buy things
    - to try to get a company to publish or produce (something)
    - to give information about the secret or criminal activity of (someone) to an authority (such as the police)

- GMO itself concedes in several places in its application that the term "shop" is generic and not unique:
    - "…the word "SHOP" is recognized worldwide…"[14]
    - "The word "SHOP" has many meanings."[15]
    - "The applied-for string, "SHOP", is – as explained above – a common generic term…"[16]

- We do not believe that the GMO application can score a 2 or a 3 for Nexus, hence it cannot score a 1 for "Uniqueness".

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[14] Answer 18 (a)
[15] Answer 20 (d)
[16] Answer 20 (d)

- GMO could have scored one point here if it had chosen a unique string. Instead, it applied for the easier to find, more globally used .shop– a good decision from a business standpoint but sacrificing nexus and uniqueness in order to obtain that name.

- However, even if GMO were to score any points for Nexus, the application should score zero (0) for Uniqueness for all the points identified above.

- GMO has answered the sub-question under Q20 d "Any connotations the string may have beyond the community?" by saying "The string has no other known connotation that is unrelated to the purpose or mission of this gTLD, as described in response to Question 18." They have failed to quote the standard definitions of the word "shop" and the varied meanings it possesses. Based on all the definitions and connotations of the string "Shop", it is inconceivable to find that it is unique to the purported community.

Summary

Given that the purported community does not meet the requirements, the application should score zero (0) for Uniqueness.

Section F: Criterion 3 – Registration Policies (4 points)

Introduction

- GMO states in its application: "Registrants in the .SHOP gTLD will include the following:
  - business entities or organizations that deploy commercial activities in an online or offline environment or provide information in relation thereto over the internet, including, but not limited to, merchants, retailers, business-to-business sales channels, marketplaces, etc.;
  - .SHOP domain name registrations will also be made available to business entities or organizations that currently do not deploy commercial activities, but that have expressed intention to engage in these activities within one year following the registration of a .SHOP domain name."

- The first category of registrants has an incredibly vague definition. Use of terms such as "including but not limited to", and "etc." leaves the door wide open for absolutely anybody to qualify to register a .Shop domain name.

- The second category of registrants is even more concerning because GMO permits any entity that has "expressed intention" to engage in commercial activities to register a .Shop domain name. This technically allows any and everybody to qualify to register a name in .Shop, because there is absolutely no way to gauge or validate "future intention".

- GMO states that the community based purpose of this TLD is establishing "a clear, unambiguous and easy to remember online identity for the community and promote a defined, meaningful, and secure namespace in order to contribute to the further development of the community and the (commercial) activities of its members."[17] GMO does not provide registration policies consistent with this stated purpose as it leaves a wide open opportunity for the sale of names with no eligibility restrictions or oversight during sunrise[18] and landrush.

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[17] Q 20(c) of the GMO application
[18] "SUNRISE ELIGIBILITY REQUIREMENTS
In accordance with the section entitled "Trademark Clearinghouse" of the Application Guidebook (January 11, 2012 version)," .SHOP SER will at least include
-       Acceptable marks:
λ   nationally or regionally registered and for which proof of use (which may be a declaration and a single specimen of current use) was submitted to, and validated by, the Trademark Clearinghouse;
λ   that have been court-validated; or
λ   that are specifically protected by a statute or treaty currently in effect and that was in effect on or before

- The GMO application does not have clearly defined eligibility requirements due to the 5 ambiguous descriptions of the purported community used in its answer to Q20 and detailed in Section B: Delineation above.

- GMO's application does not provide name selection, content and use rules, and enforcement measures that are consistent with the community based purpose of .Shop.

- Last but not the least, GMO has several forward-looking statements about policies, charters, committees, etc. that it "WILL" set up in future in order to be "accountable" to the community. However, none of these statements are specific or binding.[19]

The GMO application does not meet the criteria defined in Registration Policies.

Eligibility

Introduction

From Section 4.2.3 of the AGB, Eligibility is scored as follows

- For a score of 1: Eligibility restricted to community members
- For a score of 0: Largely unrestricted approach to eligibility

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26 June, 2008
-         representation that all provided information is true and correct;
-         provision of data sufficient to document rights in the trademark; and
-         the registrant of the domain name must be the owner of a corresponding registered mark in the Trademark Clearinghouse." Answer 29

[19] "Following delegation, the applicant will devise clear policies together with some of these organizations that represent the community in a way that would benefit the members and their interests.

The Applicant will publish a charter containing self-imposed rules and guidelines with respect to the operation of the .SHOP TLD.

