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March 26, 2014

**To: Economist Intelligence Unit
ICANN Community Priority Evaluation Panel**

Re: Community Application by Big Room, Inc. for .ECO – Statement of Opposition

To whom it may concern:

Please see the attached statement (“Statement”) submitted on behalf of Little Birch, LLC in opposition to the community application by applicant Big Room, Inc., which was invited to participate in Community Priority Evaluation on March 12, 2014. See <http://newgtlds.icann.org/en/applicants/cpe#invitations>. ICANN is hereby requested to publish this letter and accompanying Statement on its official Correspondence Page (<http://www.icann.org/en/news/correspondence>) as soon as possible.

Should there be any questions concerning this submission, please feel free to contact the undersigned directly at your earliest convenience.

Sincerely,

/s/

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d/b/a New gTLD Disputes
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**Application by Big Room, Inc. for <.ECO>:
Comment to Community Priority Evaluation**

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INTRODUCTION

The Community Priority Evaluation (“CPE”) is a serious undertaking. It allows for top-level identification of communities by the names for which they are known. Yet, a “successful” CPE also disqualifies applicants that otherwise have met the rigorous criteria to obtain a new gTLD:

[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.

Applicant Guidebook (“Guidebook” or “AGB”) § 4.2.3 at 4-9. Accordingly, ICANN created scoring to “identify qualified community-based applications,” while preventing “false positives” – *i.e.*, “awarding undue priority to an application that refers to a ‘community’ construed merely to get a sought-after generic word as a gTLD string.” *Id.*

To obtain community priority, an application must score 14 out of 16 possible points. *Id.* at 4-10. “In cases of generic words submitted as community based strings, test runs by [ICANN] staff show that the threshold is difficult to attain” See <http://archive.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf>.

An objective analysis demonstrates that the application under review for .ECO, <https://gtdresult.icann.org/application-result/applicationstatus/applicationdetails/1753> (“Application”), does not meet the stringent criteria to garner the 14 points to satisfy CPE and disqualify the other applicants. The Application by Big Room, Inc. (“Big Room” or “Applicant”) attempts to create a community around a group as diverse and unconnected as its purported “members.”

The wide range of ecological interests that the Applicant claims it would serve detract from its ability to “establish” a “community,” preventing the Application from earning a full four points on the first CPE factor. Also, the fact that “ECO” does not match the name of any organized community makes four points unattainable on the second test, for “nexus.”

The Application falls even further short on the third community criterion regarding “registration policies.” Focusing almost exclusively on “eligibility,” the Application largely ignores each of the other subparts of this category. For example, it offers no “name selection rules” or “content and use restrictions,” as the Guidebook requires. Further, the Application ties all “enforcement” mechanisms solely to eligibility, which makes them essentially toothless and not worthy of a scoring point. Big Room can lose enough points on registration policies alone to cause the entire Application to fail CPE.

The Application exhibits deficiencies as well in the fourth criterion, offering letters of support that say little about the Application itself, and which instead focus more on the

perceived benefits of a <.ECO> domain generally. Although no material opposition appears in public comments to the Application, the failure to meet strict Guidebook standards for support causes the loss of at least one point.

The Applicant undertakes CPE as a “low cost, high reward” strategy that would enable it to circumvent the normal contention set resolution process defined by ICANN. This does not demean the Application or Big Room’s approach to managing the proposed TLD. Nor does it attempt to say that Big Room should not have the right to move forward with its Application on the same level as all other applicants. The analysis simply shows that Big Room does not meet the Guidebook’s stringent CPE tests, and that it should compete with the other applicants for the domain.

ANALYSIS

The Guidebook allows the CPE Panel to award up to four points in each of four categories (maximum points in parentheses):

- “Community establishment,” which involves “delineation” (2) and “extension” (2), AGB at 4-10 *et seq.*;
- “Nexus,” meaning both “nexus” (3) and “uniqueness” (1), *id.* at 4-12 *et seq.*;
- “Registration policies,” consisting of “eligibility” (1), “name selection” (1), “content and use” (1) and “enforcement” (1), *id.* at 4-14 *et seq.*; and
- “Community endorsement,” which considers “support” (2) and “opposition” (2), *id.* at 4-18 *et seq.*

Applying the standards established by ICANN for these criteria, the Application cannot reach four points on any of them. Giving Applicant the benefit of all doubts on each at most yields about 10 points, well short of the 14 points needed to pass CPE.

