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**Sent:** Monday, March 03, 2014 08:53  
**To:** Christine Willett  
**Subject:** .radio CPE

Christine—

The attached is respectfully submitted as an evaluation of the European Broadcast Union's application for .radio. Please publish it on the ICANN correspondence page and forward it to the appropriate CPE panel.

Thank you,  
Reg

## European Broadcast Union's Application for .radio Comment to Community Priority Evaluation

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## Introduction

This evaluation of the European Broadcasting Union's ("EBU") community priority application for .radio (Application ID 1-1083-39123) is offered to the Community Priority Evaluation (CPE) Panel in the hope that it will be of use. It has been stated in various venues that CPE-related letters submitted to ICANN and to the public comment forum would be directed to the relevant CPE Panel.

It must be underscored that, if the rules set forth in the Applicant Guidebook (AGB) are followed, many community priority applications for generic strings will fail—and rightly so—given that ICANN has set the entry barrier quite high. So high that, out of 16 possible points, if an applicant loses more than 2, it is *not a community* as contemplated by the AGB and must fail CPE. This barrier is so strict because the danger of having a TLD claiming to serve a community for which the community either does not exist or does not agree to the applicant who has claimed it will represent that community is so high. In fact, if there is opposition from *only two* groups,<sup>1</sup> the application will come perilously close to failing the CPE. Such opposition will require a score of 0 for the "Opposition" portion of Criterion 4: Support and Opposition,<sup>2</sup> and force a minimum passing score. As will be shown below, not only does the EBU application lose these 2 points but many others along the way.

The AGB is a document created by the ICANN multistakeholder 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.

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

The EBU is claiming a very generic term as its community name and the CPE process was designed to prevent this. As would be expected, EBU's application does not pass our evaluation, scoring only 7 of the 14 points necessary. Here is a summary of the key areas of concern:

## Analysis

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<sup>3</sup>

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.<sup>4</sup>

The Panel is respectfully reminded that the AGB was relied upon by all applicants and the Panel must rely exclusively to the AGB for information regarding how to come to a decision regarding the EBU application for .radio. While the CPE Panel may rely on some level of outside research, this remains undefined and information regarding the definitions of and criteria for qualifying as a community under the AGB must come solely from the AGB itself. evaluation criteria published by ICANN in the AGB.

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<sup>1</sup> *New gTLD Applicant Guidebook*, Version 2012-06-04 ("AGB"), §4.2.3.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

## Criterion 1: Community Establishment; Score: 2

### Summary

Out of 4 possible points for Criterion 1, the EBU merits at most only 2.

### Criteria

A maximum of 4 points is possible on the Community Establishment criterion, or 2 points each for “Delineation” and “Extension”. To receive the full 2 points for Delineation, the AGB states that an application must invoke a “clearly delineated, organized, and pre-existing community.” For 1 point, the application must be clearly delineated and pre-existing but insufficiently for 2 full points. To score 2 points for Extension, a community must be “of considerable size and longevity”. To score 1 point for Extension, a community must have either considerable size or longevity.<sup>5</sup>

“Community” as defined by the AGB requires that there 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.*<sup>6</sup>

The EBU’s application asks us to believe that amateur radio operators in rural Montana, US and Nigerian radio broadcasters believe themselves to be both aware of and recognize themselves as part of the same supposed “community” and, further, that the *European Broadcasting Union* represents them both.<sup>7</sup>

Despite this definition, the AGB awards no points for the length of the community’s existence—past or future.

### Analysis

#### Delineation

To receive the full 2 points for delineation, the AGB states that an application must invoke a “clearly delineated, organized, and pre-existing community.” For 1 point, the application must be clearly delineated and pre-existing but insufficiently for 2 full points.

The EBU’s application proclaims that it is applying “on behalf of the global Radio community”<sup>8</sup> and goes on to define that as “all those entities and individuals related to audio content distributed mainly by broadcasting to wide communities of listeners throughout the world”.<sup>9</sup>

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.”<sup>10</sup>

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<sup>5</sup> *Id.* The CPE Panel is once again encouraged and instructed to refer to the AGB for further definitions provided by ICANN for the explicit purpose of determining whether an applicant meets the strict criteria necessary to pass CPE.

