

Internet Corporation for Assigned Names and Numbers

By E-mail newgtld@icann.org

20th November 2013

Dear Sirs

Comments on Community Priority Evaluation in respect of Tennis Australia Limited's application for .TENNIS

(Application ID 1-1723-69677)

We attach herewith our comments on the community status of the above named application, and would be grateful if this could be forwarded to the appropriate persons on the Community Priority Evaluation Panel.

Thank you for your assistance.



Peter Young

Tennis Australia Limited Application for .TENNIS:

Comment on Community Priority Evaluation

Introduction2

Criteria 1: Community Establishment – The Tennis Australia application (hereafter referred to as the "TA Application") for .TENNIS does not describe an established community—i.e., it does not meet the meet the “delineation” or “extension” criteria to achieve the required score.....3

Summary3

Criteria.....3

Analysis4

 Extension: 8

Conclusion8

Criteria 2: Nexus between Proposed String and Community – The Tennis Australia application should lose ALL nexus and uniqueness points because the broad term “TENNIS” cannot be represented by any one organization.....9

Summary9

Criteria.....9

Analysis10

 Nexus 10

 Uniqueness 11

Conclusion12

Criteria 3: Registration Policies – The Tennis Australia application should receive few, if any points for registration policies: registration eligibility is overly broad; there are effectively no restrictions on content and use; the enforcement plan lacks rigor.12

Summary12

Criteria.....12

Analysis13

 Eligibility 13

 Name Selection..... 16

 Content and Use 16

 Enforcement 17

Conclusion18

Criteria 4: Community Endorsement – The support for the TA Application does not represent the majority or the global reach of the newly formed “community” nor do the individual letters include the requisite details that describe how support was developed.19

Summary19

Criteria.....19

Analysis20

 Support & Opposition..... 20

Comment on Community Priority Evaluation

Conclusion21

Introduction

The Community Priority Evaluation (CPE) and the Applicant Guidebook set out very stringent requirements for qualification of a community-based application.” The Applicant Guidebook notes in §4.2.3, “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 meant 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 threshold¹ 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...” (See, <http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf>.)

Below we demonstrate that the Tennis Australia application for .TENNIS (also referred to as the "TA Application") does not meet the criteria to garner the 14 points necessary to “win” the CPE and disqualify the other applicants.

The application suffers from several flaws with regard to the community criteria. Tennis Australia selected a generic term that should represent tennis globally, but have demonstrated participation in their community, and support only from a small number of entities in Australia. They could have and should have chosen a unique string such as .TENNISAUSTRALIA, the industry around which they are organized. Instead, it applied for the easier to find, more globally used and generic term: .TENNIS – a good business decision but one that sacrifices community delineation, nexus and uniqueness in order qualify as a community TLD. In addition the eligibility, content and use restrictions, and most importantly their enforcement, are weak.

¹ The threshold is an appropriately high standard because the ramifications are so great in the event of a false positive (akin to “beyond all reasonable doubt” in U.S criminal law). ICANN intentionally set a high bar because “success” of a weak CPE claim would cause the “death” of all other applications for that name. A borderline "community" is not enough. An applicant claiming community must meet the extraordinarily high burden (beyond all reasonable doubt -- 14 points) because to grant such status is to eliminate competition: i.e., all the other competitors who have also met the stringent application criteria and realized significant expense in the application process.

Tennis Australia Application for .TENNIS

Comment on Community Priority Evaluation

Furthermore, it should be noted that, even within Australia the .au TLD does not allow Tennis Australia the term “tennis” at the second level. Tennis Australia had to content itself with tennis.com.au. As a corporate entity, Tennis Australia is actually disqualified from even applying for the domain tennis.au as a "community geographic domain names" (CGDNs) in Australia. It is highly ironic then, that denied this possibility of Tennis Australia being synonymous with "tennis" or even "Australian tennis" within Australia itself, they have decided to apply for the incomparably more generic and entirely global .TENNIS string instead².

Criteria 1: Community Establishment – The Tennis Australia application (hereafter referred to as the "TA Application") for .TENNIS does not describe an established community—i.e., it does not meet the meet the “delineation” or “extension” criteria to achieve the required score.

Summary

The TA Application should receive a score of zero for the delineation, organization and extension criteria.

The definition of "Australian tennis community", as both expressly stated and implied in the TA Application (as discussed below) lacks delineation, organization, specific size and boundaries.

This application merits a maximum of no more than 1 of the 4 possible points in this evaluation, as discussed below.

Criteria

- To receive one or two points for delineation, an application must invoke a “clearly delineated, organized, and pre-existing community.”

"Delineation" relates to the membership of a community, where a clear and straightforward membership definition scores highly, while an unclear, dispersed or unbound definition scores low. To determine if an invoked community exists as a delineated community, the evaluation panel should consider:

- The level of public recognition of the group as a community at a local and/or global level;
- The ***level of formal boundaries around the community and what persons or entities are considered to form the community***; §3.5.2 (discussed below).