CRITERION 1: The Application does not “establish” a “community” under the “delineation” and “extension” tests, thus yielding less than the maximum four points.

A “community” as described in the Guidebook “impl[ies] more cohesion than a mere commonality of interest.” AGB at 4-11. As such, the Guidebook calls for examining the claimed community in terms of its “delineation” and “extension.” The test for “delineation” considers:

- The “level of public recognition of the group as a community,” the existence of “formal boundaries around the community” and “what persons or entities ... form” it (hereafter referred to as the “Identification” factors);
- Whether the alleged community pre-dates the commencement of the new gTLD program in 2007 (the “Existence” factor); and

- The level of “organization” of the community through at least one dedicated entity with documented evidence of community activities (“Organization”).

AGB at 4-11. “Extension” relates to “the dimensions of the community, regarding its number of members, geographical reach, and foreseeable activity lifetime” *Id.* The Application cannot earn the full number of available points under either prong of the first “community” test.

The Application reflects no clear “delineation” of any “community.”

Satisfying all three of the Identification, Existence and Organization factors will allow an application to score up to a 2. AGB at 4-12. The Guidebook spells out how these subcategories affect an application’s “delineation” score:

Delineation (2)

2	1	0
Clearly delineated, organized , and pre-existing community.	Clearly delineated and pre-existing community, but not fulfilling the requirements for a score of 2.	Insufficient delineation and pre-existence for a score of 1.

AGB at 4-10 (emphasis added). *See also* EIU Guidelines at 3. All three subcriteria exhibit deficiencies, primarily reflective of the range of interests that make definition of a “Global Environmental Community” problematic. *See* Applic. § 20(a) (referencing a newly-formed “alliance” of *disparate* organizations). It therefore cannot receive the full 2 “delineation” points.

The Application demonstrates no community “Identification.”

Regarding Identification, the Application describes the “community” as “multi-stakeholder in nature,” thus admitting its divergent interests. The “members” that the Application undertakes to identify likewise reflect such internal deviations. *See* Applic. § 20(a). Most significantly, the Application fails to show in any way that the public recognizes these disparate interests *collectively* as a *single community*.

As stated, “community” implies “more cohesion than a mere commonality of interest.” AGB at 4-11. The dictionary defines “cohesion” as “the act or state of cohering; tendency to unite, to ‘stick together.’” The Applicant does not demonstrate or even claim any “cohesion” among those to whom it would make a <.ECO> domain available. It “delineates” them “from Internet users generally by community-recognized memberships, accreditations, registrations, and certifications that demonstrate active commitment, practice and reporting.” Applic. § 20(a). This circular definition provides

for the alleged community to define itself, by “community-recognized” criteria, without first establishing the “community” that “recognizes” its “members.”

At best, the Application bases the alleged community on a “mere commonality of interest,” and does not establish a “cohesive” unit. Nor does it have a “clear and straightforward” definition of its membership. AGB at 4-11. This lack of clear identification contributes to the inability to score a full “2” on the “delineation” subtest.

The Application does not show “Existence” *as a community* prior to 2007.

“Environmental” concerns, and parties willing to further them, certainly have existed long before the inception of the ICANN New gTLD Program in September 2007. If simply calling all of those (often disparate) interests a “community” makes it so, then Big Room could satisfy the “Existence” standard.

The high threshold for CPE requires more, however. It does not appear at all clear that members of the so-called “Global Environmental Community” have the “requisite awareness and recognition” themselves, and by others, *as a community*, as required. AGB at 4-12; *see also* <http://newgtlds.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-17mar14-en.pdf> at 2 (where community as defined in application found to lack awareness and recognition). The EIU Guidelines also ask, at 5, “Is there clear evidence of such awareness and recognition?” The Application does not provide it.