<sup>6</sup> *Id.*

<sup>7</sup> We further note that the definition explicitly excludes the many radio stations broadcasting to and from the International Space Station (“ISS”), including both American and Russian amateur radio stations.

<sup>8</sup> Public portion of the European Broadcasting Union’s application for .radio (“EBU’s Application”), available at <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1468>. Last accessed 20 February 2014. Answer to Question 18(a): Describe the mission/purpose of your proposed gTLD.

<sup>9</sup> *Id.*

<sup>10</sup> AGB, §4.2.3.

The EBU's definition of the supposed "community" it purports to represent is so unbounded that the only boundaries it mentions are those of this planet.<sup>11</sup> The EBU's application asks us to believe that amateur radio operators in rural Montana, US and Nigerian radio broadcasters believe themselves to be both aware of and recognize themselves as part of the same supposed "community" and, further, that the *European Broadcasting Union* represents them both.<sup>12</sup>

If we were to stop here, the EBU would not be able to score the full 2 points for Delineation under the AGB but would instead merit only 1 point for an "unclear, dispersed or unbound definition"<sup>13</sup> of its so-called "community."

However, the EBU's application expands upon its initial definition in later questions, saying that "the Radio industry keeps evolving and today, many stations are not only broadcasting in the traditional sense, but also webcasting and streaming their audio content via the Internet. Some are not broadcasters in the traditional sense: Internet radios are also part of the Radio community".<sup>14</sup> Here, the EBU makes its claimed "community" ever larger by including Internet radio. Previously, the EBU had stated that "licensed radio broadcasters"<sup>15</sup> as well as their "associations, federations and unions"<sup>16</sup> would qualify for purchase of a domain name in their "community"-only .radio. However, since Internet radio broadcasters need not be licensed—or even tracked—how will the EBU determine whether an Internet broadcaster is a member of its alleged "community" or not? The simple answer is that it cannot. Anyone, with the help of easily-available software—both paid and free—can create an Internet radio station and present content to listeners. Many of these people might not even consider themselves to be part of a "radio community" since the bulk of what they do is online. The EBU cannot purport to claim that its "community" is everyone in the world with access to the Internet and a computer.

The EBU must score 0 for Delineation.

### Extension

To score 2 points for Extension, a community must be "of considerable size and longevity". To score 1 point for Extension, a community must have either considerable size or longevity.<sup>17</sup>

Assuming, for the moment, that the "community" defined by the EBU can be considered a community for the purposes of scoring under Extension, the EBU has defined a community of considerable size—indeed it encompasses the entire globe and anyone with access to the Internet and a computer who desires to be part of it.

Further, radio as we know it was invented some time in the late 1800s, depending on when one chooses to pinpoint such a thing as "radio". If we take this to be the "community" proposed to be represented by the EBU, it can definitively be said to have "longevity". The EBU itself was founded only in 1950, much later. One wonders what the "community" of radio broadcasters did without the EBU to represent it. Since "longevity" is an ambiguous term, it may or may not be the case that the "community" the EBU purports to represent can be considered to have longevity under the AGB.

The EBU scores 2 points for Extension.

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<sup>11</sup> Once again excluding only radio users on the ISS.

<sup>12</sup> We further note that the definition explicitly excludes the many radio stations broadcasting to and from the International Space Station, including both American and Russian amateur radio stations.

<sup>13</sup> AGB, §4.2.3.

<sup>14</sup> EBU's Application. Answer to Question 20(a). Provide the name and full description of the community that the applicant is committing to serve.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> AGB, §4.2.3.

## Score

Based on the manner in which the EBU has described the “community” it purports to represent, the EBU scores no more than 2 for Criterion 1. This is because it cannot score any for Delineation, as discussed above, and because it may score either 1 or 2 for Extension—based on the extreme broadness of the “community” the EBU has defined and on the length of time that radio broadcasting has been in existence.