² <http://en.wikipedia.org/wiki/.au>

Tennis Australia Application for .TENNIS

Comment on Community Priority Evaluation

With respect to “delineation,” if an application satisfactorily demonstrates all three relevant parameters (delineation, pre-existing and organized), then it scores a 2.

"Organized" implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities.

- To receive one or two points for “extension” an application must demonstrate a “community of considerable size and longevity.” “Extension” relates to the dimensions of the community, regarding its number of members, geographical reach, and foreseeable activity lifetime, as further explained in the following. With respect to “extension,” if an application satisfactorily demonstrates both community size and longevity, it scores a 2.

Analysis

The “community” identified by Tennis Australia varies substantially in the course of the application.

At first glance, a clear membership structure would seem to delineate the community from Internet users in general. On the one hand, in the express definition provided in response to Question 20(a), THE .TENNIS COMMUNITY, the "community" is precisely defined as "the eight Australian state-and territory-based Member Associations of Tennis Australia":

"Through the .TENNIS TLD, Tennis Australia commits to serve the Australian tennis community, which is comprised of the eight Australian state-and territory-based Member Associations of Tennis Australia: Tennis Victoria, Tennis New South Wales, Tennis Queensland, Tennis South Australia, Tennis Western Australia, Tennis Tasmania, Tennis Australian Capital Territory and Tennis Northern Territory. These Member Associations are represented by and shareholders of Tennis Australia. They are the representative body of all affiliated clubs, centres, associations, regions and their members in their respective State or Territory. As the central administrative body of tennis within a State or Territory, Member Associations are responsible for implementing Tennis Australia's objectives and initiatives in order to manage, co-ordinate, promote, and unify the diverse facets of the sport of tennis within Australia."

On the other hand, in response to Question 20(a), CURRENT ESTIMATED SIZE OF THE COMMUNITY, Tennis Australia's "Australian tennis community" is additionally and impliedly composed of 1.8 million tennis participants and players who need not be members in any Member Association, or even an Affiliate:

*"Through these State- and Territory-based Member Associations, Tennis Australia maintains a direct link with the 2,176 affiliated tennis clubs, 3,198 member coaches, **and 1.8 million tennis participants and players throughout Australia.**"*

Tennis Australia Application for .TENNIS

Comment on Community Priority Evaluation

It is also entirely unclear from whence the statistics attesting to the 1.8 million participants are derived, but there is clearly an attempt to imply that these persons form part of the community.

The confusion relating to which community Tennis Australia has actually delineated in the application extends to the 'delineated' registrants for the .TENNIS string.

In response to 18(a) (MISSION AND PURPOSE), the TA Application expressly states: "Only individuals and entities **belonging to the Tennis Australia community** will be eligible to register", i.e., according to the express definition, comprises the eight Member Associations of Tennis Australia.

On the other hand, the persons identified on a "definitive" list by Tennis Australia as being eligible to register websites is expressly stated to be wide enough to include third party "corporate partners", "organisers" and "deliverers":

	Permitted registrant	Tennis Australia Member Association?	Commentary
1	Tennis Australia internal departments	Yes	
2	Tennis Australia Member Associations	Yes	
3	Tennis Australia Member Association-Affiliated Clubs	No	Strictly speaking, no. It is only if we widen the strictly delineated definition of community from Member Association, to include "the representative body of all affiliated clubs, centres, associations, regions and their members in their respective State or Territory" of the Member Associations, that Tennis Australia would be permitted to register Affiliates.
4	Tennis Australia Corporate Partners	No	Clearly not a Member Association, this group is completely undelineated, it is impossible to delineate the set of potential "corporate partners" of Tennis Australia, current and future.
5	Tennis Australia Coach	No	Strictly speaking, no. It is only if we widen the strictly delineated definition of

Tennis Australia Application for .TENNIS

Comment on Community Priority Evaluation

	Members		community from Member Association, to include "the representative body of all affiliated clubs, centres, associations, regions and their members in their respective State or Territory" of the Member Associations that Tennis Australia would, by its own criteria, be allowed to register coaches.
6	Tennis Australia-Endorsed or Sanctioned Tournament Organisers	No	A tournament organizer can clearly include non-Member Associations, e.g. corporates, and again this group is completely undelineated, making it is impossible to quantify the set of potential "tournament organisers" for Tennis Australia.
7	Tennis Australia Member Association Affiliates	No	Strictly speaking, no. It is only if we widen the strictly delineated definition of community from Member Association, to include "the representative body of all affiliated clubs, centres, associations, regions and their members in their respective State or Territory" of the Member Associations, that Tennis Australia would be permitted to register Affiliates.
8	Tennis Australia and Member Association Competition Organisers	No	Clearly can include non-Member Associations and again this group is completely undelineated, it is impossible to delineate the set of potential "competition organisers" for Tennis Australia - as this can be outsourced to third parties, including corporates.
9	Hot Shots Deliverers	No	Clearly can include (whether now or in future) non-Member Associations and again this group is completely undelineated, it is impossible to delineate the set of potential "Hot Shots delivers" for Tennis Australia - as this can be outsourced to third parties,