To the contrary, the Application admits that the “community ... is multi-stakeholder in nature,” and did not form a global “alliance” of its various interests until March 2009, “in response to ICANN’s new gTLD program” Applic. § 20(a). As such, the proffered “community” concededly cannot establish its “activ[ity] as such since before the new gTLD policy recommendations ... in September 2007.” AGB at 4-11. Rather, it appears that the Application “refers to a ‘community’ construed merely to get a sought-after generic word as a gTLD string,” which the Guidebook does not allow. *Id.* at 4-9; *see* <http://newgtlds.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-17mar14-en.pdf> at 3.

The Application does not show the requisite community “Organization.”

The EIU Guidelines further ask, at 3, “Is there at least one entity mainly dedicated to the community?” The Application does not show this. Rather, it reflects otherwise:

The Community has historically structured and organized itself and its work through an international *network* of organizations, including *millions of individual* members with strongly aligned goals, values and interests.”

Applic. § 20(a) (emphases added). Groups *within* the expansively defined Community “organize through multi-organization alliances around *specific* events, geographies, and issues.” *Id.* (emphasis added). Thus, the so-called Global Environmental Community consists of many distinct individuals and organizations, some of which come together

around specific subjects, but no single organization – at least prior to 2007 – that represents the Community as the Application defines it.

The Application also describes numerous individual, group, business and governmental “members” and a complex internal structure for the “Community” that consists of elements such as an “Organization,” a “Consensus,” a “Council” and a “System.” The Application attempts to effect organization of the alleged community where nothing of such a sort previously existed.

Each of the “delineation” subcriteria comes with issues that preclude their complete satisfaction. As such, the Application *cannot* score a full 2 points for Delineation. Even if “delineated and pre-existing” to an extent, the claimed community falls short on “organization” and on the Delineation test as a whole, “not fulfilling the requirements for a score of 2.” AGB at 4-10.

The Application should not receive two points for community “extension.”

To receive 2 points for “extension,” an application must demonstrate a “community of considerable size and longevity.” A “community of *either* considerable size *or* longevity, but not fulfilling the requirements for a score of 2,” can earn 1 point. AGB at 4-10 (emphasis added). One that meets neither gets a zero.

Regarding “longevity,” the Application states that the ECO community did not form a global “alliance” until March 2009. Applic. § 20(a) at 20. However, longevity in Guidebook terms “means that the pursuits of a community are of a lasting, non-transient nature.” AGB at 4-12. The Application identifies no particular “pursuit” of individuals and organizations that unite them *as a community*, other than a generic “environmental” or “ECO” label that describes a wide variety of interests.

The Application also uses such labels to ascribe “size” to a conglomeration of what began as more local, isolated and divergent interests. The shortcomings on each of the two “extension” criteria militate against awarding the two points otherwise possible on that test.

The Guidebook makes clear that a “community” can exist only where “the requisite awareness and recognition of the community is at hand among the members. Otherwise the application would be seen as not relating to a real community and score 0 on both ‘Delineation’ and ‘Extension.’” AGB at 4-12 (emphasis added). Even if the various interests described in the Application would recognize themselves as belonging to an “ECO” community, and the Panel deems it of sufficient size and longevity *as a community*, the inability to define its boundaries sufficiently to meet all “delineation” subtests should cause a loss at least one point, allowing it *at most* 3 out of the possible 4 points on Criterion 1. See <http://newgtlds.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-17mar14-en.pdf> at 3.

CRITERION 2: The Application does not establish a sufficient “nexus” to any “community” known as “ECO,” and certainly not “uniquely.”

Criterion 2 requires a “nexus” between the asserted community and the applied-for string. AGB at 4-12. The test consists of a “nexus” factor of up to three points, and a “uniqueness” score of either zero or one. An application must score at least 2 points for “nexus” in order to obtain a point for “uniqueness.” See AGB at 4-14.

The <.ECO> string does not *match* any particular “community.”

The Guidebook scores “nexus” 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; and
- For a score of 0: String nexus does not fulfill the requirements for a score of 2.

AGB at 4-12. These guidelines make immediately apparent that the Application cannot earn 3 nexus points.