## Criterion 2: Nexus between Proposed String and Community – Score: 2

### Summary

Out of 4 possible points for Criterion 2, the EBU merits only 2.

### Criteria

A maximum of 4 points is possible on the Nexus between Proposed String and Community criterion, or 3 points for “Nexus” and 1 point for “Uniqueness”. To receive the full 3 points for Nexus, the AGB states that an the applied-for string must “match[...] the name of the community or [...].be] a well-known short-form or abbreviation of the community”. To score 2 points for Nexus, the string must identify the community. There is no ability to score 1 point for Nexus. To score 1 point for Uniqueness, the applied-for string must have “no other significant meaning beyond identifying the community described in the application”.<sup>18</sup>

### Analysis

#### Uniqueness

To receive the full 3 points for Nexus, the AGB states that an the applied-for string must “match[...] the name of the community or [...].be] a well-known short-form or abbreviation of the community”.<sup>19</sup>

The word “radio” does not conjure to mind a community of any kind. Rather, the word is most often used to refer to the device that receives radio frequencies.<sup>20</sup> In addition, the term “Internet radio” refers mainly to the transmission of audio via the Internet—and not to the community of people who participate in such transmission.<sup>21</sup> The definition of the word “radio” does mention the purported “community” the EBU is attempting to create around itself, but only as a subsidiary definition.<sup>22</sup>

The applied-for string in this case does not match the name of the “community”, stated by the EBU to be “the global Radio community”.<sup>23</sup> Without that extra word, the statement is vastly different: “the global Radio”. It is not a short-form or abbreviation. It does, however, identify the community.

The EBU scores 2 points for Uniqueness.

#### Nexus

To score 1 point for Nexus, the applied-for string must have “no other significant meaning beyond identifying the community described in the application”.<sup>24</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> E.g., “Turn on the radio,” “I’m listening to the radio,” or “My radio is broken.”

<sup>21</sup> Wikipedia entry on “Internet radio”: [http://en.wikipedia.org/wiki/Internet\\_radio](http://en.wikipedia.org/wiki/Internet_radio). Last accessed 20 February 2014.

<sup>22</sup> “3(b) specializing in radio or associated with the radio industry”

Merriam Webster online dictionary entry on “radio”: <http://www.merriam-webster.com/dictionary/radio>. Last accessed 20 February 2014.

<sup>23</sup> EBU’s Application. Answer to Question 20(a).

<sup>24</sup> AGB, §4.2.3.

As shown above, there is another, very significant meaning, beyond identifying the “community” the EBU claims exists. “[T]he global Radio”, if it has a meaning, must refer to the transmissions of radio signals around the globe, including—as allowed by the EBU in its application—audio transmitted via Internet.

As demonstrated above, there is a significant meaning beyond identifying the so-called “community” described in the application and that is the devices which are used to receive radio frequencies or, in the case of Internet radio, the audio transmitted by these devices.

In fact, the AGB cites the situation of the EBU as an example of an application that does *not* qualify as a community:

*As an example, a string could qualify for a score of 2 if it is a noun that the typical community member would naturally be called in the context. If the string appears excessively broad (such as, for example, a globally well-known but local tennis club applying for “.TENNIS”) then it would not qualify for a 2.*

The EBU would have us believe that its members “would naturally be called” “radio” or “radios”. Further, the *European Broadcast Union*, as much as it may well be a large entity, is nonetheless a local union within Europe.

The EBU scores 0 points for Nexus.

### Score

Because of the string the EBU has applied for to represent its so-called “community”, the EBU scores no more than 2 for Criterion 2: Nexus between Proposed String and Community. This is because the word “radio” does not naturally refer to the community of radio broadcasters and enthusiasts but rather to the devices they use or the audio transmitted by those devices.

## Criterion 3: Registration Policies; Score: 1

### Summary

Out of 4 possible points for Criterion 3, the EBU merits only 1.