Also, with respect to the .SHOP initiative, the Applicant will set up a policy advisory committee, in which representatives of the targeted community can, together with representatives of the registry operator, develop new policies in relation to the operation of the .SHOP TLD. Expressions of interest for becoming a member of such a committee have already been received by the Applicant.

Furthermore, the Applicant will set up an oversight committee, comprising representatives of the targeted community, who will formulate recommendations with respect to the positioning, marketing and operation of the TLD." Answer 20 (b)

"Registration policy is a criterion where a balance is needed between what is reasonably the most appropriate registration policy for a community and the risk for gaming of the process by an "open" application declaring itself as "community-based" to get an advantage in a contention situation. The approach taken is conservative in this respect, with the high score reserved for a registration policy only permitting members of the community to register. A widening has been considered, but it appears reasonable to maintain the chosen approach…"[20]

Analysis

- The GMO application does not meet the Eligibility criterion requirements.
- The AGB states: "Eligibility" means the qualifications that entities or individuals must have in order to be allowed as registrants by the registry.
- In order to score "1", GMO must confirm that the qualifications that entities or individuals must have in order to be allowed to register a .shop domain must be restricted to community members only.
- There are various statements in the application to prove that GMO has no concrete plans to restrict registration of names in .Shop to "business entities or organizations that deploy commercial activities in an online or offline environment or provide information in relation thereto over the Internet".
- "A lack of policies and procedures relevant to the scope and nature of the foreseen community TLD must result in a lower score."[21]
- At the very outset, in its answer to question 20 (a), GMO concedes that it is still to "finalize" the "requirements" that potential registrants would need to meet in order to qualify to register a domain name in .Shop. It states, "only those who engage or intend to engage in commercial activities qualify to register domain names, if they meet requirements that – _once finalized_ – will be laid down by the Applicant."
  - The first problem with this is that GMO intends to allow "those who intend to engage in commercial activities" to register domain names in .Shop – without stating how it can validate the "intentions" of a potential registrant.
  - The second problem is that the "requirement" to qualify for registering names has not been "finalized". GMO could potentially come up with and finalize any requirements in

[20] http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf, p.103
[21] http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv3-15feb10-en.pdf

future, which could very possibly be against the community based purpose of .Shop, and would not restrict eligibility at all.

- Most importantly there is no mention of any specific requirements that a potential registrant would have to fulfill in order to be "eligible" to register a name in .Shop. The application only states:
  - "All .SHOP domain name registrants will be required to prove that they are legally established business entities or organizations by providing the following information at the time of domain name registration:
    - Country name where the business entity or organization is established
    - Business entity or organization identification number type (Business ID, Tax ID, VAT, etc.)
    - Business entity or organization identification number"

- Simply "providing the country of establishment and an identification number" will be sufficient for anyone to register a domain name in .Shop. There is no mention of actually verifying that these are correct.

- Additionally, as conceded by GMO itself, such registration is only a requirement in certain countries, not all countries. Hence it is likely that for registrants from other countries (where such registration is not mandatory), GMO will simply accept any application for a domain name in .Shop.

- To make matters worse, GMO also allows any entity with an "intention" to deploy commercial activities in the future to register names in .Shop. Such entities would most likely have no registered business identification number, but would still qualify to register a name in .Shop.

- Furthermore, GMO does not once mention post-registration checks on names to ensure that they continue to maintain eligibility to own a .Shop domain name. It is a very plausible that a registrant who expresses an "intention" to deploy a commercial activity in future registers a name on that pretext, and never deploys that activity. GMO has no proactive checks in place to ensure that the registrant follows through on his/her stated "intention".

- Worse, GMO states, "On a daily basis, new businesses appear, and existing merchants go out of business."[22] In this scenario, we submit that it is close to impossible for GMO to keep a track of which registrants continue to satisfy its eligibility requirements "on a daily basis".

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[22] Answer 20 (a)

- GMO also intends to auction certain names in .Shop.[23] Their registration policies for these names do not adhere to the requirement of restricting registration in .Shop to purported community members.

- This leaves all of GMO's already weak eligibility rules completely open and without limitation.

- Consequent to the above AGB guidance and statements from the application, this application must score zero (0) on the Eligibility criterion.

Name Selection

Introduction

From Section 4.2.3 of the AGB, Name Selection is scored as follows

- For a score of 1: Policies include name selection rules consistent with the articulated community-based purpose of the applied-for gTLD

- For a score of 0: Policies do not fulfill the requirements for a score of 1

Analysis

- The GMO application does not meet the Name Selection criterion requirements.

- The AGB states: "Name selection" means the conditions that must be fulfilled for any second-level domain name to be deemed acceptable by the registry.