The named “Global Environmental Community,” if it exists, does not “match” – *i.e.*, is not “commonly known by” – the term “ECO” in the same sense that, for example, the “Navajo” and “Boy Scout” communities go by those precise names. Big Room has not applied for <.GLOBALENVIRONMENTALCOMMUNITY> or <.ENVIRONMENTAL> so as to match the name, or even part of it, given to the alleged community.

Many English-speakers may well see the expression “ECO” as an abbreviation for the word “ecology” or “ecological,” which Webster’s Dictionary defines as “a branch of science dealing with relations and interactions between organisms and their environment.” See <http://www.merriam-webster.com/dictionary/ecology>. As such, the term may “identify” – *i.e.*, “closely describ[e]” – the “Global Environmental Community,” so as to entitle the Application to 2 “nexus” points, but certainly does not “match” the “name” of the “community” so as to earn all 3.¹ That shortcoming has affected others undergoing CPE. See <http://newgtlds.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-17mar14-en.pdf> at 4.

¹ Arguably, “GREEN” serves as the more common English “short form” for the modern “environmental” movement. Big Room, in fact, touts its “support” from the Green Cross (not the “Eco Cross”), Greenpeace (not “Ecopeace”), the Green Seal and Green TV. Big Room did not apply for <.GREEN>, although four others did. See <https://gtldresult.icann.org/application-result/applicationstatus/viewstatus>, search term “green.” The Applicant may have made a strategic decision to apply for <.ECO> over <.GREEN>, choosing a term that may “identify” an environmental “community,” but certainly does not *name* it.

The term “ECO” does not “uniquely” identify a “Global Environmental Community.”

An applicant can earn a “uniqueness” point if the applied-for string has no other significant meaning beyond identifying the community described in the application; a score of zero does not fulfill this requirement. AGB at 4-13. “‘Uniqueness’ relates to the meaning of the string.” <http://archive.icann.org/en/topics/new-gtlds/summary-analysis-agv3-15feb10-en.pdf> at 65. “To be an unambiguous identifier, the ‘ideal’ string would have no other associations than to the community in question” See <http://archive.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf> at 103.

With this subcriterion, ICANN placed the necessary balancing in the hands of applicants. For example, does an applicant select a popular, well-recognized term that fails to identify a community *uniquely*, such as <.SCOUTS> or <.SCOUTING> (which could refer to “Girl Scouts” or “Boy Scouts” among other things)? Or does the applicant select its own *unique* and specific organizational name, such as <.BOYSCOUTSOFAMERICA>? The latter may deserve a scoring point, while the former likely does not.

Does the expression “ECO” have “any other significant meaning beyond identifying the [Global Environmental Community]?” Of course it does. As discussed, it abbreviates the term “ecology.” While “ecology” may describe a *topic* associated with “environmental” matters, it does *not* identify any *particular group* of people or organizations. And, the Application itself recognizes other uses of the term “ECO.” Applic. § 20(d).

Big Room may well have made an excellent choice for a top-level domain utilizing the broad term “ECO.” However, opting for such wider scope comes at a cost — namely, the loss of a point for “uniqueness.”

Of the four total points available for “Nexus,” the Application should earn no more than two. The <.ECO> string does not “match” the community as named by the Applicant. Nor does it “identify” this alleged community *uniquely*.

CRITERION 3: The Application should receive no points for registration policies; it imposes only vague eligibility criteria, no name selection standards or content and use restrictions, and no specific enforcement plan.

“Registration policies” represent the conditions that the registry will set for prospective registrants — *i.e.*, those desiring to register second-level domains. A community application will receive one point for each of the four following policies:

- Eligibility restricted to community members (a largely unrestricted approach to eligibility receiving zero points);

- Name selection rules consistent with the articulated community-based purpose of the applied-for gTLD;
- Rules for content and use consistent with the articulated community-based purpose of the applied-for gTLD; and
- Specific enforcement mechanisms.