### Criteria

A maximum of 4 points is possible on the Registration Policies criterion, or 1 point each for Eligibility, Name Selection, Content and Use, and Enforcement. To receive 1 point for Eligibility, eligibility for registration in the EBU’s .radio namespace must be “restricted to community members”. To receive 1 point for Name Selection, the EBU must institute “[p]olicies [that] include name selection rules consistent with the articulated community-based purpose of the” string. To receive 1 point for Content and Use, the EBU’s [p]olicies include rules for content and use consistent with the articulated community-based purpose of” .radio. To receive 1 point for Enforcement, EBU’s “[p]olicies [must] include specific enforcement measures”.<sup>25</sup>

### Analysis

#### Eligibility

To receive 1 point for Eligibility, eligibility for registration in the EBU’s .radio namespace must be “restricted to community members”.<sup>26</sup> In its answer to Question 20, the EBU addresses how it defines its “community” “for registration purposes”:

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

- 1 Broadcasters' Unions
- 2 Licensed Radio Broadcasters
  - 2.1 International Broadcasters
  - 2.2 National Broadcasters
  - 2.3 Regional Broadcasters
  - 2.4 Local Broadcasters
  - 2.5 Community Broadcasters
- 3 Trademarks
  - 3.1 Trademarks used for radio related activities for example companies providing specific services, equipment, radio programmes, etc.
  - 3.2 Defensive registrations by non-eligible applicants
- 4. Internet radio stations
- 5 Licensed amateur radios and clubs
- 6 Radio professionals<sup>27</sup>

As discussed in the argument above for Criterion 1, the EBU includes “Internet radio stations” in its “community”. It is passing simple to start an “Internet radio station” and, indeed, many amateurs around the world have done so. All one needs is access to the Internet and a computer. From there, one can easily obtain software—most of it free. From Audacity to WildVoice Studio, there are multiple easy to use, easy to find, and quick to install programs intended explicitly to help amateurs start their very own “Internet radio station”.<sup>28</sup> This being the case, then, just as the EBU’s “community” is not delineated, its criteria for eligibility for registration in its .radio namespace is also not well defined, as it must include anyone with access to the Internet and a computer. Many of these people might not even consider themselves to be part of a “radio community” since the bulk of what they do is online.

Just as the EBU cannot purport to claim that its “community” is everyone in the world with access to the Internet and a computer, it also cannot claim that it is restricting eligibility in its namespace to everyone in the world with access to the Internet and a computer—this is likely the same group of people who are interested in purchasing a domain name.

The EBU recognizes this and notes, about Internet radio stations, that

*This category is much more fluid and less organized than the two previous ones. No licensing system; no organized registration.*<sup>29</sup>

It does not, however, define what these are. It can, then be said that the EBU has taken a “[l]argely unrestricted approach to eligibility,”<sup>30</sup> the criteria for scoring 0 for Eligibility.

The EBU must score 0 for Eligibility.

### Name Selection

To receive 1 point for Name Selection, the EBU must institute “[p]olicies [that] include name selection rules consistent with the articulated community-based purpose of the” string.<sup>31</sup>

The EBU’s application states that “the [domain name] registrant’s nexus with the Radio community and use of domain must be commensurate to role and importance of domain

<sup>27</sup> EBU’s Application. Answer to Question 20(a).

<sup>28</sup> A simple search of the Internet revealed multiple lists of such programs, including a list of ten different programs for various operating systems and review of each program, posted by TopTenReviews at <http://podcast-software-review.toptenreviews.com>. Last accessed 20 February 2014.

<sup>29</sup> EBU’s Application. Answer to Question 20(a).

<sup>30</sup> AGB, §4.2.3.

<sup>31</sup> *Id.*



registered.”<sup>32</sup> Inasmuch as an Internet radio broadcaster can be considered to have a “nexus” with the EBU’s so-called “community”,<sup>33</sup> this qualifies for a score of 1 for Name Selection as the EBU’s application has articulated policies “consistent with the articulated community-based purpose”<sup>34</sup> of its .radio.