- Evident from the AGB guidance, the application would score one (1) if the name selection rules are consistent with the articulated community-based purpose of .Shop.

- Statements made in the application show that the name selection rules are not consistent with the quoted community-based purpose of .Shop.

- The GMO application contains the following statements under the pretext of name selection rules:

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[23] "…multiple applications for a particular domain name during the .SHOP initial launch phase will be resolved as follows:

- Sunrise Registration Process: Auction
- Landrush Process: Auction." Application Q 18(c)

- o "Registrants will be entitled to register domain names that are identical or similar to their current or future trademark, business name, trade name, business identifier, name of business entity or organization, names under which they are commonly known, slogans, acronyms, etc., including combinations thereof, in the .SHOP gTLD."
    - o "These premium domain names may be retained by the registry operator, leased or rented, or offered for registration to eligible members of the community."
- Use of terms such as "similar to", "future trademark", "including combinations thereof", and "etc." shows the fact that there are no definitive or enforceable name selection rules that will apply in .Shop.
- GMO even plans to "lease or rent" premium generic domain names in .Shop. Note that since leasing or renting a name does not qualify as a "registration", none of the eligibility restrictions, name selection, content and use, and enforcement rules would apply to the entity actually using the name. This is a massive loop-hole that can allow absolutely anyone to use absolutely any supposedly "premium" name in .Shop without actually "registering" it, and therefore with no accountability to the purported community.
- Needless to say, this is not consistent with the community-based purpose of .Shop.
- Consequently, the application should score zero (0) on the Name Selection criterion.

Content and Use

Introduction

From Section 4.2.3 of the AGB, Content and Use is scored as follows

- For a score of 1: Policies include rules for content and use restrictions consistent with the articulated community-based purpose of the applied-for gTLD
- For a score of 0: Policies do not fulfill the requirements for a score of 1

Analysis

- The GMO application does not meet the Content and Use criterion requirements.

- The AGB states: "Content and use" means the restrictions stipulated by the registry as to the content provided in and the use of any second-level domain name in the registry.
- In other words, the application needs to impose content and use restrictions which are consistent with establishing "a clear, unambiguous and easy to remember online identity for the community and promote a defined, meaningful, and secure namespace in order to contribute to the further development of the community and the (commercial) activities of its members" in order to score one (1) for this criterion.
- The GMO application states in its answer to Q 20(e), "Registered .SHOP domain names must be intended to be used for commercial activities in an online or offline environment or to provide information in relation thereto over the internet."
    - Note the usage of the term "intended to be used". This language simply begs the question of how GMO intends to validate any entity's "intention" when it comes to determining whether the "content and use" rules are being followed. The answer is that there is absolutely no way to know for sure what the name will eventually be used for.
- GMO also has this statement in their application: "Registering a .SHOP domain name solely for the purpose of selling, exchanging, trading, or leasing such domain name shall be deemed as inappropriate use or intent, and will be prohibited by the registry operator."
    - While on the face of it, this seems like a good rule to have; this claim too falls flat because in order to enforce this rule, GMO should have included rules prohibiting transfer or re-sale of domain names in .Shop. There are no such rules, leaving the opportunity for any registrant to circumvent any rules that apply for .Shop, simply by selling the domain name to anyone who may or may not meet any of the criteria set out by GMO.
- Evident from the application statements, these Content and Use restrictions are not consistent with the community based purpose of .Shop.
- Thus the application should score zero (0) on the Content and Use criterion.

Enforcement

Introduction

From Section 4.2.3 of the AGB, Enforcement is scored as follows

- For a score of 1: Policies include specific enforcement measures (e.g. investigation practices, penalties, takedown procedures) constituting a coherent set with appropriate appeal mechanisms
- For a score of 0: Policies do not fulfill the requirements for a score of 1

Analysis

- The GMO application does not meet the Enforcement criterion requirements.
- The AGB states: "Enforcement" means the tools and provisions set out by the registry to prevent and remedy any breaches of the conditions by registrants.
- In other words, the application would score one (1) if it contained
  - SPECIFIC tools and provisions which constitute a coherent (synonyms of coherent: logical, rational) set
  - APPROPRIATE appeal mechanisms
- GMO's application certainly does not contain "specific enforcement measures" that constitute a logical set.
- The only thing that comes close to enforcement in GMO's application is in its answer to question 18(b) where GMO squarely puts the onus for enforcement of its policies and restrictions on its registrars by way of requiring registrars to insert certain clauses in their registration agreement with registrants. [24] There is no enforcement at the registry level being proposed by GMO which are consistent with the community based purpose of .Shop.
- There is no mention of any "appeal mechanism", let alone an appropriate one.
- Evident from the above stated facts, the application neither has specific enforcement measures, nor appropriate appeal mechanisms.
- Consequently the application should score zero (0) for the Enforcement criterion.