Guidebook at 4-14 to 4-15. The Panel should score the Application “from a holistic perspective, applying these categories to the particularities of the community explicitly addressed.” *Id.* at 4-16. Particularly as to “restrictions and corresponding enforcement mechanisms,” the Guidebook instructs that these measures “should show an alignment with the community-based purpose of the TLD and demonstrate continuing accountability to the community named in the application.” *Id.*

The Application’s broad eligibility requirements do not meet these specific Guidebook standards. Indeed, the inadequacies in the foregoing areas potentially knocks out three if not all four scoring points. Even giving the most favorable treatment possible to the detail provided in the Application on eligibility restrictions and their enforcement, the lack of any meaningful consideration to the name selection and content and use elements make for a score of no higher than two.

The Application’s “eligibility” standards lack precision.

The Application identifies those who may register <.ECO> domains, including “governments,” “academics/scientists” and “[n]ot-for-profit environmental organizations” and “business entities” that can provide documented evidence of “accreditation” by “voluntary environmental certifications, standards and reporting systems,” or membership or affiliation with certain specified but other not yet identified organizations. Applic. § 20(e). The Application also states that “individuals” who have provided “financial support” for “business entities” that have “other memberships approved by the Organization” may apply for a <.ECO> TLD. *Id.*

Such exceedingly loose requirements hardly amount to real “restrictions” at all, making the domain as applied for tantamount to an “open” TLD. A registrant needs simply to *represent* that it fulfills the broad and still not fully articulated registration criteria. Both the stated and not yet stated standards make “back doors” of registration available to “game” the CPE procedure in a way discouraged by ICANN.

Opening up registrations to as many potential registrants as possible makes good sense for any registry trying to maximize exposure for the TLD. However, it does not pass the test – and, as such, cannot earn a point – for “eligibility.”

The Application puts forth no “name selection” rules.

Name selection restrictions protect the identified community by ensuring that the names under a particular TLD “align” with community interests and “demonstrate continuing accountability” to it. AGB at 4-16. The Application proffers no such limits.

Big Room states it will put up a certain number of “useful” names for “competition,” and will “donate” such names to the winners for a specified term. Applic. § 20(e). It will reserve another set of “platform” names to itself, and make “auction-able” names available to the highest bidder during the sunrise period, with proceeds used to help support its organizational activities. *Id.* However, the “Organization” for which the Applicant acts will solely determine what it considers “useful,” “auction-able,” or “platform” names.

More to the point for CPE purposes, the foregoing simply describes how the Applicant will *promote* certain names – not how it will *restrict* any. The Application suggests a separate prohibition on “controversial names” in its “content and use” section, but states merely that it will “develop a method” – conceding that it does not already have one – regarding how to determine what constitutes a “controversial” name.

With no name selection standards, the Application cannot receive a point on this factor. See <http://newgtlds.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-17mar14-en.pdf> at 5 (no points awarded where “the name selection rules overall are too vague to be consistent with the broad purpose of the gTLD”).

No “content and use” restrictions appear anywhere in the Application.

The Guidebook provides a separate scoring point where a community TLD operator curtails the content and use of any second-level domain name in a manner that “show[s] an alignment with the community-based purpose of the TLD and demonstrate[s] continuing accountability to the community named in the application.” AGB at 4-16. See *also* EIU Guidelines at 13 (scoring point available where the applicant’s “[p]olicies include rules for content and use consistent with the articulated community-based purpose of the applied-for TLD”). In other words, the Application must impose content and use constraints that serve and protect the interests of the identified community in order to score a point on this element. AGB at 4-16.

Even the most cursory reading of the Application reveals that it completely ignores this aspect. Rather, it ostensibly addresses this topic merely by repeated reference to the “ECO-profile” that the registry will require as part of its *eligibility* criteria:

“Applicants must complete a *.ECO-profile* that includes a series of mandatory and voluntary questions about commitments, memberships, certification, reporting and other activities undertaken in support of Community goals.”

“Responses will form a *.ECO-profile* webpage that will be added to a public online database called the *.ECO System*. Registrant *.ECO*-profiles will be linked to the registrant’s *.ECO* domain via a *.ECO* logo trust-mark.”

“The Organization will develop a process to establish, regularly review, and update the *.ECO-profile* Registrant questions.”