The EBU scores 1 for Name Selection.

### Content and Use

To receive 1 point for Content and Use, the EBU’s [p]olicies include rules for content and use consistent with the articulated community-based purpose of” .radio.<sup>35</sup>

The EBU’s application does not go into detail about what its rules will be for content and use, simply stating that “name selection and content and use requirements are subject to post-validation throughout an extensive compliance program”.<sup>36</sup> It continues, later in its application, to describe how its “community” will be eligible for domain names in sunrise and how it handles domain name collisions.<sup>37</sup> It also briefly mentions an “intended use statement”<sup>38</sup> but does not define what this is, how it will be vetted, or what intended uses might be acceptable or unacceptable to intend in its .radio namespace.<sup>39</sup> The EBU’s “rules for content and use” are completely unarticulated.

The EBU must score 0 for Content and Use.

### Enforcement

To receive 1 point for Enforcement, EBU’s “[p]olicies [must] include specific enforcement measures”.<sup>40</sup>

Here, the EBU states that it will use “vigorous Enforcement practices”<sup>41</sup> but then goes on to say nothing about what those practices are. It does say that they will involve “random investigations,”<sup>42</sup> which hardly seems “vigorous”. When it does decide to “outline [...] the Enforcement Policies,” all it states is that it will have a launch phase, general availability, technical implementation, and human resources.<sup>43</sup> This list of the phases of a TLD is woefully insufficient to define any kind of enforcement in the EBU .radio namespace.

It should be noted that the EBU has stated that it would create the “World Radio Advisory Board” to create and enforce “community” policy for the EBU .radio namespace. This board “will include representatives from the WBU and other radio associations and organisations”.<sup>44</sup>

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<sup>32</sup> EBU’s Application. Answer to Question 20(e): Provide a description of the applicant’s intended registration policies in support of the community-based purpose of the applied-for gTLD.

<sup>33</sup> Which, again, the EBU admits in its application is impossible, saying that there is “No licensing system; no organized registration” necessary to become an Internet radio broadcaster. (EBU’s Application. Answer to Question 20(a).)

<sup>34</sup> AGB, §4.2.3.

<sup>35</sup> *Id.*

<sup>36</sup> EBU’s Application. Answer to Question 18(b).

<sup>37</sup> *Id.*, Answer to Question 29: Rights Protection Mechanisms.

<sup>38</sup> *Id.*, Answers to Question 20(e) and Question 29.

<sup>39</sup> It does, however, state that “A false statement of intended use is an indication of bad faith and can be the basis for the suspension of the domain name.” As long as an applicant, then, is sufficiently broad in describing (or updating, as is allowed by the EBU’s nebulous use “policy”) its intended use, this is only barely a restriction on the use of domains within the EBU’s namespace.

<sup>40</sup> AGB, §4.2.3.

<sup>41</sup> EBU’s Application. Answer to Question 18(c): What operating rules will you adopt to eliminate or minimize social costs?

<sup>42</sup> *Id.*, Answer to Question 20(e).

<sup>43</sup> *Id.*, Answer to Question 29.

<sup>44</sup> *Id.*, Answer to Question 20(a).

Since it has already admitted that at least one of the groups that it claims to represent in its “community”—Internet radio—has neither licensing nor registration, one wonders if that group will simply be represented by people who are not part of it in the EBU’s “community”. Once again, this points to the fact that the EBU’s radio “community” is nothing like a community within the contemplation of the AGB.

Since the EBU’s application does not enumerate “specific enforcement measures [...] constituting a coherent set,”<sup>45</sup> the EBU must score 0 for Enforcement.

### Score

Because the EBU’s registration policies are unclear and do not adequately represent the whole of the so-called “community” the EBU seeks to create around its .radio application, it can score only 1 for Criterion 3: Registration Policies.

## Criterion 4: Community Endorsement; Score: 2

### Summary

Out of 4 possible points for Criterion 4, the EBU merits only 2.