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[24] "All .SHOP TLD registrars are required to include policies and restrictions including but not limited to the following in their registration agreement with their customers to which registrants must agree and comply."
Answer 18 (b)

Summary

- The GMO application does not have clearly defined eligibility requirements.
- GMO does not provide any name selection rules, let alone those that are consistent with the community based purpose of .Shop.
- GMO does not have content and use requirements that are consistent with the community based purpose of .Shop.
- GMO's application neither provides specific enforcement measures, nor appropriate appeal mechanisms.
- The GMO application does not meet the criteria defined in Registration Policies and should score zero (0) for this criterion.

Section G: Criterion 4 – Support (2 points)

Introduction

The GMO application does not enjoy the level of support necessary for a score of one or two. GMO has gleaned support from only a small minority of the purported community.

From Section 4.2.3 of the AGB, Support is scored as follows

- For a score of 2: Applicant is, or has documented support from, the recognized community institution(s)/member organization(s) or has otherwise documented authority to represent the community
- For a score of 1: Documented support from at least one group with relevance, but insufficient support for a score of 2
- For a score of 0: Insufficient proof of support for a score of 1

Analysis for a Score of 2

- The Panel should note that GMO needs to meet any one of the following criteria to be eligible for a score of 2
  - It needs to BE the "recognized community institution(s)/member organization(s)".
  - It needs to have "documented support from, the recognized community institution(s)/member organization(s) or has otherwise documented authority to represent the community".
- As stated by GMO in its application, it is an Internet Service Provider from Japan. Clearly GMO is NOT the recognized community institution or member organization.
- The AGB offers the following definitions and guidance for scoring Support:
  - "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community.
  - With respect to "Support," it follows that documented support from, for example, the only national association relevant to a particular community on a national level 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.

- - Also with respect to "Support," the plurals in brackets for a score of 2, relate to cases of multiple institutions/organizations. *In such cases there must be documented support from institutions/organizations representing a MAJORITY of the overall community addressed* in order to score 2.
- GMO has shown support from five (5) individual organizations
  - Of these letters, four (4) are one-pagers, and three (3) are not in English.
  - The three (3) letters that are not in English are from EC Network, JFEC, and JECC, all of which are local to Japan, the place of GMO's incorporation.
  - The two (2) letters that are in English come from EMOTA and BDMA, both of which are European organizations.
  - There is absolutely no support from any other region, or anything remotely close to international support.
  - On a global scale, these letters would not suffice to demonstrate support from "institutions/organizations representing a MAJORITY of the overall community addressed."
- There is no documented evidence that the five (5) letters of support are representative of the alleged global community of "business entities or organizations that deploy commercial activities in an online or offline environment or provide information in relation thereto over the Internet"
- GMO offers no computation in their application to demonstrate how their support endorsements constitute a MAJORITY of the overall community addressed
- GMO offers no "documented authority to represent" the purported "community".

Analysis for a Score of 1

- The AGB states For a score of 1 the applicant must have "Documented support from at least one group with relevance"
- It further clarifies – "To be taken into account as relevant support, such documentation must contain a description of the process and rationale used in arriving at the expression of support. Consideration of support is not based merely on the number of comments or expressions of support received."

- The above clarification is immensely important. Mere letters of support from five (5) organizations are not adequate. Each support letter / endorsement must contain "a description of the process and rationale used" in arriving at the expression of support. It is important for the letter to identify the process used by them to arrive at the expression of support.

- Needless to say none of the 5 letters "contain a description of the process" and /or contain "rationale used in arriving at the expression of support".

- The letters do not provide clear documentation of the process that the organization followed to determine support.

- In all cases, the statements of support fail the criteria test of "relevant support" and should be disregarded.

Summary

- GMO has failed to prove support from a majority of the institutions / associations that represent the alleged community.

- None of them contain a "description of the process" used to arrive at the expression of support, thus failing the criteria for "relevant support".

- Based on this, the application should score zero (0) for the Support criterion.

Section H: Criterion 4 – Opposition (2 points)

Introduction

From Section 4.2.3 of the AGB, Support is scored as follows

- For a score of 2: No opposition of relevance
- For a score of 1: Relevant opposition from one group of non-negligible size
- For a score of 0: Relevant opposition from two or more groups of non-negligible size

Analysis

- Since there appears to be no "relevant" opposition to the GMO application, it qualifies for a score of 2 on the Opposition criterion.

Summary

- Overall the GMO application is qualified to achieve a score of two (2) points out of the 16 possible points.