“Registrants must complete all mandatory *.ECO-profile* questions.”

“Registrants can indicate if the information in their *.ECO-profile* has been independently verified, and if so, include the verifier and validity/expiry dates.”

Applic. § 20(e). These items speak to a potential registrant’s “eco-credentials” to gain access to the <.ECO> domain with a second-level name, but impose no parameters on how to use the site so acquired, or what content to place or not to place there.

Again, a TLD operator certainly may decide to allow a <.ECO> registrant complete freedom to discuss whatever it wishes on that TLD. Yet promotion of open dialogue, however laudable generally, does not earn a point for content and use restrictions. See <http://newgtlds.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-17mar14-en.pdf> at 5 (no points awarded where application does not “specify[] what the content should be restricted to”).

Big Room does not articulate any real “enforcement” plan.

While the Applicant supplies a bit more detail regarding “enforcement,” a point for this subcategory requires *specificity*. A well-drafted CPE application should lay out a “coherent set” of detailed investigation practices, penalties, and takedown procedures in the event of a violation of the registry’s policies. AGB at 4-16; *see also* EIU Guidelines at 14. Of course, as the subject Application contains very few such policies, it has little to “enforce.” Regardless, the Application still falls short of the precise detail required to earn the only available point.

While Big Room does present some overarching parameters for an enforcement plan, it still fails to approach the level of particularity needed for a point. For example, it fails to lay out fully all aspects of day-to-day enforcement, such as investigation practices, budget, staffing, resources, appeal mechanisms and other indicia of a meaningful compliance regime. *See, e.g.*, EIU Guidelines at 14.

The plan also relies on vague terminology — *e.g.*, allowing community members and third parties to make “complaints,” while never specifying what someone may complain *about* — and provides extensive leeway simply to ignore problems. By way of example, if it receives a “complaint,” Big Room states that it “may” (though not necessarily *will*) “suspend and/or take down” the domain. It also “may” refer the matter to a “dispute resolution process” if a “mutually agreeable solution” is not reached.

Signaling a general willingness to enforce restrictions does not rise to the level of specificity required for this element. “Enforcement” can mean something only where an application makes rules capable of “enforcement.” Even the most elaborate and rigorous “enforcement” measures matter little without proscribing particular conduct relating to eligibility, name selection or content and use. That context means everything, since enforcement procedures must provide “continuing accountability to the community named in the application.” AGB at 4-16; EIU Guidelines at 14. Big Room describes an enforcement plan, however vague, only as to eligibility qualifications, however loose. No controls can apply to name selection or content and use, since the Application establishes no rules to enforce in those areas. Such a lack of specificity and thoroughness negatively impacts the “enforcement” score. See <http://newgtlds.icann.org/sites/default/files/tlds/tennis/tennis-cpe-1-1723-69677-17mar14-en.pdf> at 5; <http://newgtlds.icann.org/sites/default/files/tlds/immo/immo-cpe-1-1000-62742-17mar14-en.pdf> at 6.

To summarize, this analysis finds no points awardable out of the four available for “registration policies.” The Application does not specify any name selection or content and use restrictions *at all*. Nor does it circumscribe eligibility in any meaningful way, as essentially anyone who wishes to can register a <.ECO> domain. Enforcement measures, to the extent they exist at all, can relate at most to eligibility, if the standards there even allow for enforcement in their vagueness.

A generous Panel perhaps could find a single point between the eligibility and enforcement elements, as neither suffices in itself to merit a full point. However, the Guidebook does not appear to allow this; an applicant either earns the full or some lesser *whole* number of points available on an element, or it does not. Accordingly, this analysis does not see how a Panel could award any of the four potential points for “registration policies.”

CRITERION 4: The Application does not demonstrate “documented support” from a majority of its purported “community,” or any “documented authority” to represent it.

The “support” criterion actually looks at both support and opposition in awarding up to four points to an application. For “support,” the applicant must demonstrate that:

- It is, or has documented support from, the recognized community institution(s)/member organization(s) or has otherwise documented authority to represent the community. It must have documented support from institutions/organizations representing a *majority* of the overall community in order to score 2.
- Documented support from *at least one group with relevance may allow a score of 1*, but does not suffice for a score of 2.

