## In brief

- .MOBILE: The Objector met both <u>standing and merit requirements</u> to prevail in a community objection
- .BOOK: The Objector was <u>unsuccessful</u> in meeting the standing or merit requirements

## Examples of identified harm:

.MOBILE

- From the Objector, "Amazon … [has] proposed to operate that TLD on a completely 'closed' basis, making it unavailable to the vast majority of participants in the mobile services industry and members of the Mobile Wireless Community. As the major trade association for mobile services operators around the globe, GSMA submits that granting exclusive rights in .MOBILE will **harm competition in the mobile services marketplace** and **expose mobile subscribers to the likelihood of confusion and deception in their choice of mobile services and providers**. As a result, consumers, our members, and other members of the Mobile Wireless Community will be harmed."
- "…**Therefore, I find that the evidence suggests that Applicant will not act in accordance with the interests of the Mobile Wireless Community to the extent that the community has an interest in exploiting .MOBILE domain names**. "…In the expanded-gTLD internet world, in light of the Mobile Wireless Community's strong association with the term "mobile," **it is very likely to want access to the /MOBILE gTLD. This is indicated, among other reasons, by the fact that the community's advocates say so now, and object to the Applicant having exclusive access to it."**
- "…In this case, Applicant has **proposed no effective security protections** for the simple reason that its Application proposes not to allow the Mobile Wireless Community—or other users—access to the /MOBILE gTLD at all.
- "…In this regard, I feel compelled to clarify that I am not taking the position that there should or can be no closed registry of generic terms at all. That is a policy question for others to determine. **I only take the view that in a case such as this where a party has shown that it is a community strongly associated with a particular gTLD and there is substantial opposition in that community to a particular party having a closed registry on that gTLD, there is a strong likelihood that there is a material detriment**.

.BOOK

- "The Objector submits that if Amazon is granted the string .BOOK then Amazon will engage in **monopolistic practices harmful** to the members of the community Rakuten claims to represent. The Objector alleges that the Application is an **attempt "to obtain exclusive access to and make exclusive use on the Internet of a term that is undisputedly in the public domain**," thereby causing, presumably, interference or other damage to the community. The Objector is silent on all of the other balancing factors."
- In response, Respondent explains:
  - "Here, Rakuten defines the "market" as a single gTLD, .BOOK. Rakuten does not, however, explain why any other gTLDs, current or future, could not serve as reasonable alternatives for .BOOK. Given that current gTLDs receive an

overwhelming portion of today's Internet traffic, **there is no reason to believe that Internet users would not consider them as viable substitutes to the gTLDs of tomorrow. Because a single gTLD is not a cognizable relevant product market, Amazon's acquisition of .BOOK cannot create a monopoly**.

- The Guidebook specifically provides that "[a]n allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment." **The allegation of detriment made here amounts to little more than an allegation that a competitor, here the Applicant, might benefit from the grant of the string, to the Objector's detriment**.

## How an objection to a Closed Generic may qualify (e.g., standing):

Standing for a community objection:

1. Established institution
2. Ongoing relationship with a **clearly delineated community**
3. **Strongly associated with the applied-for gTLD string**

.MOBILE

1. Established institution:

   "However, I find that the evidence seems clear that Objector is an established, fully functioning, active and well-regarded entity with a robust and impressive membership and lineup of business activities." See here, starting on page 16: https://iccwbo.org/publication/exp_499_icann_116_expert-determination/

2. Delineation:

   "**First**, is there public recognition of the mobile wireless industry as a community at a local and/or global level? In my view, and based on the materials presented by the parties, there is unquestionably global recognition of the mobile or wireless economic sector generally.

   **Second**, to what extent are there formal boundaries around the community, and what persons or entities are considered to form the community? Objector takes the position that its members "and others like them" form the community. In my view these "others" would include many of the members of the GSMA as well.

   **While the membership of the alleged "Mobile Wireless Community" would be wider than just the members of Objector and GSMA, the very process of joining and maintaining membership in trade associations or other groups certainly provides a formal process for those who choose it**. Indeed, I consider the formality of organization of the community overall to be a relevant factor. In this case, the existence and scale of organizations such as Objector and the GSMA reflects a strong shared group interest in pursuing activities and policy goals that benefit the group as a whole. Such organizations only arise where there is a common interest in a community, and active participation.

Thus, while membership in the alleged "Mobile Wireless Community" does not *require* membership in Objector or any other organization, such organizational bodies do exist and, as noted above, the fee requirement and self-selection of the membership results in a natural exclusionary function such that the membership of such organizations will inevitably be substantially composed of community members."

**Third**, how long has the community been in existence? The "Mobile Wireless Community," as described by Objector, has been in existence for several decades, since mobile or wireless communications services and devices were made commercially available. According to Objector, this was in 1984. I accept this.

**Fourth**, what is the global distribution of the community (this may not apply if the community is territorial)? Objector has defined the community at issue as "global" and noted that it consists of its own members "and others like them." It further states: (quoting Objector…)

In addition, Objector has acknowledged that the alleged global "Mobile Wireless Community" consists of its members "and others like them," which would clearly also include the members of GSMA, which has also lent its support to the Objection. Therefore, I find that the invoked community is both substantial and globally distributed.

**Fifth**, what number of people or entities makes up the community? **It is sufficient to say that, plainly, the number of people or entities that make up the community is large and is substantially reflected in the membership of the Objector and the GSMA.**

For all these reasons, I find that there is a clearly delineated community, which is the "Mobile Wireless Community" as described by the Objector, consisting of "carriers, network providers, and others involved in the delivery of mobile wireless and wireless-enabled services to governments, enterprises, and consumers worldwide."

Ongoing:
"…**Although it may not serve the entire community**, it is the trade association for a very significant component of the community (i.e., the US/North American sub-community), as reflected in its extensive membership list and the many important companies that populate them.

3.  "…As noted above, the merits tests likewise include a component requiring a "strong association" between the specified community and the gTLD string at issue.

    I would add one note of clarification regarding this requirement, and that is that the threshold is a relatively high one—"strong" association—**but it by no means requires that the gTLD string must be an identifier that is unique to the community at issue**."

"Indeed, in the Internet world within which the new gTLDs will operate, the association of the term "mobile" with wireless technologies may predominate over more traditional or historical meanings of the world. It is not uncommon for people in countries where such technologies are common to use the word "mobile" as a synonym for a cellular phone on business cards or in conversation, and "mobile device" is commonly used to capture the category of technological devices which operate via wireless communication signals, such as cellular phones, smart phones, tablets, and the like…"

…As to the associations of the public, for reasons I have asserted above and with the arguments of the Objector in mind, I find that there is a strong association in the public mind between the word "mobile" and the Mobile Wireless Community as defined by Objector."


.BOOK
1. Established institution:
"…**Rakuten meets the first branch of the standing requirement to the extent that it is an "established" institution.** If and to the extent there is a "community" component to the definition of "institution", this is addressed under the second branch of the requirement."
2. Delineation:
"…Clearly, the Objector **has not shown that it provides participatory mechanisms to members of the community it claims to represent**. A consumer's ability to buy a Kobo e-reading device and to download e-books does not amount to participation for this purpose."

"…In this case it is unnecessary to decide this issue, as the **Objector has not carried its burden of establishing that it has an "[i]nstitutional purpose related to the benefit of the associated community.**"

"…no attempt by the Objector to demonstrate the performance of regular activities that benefit the associated community."

"…There is **no attempt at delineating the community other than through a general reference to Kobo users**. The Objector has failed to demonstrate the existence of formal boundaries around the community it claims to represent."