.music

Supported by leading organizations with members representing 95% of music consumed globally

Community Application Challenges and Improvements

Session: New gTLD Applicants: Expanding the Circle
Agenda: 2. Systemic Bias against Niche TLD Applicants

ICANN 68 (June 23, 2020)

Constantine Roussos

costa@music.us

Website: https://www.music.us

Community Evaluation: Flawed design and execution

▶ "Community should be interpreted broadly and will include, for example, an economic sector, a cultural community, or a linguistic community" – GNSO, Final Report Introduction of New Generic Top-Level Domains (8 August 2007)

▶ The intended goal of the concept of prioritizing communities was insufficiently developed and rationalized e.g. Why was the passing score 14 out 16 not 10 out of 16? Out of 27 string applications in CPE only 5 passed. None scored the maximum 16 points

▶ The scoring methodology applied in scoring was entirely subjective resulting in inconsistencies amplified by a lack of quality control, transparency and evaluator training

▶ Evaluators did not have in-depth knowledge of the field to which the application was related to and had zero expertise with respect to the subject matter

▶ Auction resolution benefited deep pocketed applicants

▶ The broad definition of community as formulated by the GNSO was severely restricted in the AGB and in the CPE Guidelines. The EIU provided an even more narrower interpretation, focusing largely on what the "definition" of the community was not whether the community application was clearly credible by having demonstrable community support, aligned registration policies and serving the global public interest and its associated community

Defining "community" largely determined success

- According to the AGB and CPE Guidelines:

  - "A community can consist... of a logical **alliance** of communities (for example, an international federation of national communities of a similar nature). All are viable as such, provided the requisite awareness and recognition of the community is at hand among the members."

  - A community must be "clearly **delineated, organized**, and pre-existing [2007]"

- .MUSIC defined the "Music Community" as a "**strictly delineated and organized** community of individuals, organizations and business, a logical **alliance** of communities of similar nature that relate to music"

- Requisite awareness and recognition of the "alliance" was met through the letters of support, aligned community purpose, shared values and registration policies (which got a max score)

- The "alliance" represented the most prominent, influential and powerful music organizations and associations in the world with members representing over 95% of global music consumed. Multiple global music federations pre-existed 2007 (IFPI founded in 1933. FIM founded in 1948)

- Evaluator did not mention our explicit definition in their CPE Report. Instead they took a sentence from an answer to a different question and improperly and implicitly labeled it as the stated community definition

Loopholes prevent accountability & transparency

▶ There is consensus that community TLDs were designed to serve the global public interest. ICANN has no clear definition of "global public interest"

▶ The appearance of conflicts of interest existed without redress

▶ No quality control program to ensure not only fairness but predictability, consistency and accountability of community evaluations

▶ In case of clear errors or mistakes, there was no appeals mechanism. Accountability mechanisms were restricted to whether or not ICANN violated established policy and procedure not whether the evaluation was credible. Substantive disagreement with evaluators, even clear factual errors, were not proper basis for reconsideration

▶ Dot Registry IRP stated that ICANN "failed to exercise due diligence and care in having a reasonable amount of facts in front of them and failed to fulfil its transparency obligations"

▶ ICANN Bylaws are deeply flawed and can rarely hold ICANN accountable. For example, an IRP Panel is not asked to, nor allowed to, substitute its judgment for that of the Board. ICANN is the ultimate decision maker. Any IRP findings are purely recommendations

▶ Covenant not to sue, Reconsideration Requests, DIDP Requests and the Independent Review Process are designed to favor ICANN. ICANN is the jury, judge and executioner

Recommendations

▶ A successful community application should be based on whether the community applicant has (i) demonstrable community support relating to the applied-for string; and (ii) registration policies aligning with the interests of the associated community. Community definitions or anything deemed subjective must not be part of criteria

▶ Define what the "global public interest" is and consider it in relation to the community associated with the string

▶ Transparently disclose who the evaluators are. Disqualify evaluators with an appearance of conflict of interest

▶ Ensure that the evaluators have the requisite expertise and "know-how" to score a community application with in-depth knowledge of the community being evaluated

▶ Introduce quality control to ensure fairness, predictability and consistency

▶ Introduce appeals mechanisms that also address the substance of research and facts relied upon by the evaluator not merely whether established process was followed

▶ Amend the Independent Review Process policies to give the IRP Panel the power to make decisions that matter not merely provide recommendations

▶ Allow accountability mechanisms to proceed by a prevailing party so that ICANN can be held accountable