### Criteria

A maximum of 4 points is possible on the Community Endorsement criterion divided equally between Support and Opposition. For the full 2 points for Support, the EBU must show that it has “documented support from, the recognized community institution(s)/member organization(s) or has otherwise documented authority to represent the community.” To score 1 point for Support, the EBU must show “support from at least one group with relevance, but insufficient support” to merit a score of 2. For the full 2 points for Opposition, the EBU must show “no opposition of relevance”. To score 1 point for Opposition, the EBU must show “[r]elevant opposition from one group of non-negligible size.” For 0 points, the EBU may have “[r]elevant opposition from two or more groups of non-negligible size.”<sup>46</sup>

### Analysis

#### Support

For the full 2 points for Support, the EBU must show that it has “documented support from, the recognized community institution(s)/member organization(s) or has otherwise documented authority to represent the community.” To score 1 point for Support, the EBU must show “support from at least one group with relevance, but insufficient support” to merit a score of 2.<sup>47</sup>

The EBU lists support from five groups of radio broadcasters,<sup>48</sup> implies the support of its own members,<sup>49</sup> and hints at support from a group it is a member of.<sup>50</sup> The EBU also attaches mostly identical form letters from multiple groups that list their members, implying support.<sup>51</sup>

The EBU has the requisite documentation to show sufficient support to merit 2 points.<sup>52</sup>

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<sup>45</sup> AGB, §4.2.3.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> EBU’s Application. Answer to Question 20(b): Explain the applicant’s relationship to the community identified in 20(a).

<sup>49</sup> By the simple fact of its application it purports to speak on behalf of its members.

<sup>50</sup> EBU’s Application. Answer to Question 18(a) and throughout, also implying support from its “sister Unions” under the World Broadcasting Union.

<sup>51</sup> EBU’s Application, Attachment to 20(f): WBU\_Endorsement\_Letters\_and\_Annexes.pdf.

<sup>52</sup> It will be shown later, however, that at least some of this so-called “support” was signed off on by groups without consulting their members, throwing into question the remaining letters of “support”.

## Opposition

For the full 2 points for Opposition, the EBU must show “no opposition of relevance”. To score 1 point for Opposition, the EBU must show “[r]elevant opposition from one group of non-negligible size.” For 0 points, the EBU may have “[r]elevant opposition from two or more groups of non-negligible size.”<sup>53</sup>

The EBU loses points first with the opposition filed in August 2012 by the International Radio Emergency Support Coalition (“IRESC”).<sup>54</sup> In it, the President of the IRESC, a group with special consultative status to the UN,<sup>55</sup> decries the form letter of support submitted by the International Amateur Radio Union (“IARU”), saying that this support “does not reflect the views of all amateur radio operators globally.”<sup>56</sup>

This opposition is relevant because it raises questions about the letters of support for the EBU’s application. The form letters that were clearly sent around to various international groups for signature-and-support for the EBU’s application may not have been signed onto with the support of each group’s membership. Here, indeed, is a group, the IRESC, that was allegedly represented by the IARU, whose opposition to the EBU’s application was not taken into account when the IARU submitted its form letter of support. One wonders how many other groups “support” the EBU’s application so falsely.

This opposition is also relevant because it raises questions about the relationship between the EBU and the Governmental Advisory Committee (“GAC”) to the ICANN Board.<sup>57</sup> The GAC is relied upon by the ICANN Board for guidance and advice<sup>58</sup> and, for the New gTLD Programme, was in a unique position to delay, halt, or encourage applications.<sup>59</sup> Shortly after applications were submitted, the EBU requested<sup>60</sup>—and was approved for—observer status with the GAC. This put it in a position of profound conflict of interest with regard to the GAC’s “Early Warnings,” which were issued just months after it joined.<sup>61</sup> It is astonishing that it was allowed to join the GAC as an observer, giving it access to the GAC that no other applicant has, and more astonishing that it was allowed to continue in its bogus attempt to claim to represent a radio “community”.