See AGB at 4-17 (emphases added).

The Applicant has not shown evidence of its “documented authority to represent” a majority of those “dedicated to the respectful, responsible and sustainable use of the environment.” Applic. § 20(a). The Applicant formed in 2009 specifically to apply for a <.ECO> TLD. It does not itself register or issue licenses to any environment-related entities. It does not provide (aside from potentially allowing the registration of second-level domain names) any goods or services that facilitate environment-related entities.

Nor does the Applicant show that it has support from a “majority” of the “Global Environmental Community” it claims to represent. The Application offers no means of measuring that alleged community or what constitutes a majority of it.

Further, for consideration as relevant support, documentation *must contain a description of the process and rationale used in arriving at the expression of support*, and does not receive a point based merely on the number of comments or expressions of support received. AGB at 4-18. Documentation accompanying the Application does not demonstrate this.

Many of the letters presented by the Applicant express “support” for the Application in *identical* language, calling the *bona fide* nature of the endorsements into question. The letters largely center around a single theme: the origins and validity of the alleged community. Many do not specifically endorse the Application itself. For example, the United Nations Global Compact simply supports generally “the idea of securing the .eco top level domain as a public resource.”

<https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadattachment/137410?t:ac=1753>. Another comment merely cautions ICANN against “auctioning off public goods for corporate greed.”

<https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadattachment/140832?t:ac=1753>. Yet none of the letters expresses how or why the commenters’ support developed for the Applicant. The process and rationale behind each letter of support is especially vital where the Applicant concedes it only came into existence for the specific purpose of securing the TLD.

The Application does not demonstrate the level of “documented” evidence of support necessary to garner two points under the analysis. Having offered “[d]ocumented support from at least one group with relevance” may entitle Big Room to 1 “support” point, “but does not suffice for a score of 2.” AGB 4-17.

As mentioned, nothing here diminishes the effort and preparation exhibited by the Application and supplementary materials. One would expect to find it exceedingly difficult to gain the requisite support required from such a large, unbounded “community” that Big Room attempts to create. This is why ICANN has set the CPE bar so high – to prevent the creation of artificial communities to gain an advantage in the new gTLD process.

Thus, the Application should lose at least one point on this factor. The letters offered by the Applicant do not describe how anyone came to “support” the Application, and provide little more than guarded language that hardly can be seen as an “endorsement” of the Applicant itself or its particular Application.

On the opposition side, an application will earn two points where it lacks any opposition of relevance, one where it has "relevant" opposition from "one group of non-negligible size," and none in the case of "relevant opposition from two or more groups of non-negligible size." *Id.* at 4-17. No such opposition appearing in the public comments, the Application would seem entitled to 2 points on this prong of the “support” test. With the single point to which it should be limited for affirmative support, the Application should earn no more than 3 points on Criterion 4.

CONCLUSION

Reviewing the categories considered by the CPE process, this analysis concludes as follows out of the 16 total possible points:

- Maximum of 3 points for Criterion 1, “community establishment,” as the alleged community cannot earn the 2-point maximum for “delineation,” even if awarded both available points for "extension."
- Maximum of 2 points for Criterion 2, “nexus,” since the term “ECO” does not *match* the *name* of the purported community, and does not identify it “uniquely.”
- Zero points for Criterion 3, “registration policies,” as the Application fails all four subtests. It has no “name selection” standards or “content and use restrictions” at all. While the Application ostensibly does set forth “eligibility” criteria and “enforcement” mechanisms, theoretically entitling it to a point for each, the specificity needed to earn such points does not appear.
- Maximum of 3 points for Criterion 4, “support,” as the Application does not demonstrate support from a “majority” of the alleged community, or how those who support the Application came to do so.

Based on the foregoing, the Application should earn no more than 10 of the 14 points needed to gain community priority. It thus fails CPE.

DATED: March 26, 2014

Respectfully submitted,

THE IP & TECHNOLOGY LEGAL GROUP, P.C.
dba New gTLD Disputes

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