The opposition of the IRESC is of non-negligible size and importance, having consultative status with the United Nations, allowing it to actively engage with the UN’s Economic and Social Council. It represents members from more than 40 countries.<sup>62</sup>

Many other concerned groups and citizens have raised the issue of the EBU’s conflict of interest via ICANN’s Application Comment forum, including the Webcaster Alliance, a US-based non-profit dedicated to providing information, education, and support to Internet radio

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<sup>53</sup> AGB, §4.2.3.

<sup>54</sup> Public comment posted in the Application Comment section of ICANN’s website. Available at: <https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/6609>. Last accessed 20 February 2014.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> ICANNWiki entry on “GAC”. Available at: <http://icannwiki.com/index.php/GAC>. Last accessed 20 February 2014.

<sup>59</sup> *Id.*, at [http://icannwiki.com/index.php/GAC#New\\_gTLDs](http://icannwiki.com/index.php/GAC#New_gTLDs).

<sup>60</sup> Domain Incite, 28 June 2012, “.radio gTLD applicant joins the GAC”. Available at: <http://domainincite.com/9640-radio-gtld-applicant-joins-the-gac>. Last accessed 20 February 2014.

<sup>61</sup> ICANNWiki entry on “GAC” at [http://icannwiki.com/index.php/GAC#Early\\_Warnings](http://icannwiki.com/index.php/GAC#Early_Warnings).

<sup>62</sup> NGO Branch of the United Nations’ Department of Economic and Social Affairs’ searchable list of consultative members, IRESC entry. Available at: <http://esango.un.org/civilsociety/showProfileDetail.do?method=showProfileDetails&profileCode=615615>. Last accessed 20 February 2014.

and streaming media organizations.<sup>63</sup> The Webcaster Alliance represents hundreds of Internet radio stations, making it also of non-negligible size.<sup>64</sup>

These comments alone are sufficient for the EBU to score 0 for Opposition, however the mere fact of two of the competing applications for .radio is also worthy of note. The Societe Francaise du Radiotelephone, a French telecommunications company serving millions of customers worldwide<sup>65</sup> is not represented by the EBU's supposed radio "community". Nor is BRS Media, a US-based multimedia company specializing in radio and the Internet.<sup>66</sup>

The EBU must score 0 for Opposition because of the overwhelming opposition to its "community" application.

### Score

Although the EBU has presented form letters of support from some national and international radio broadcasting groups, because of the opposition to its "community" application, it can score only 2 for Criterion 4: Community Endorsement.

### Conclusion

The term "radio" is not a fellowship or membership community. It is a general term that has been in use for over 100 years to describe a diverse and broad audio-based industry of individual broadcasters, amateur operators, high school and college educational institutions, public broadcasters, commercial broadcasting companies, Internet-based online webcasters, and many others. They share merely a commonality of interest and are not a "community" within the strict definition described by the AGB. Not only that, the EBU does not represent any such "community" and, in fact, there is strong opposition to its purported representation.

The EBU's attempt to restrain and redefine the term "radio" and to coopt its use online will create material harm to a significant portion of the radio industry by preventing legitimate radio members operators from within the industry, from using .radio in the domain space.

As has been amply shown above, the EBU must fail CPE. The Panel is thanked for its kind attention to this evaluation and its strict adherence to the AGB.

Reg Levy  
Minds + Machines

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<sup>63</sup> Public commented posted in the Application Comment section of ICANN's website. Available at: <https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/6769>. Last accessed 20 February 2014.

<sup>64</sup> CNET, 27 August 2003, "Small Webcasters sue RIAA". Available at [http://news.cnet.com/2100-1027\\_3-5069102.html](http://news.cnet.com/2100-1027_3-5069102.html). Last accessed 20 February 2014.

<sup>65</sup> Wikipedia entry on "SFR", available at: <http://en.wikipedia.org/wiki/SFR>. Last accessed 20 February 2014.

<sup>66</sup> BRS Media's "About Us" page, available at <http://brsmedia.com/aboutus/>. Last accessed 20 February 2014.