Tennis Australia Application for .TENNIS

Comment on Community Priority Evaluation

			including corporates.
10	Cardio Tennis Deliverers	No	Clearly can include (whether now or in future) non-Member Associations and again this group is completely undelineated, it is impossible to delineate the set of potential "Cardio Tennis deliverers" for Tennis Australia- as this can be outsourced to third parties, including corporates.

As the analysis in the table above shows, eight out of the ten "subgroups" which would be permitted to register domain names are outside the Member Associations, and a potentially large, unquantifiable section of these, as expressed in the TA Application, could be third parties who do not belong to the Member Associations of Tennis Australia even as affiliates. Therefore, the claimed "Australian tennis community" in the TA Application MUST be wider than the express definition of Member Associations.

This leads us inexorably to the following conclusions on the criteria of 'delineation, pre-existing and organization' in respect to the claimed "community" in the TA Application:

- the community cannot be clearly delineated as it includes unknown "corporate partners" and "deliverers" as well as 1.8 million "tennis participants" or players;
- as the 1.8 million "participants" and "players" and the "corporate partners" and "deliverers" are not a distinctly identifiable group and there is no indication as to the potential size or purpose of the group, there are no clear boundaries;
- as the vast majority "participants" and "players" and the "corporate partners" "deliverers" are not currently members of the Member Associations, clearly the "community" cannot be pre-existing as the community is wider than Tennis Australia.
- certainly, while the Member Associations of Tennis Australia might have an organized structure, that structure clearly cannot organize or represent the wider community of parties which they have expressly (as subgroups) and impliedly included, and therefore there is no single provider of organized input into this group;
- in any case, the longevity of the commitment of any tennis "participant", "deliverer" or "corporate partner" within the "Australian tennis community" who is granted (on payment of a fee) the right to register a website is entirely impossible to determine;
- the goals and interests of corporate sponsors or partners or third party deliverers, would be entirely unique to any particular entity and will almost certainly have only a tangential overlap with the goals of Tennis Australia to be "the leading tennis nation on the planet".

Accordingly, for the mentioned set of criteria, the TA Application should be awarded no points.

Tennis Australia Application for .TENNIS

Comment on Community Priority Evaluation

Extension:

In Question 20(a), the applicant is asked to provide the following description in their response

- When was the community 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.

Tennis Australia stated in its application, as described above, that “through its eight Member Associations, Tennis Australia provides benefits to 2,176 affiliated tennis clubs and their over 180,000 tennis player members throughout Australia” and that it has a “direct link” to over 1.8million “participants” and “players”.

Clearly the TA Application is geographically limited, but in the context of a globally recognized sport, this makes Tennis Australia only a very minor part of a global community. In 2007, the British Medical Journal claimed that over 75 million people participate in tennis worldwide, and many more follow tennis events.³

Even if Tennis Australia did represent all 1.8 million of the participants in tennis in Australia, which it does not, that would still only represent 2.4% of tennis participants worldwide. The vast majority of participants would not even be aware of Tennis Australia.

Again, for this criteria, this application should not be awarded points.

Conclusion

Tennis Australia’s community was drawn from a very narrow group of participants for the convenience of this application: to take advantage of this CPE preference, in order to falsely gain an advantage in this process and unfairly disqualify others.

³ <http://bjsm.bmj.com/content/41/11/703.full>

Tennis Australia Application for .TENNIS

Comment on Community Priority Evaluation

Criteria 2: Nexus between Proposed String and Community – The Tennis Australia application should lose ALL nexus and uniqueness points because the broad term “TENNIS” cannot be represented by any one organization.

Summary

- The “community” identified by Tennis Australia in its application for .TENNIS is a community comprised of persons and entities who participate in different types of activities that may only indirectly (through sponsorship or mere interest) support the Australian tennis community.
- The applied-for string, “TENNIS,” is not the exact name of community or organization and therefore does not merit a score of three for nexus. Indeed, the term “tennis” does not merit a score of two, because it does not identify the alleged community in Australia at all.
- The “TENNIS” label is used in many ways by globally diverse groups and so cannot be attached uniquely to an identifiable community because no such community organization exists.
- If a geographically linked applicant chooses the better recognized term such as “TENNIS” over a more specific term (e.g. "TENNISAUSTRALIA") for commercial reasons, the applicant clearly sacrifices the points associated with the nexus between its organization and the applied-for name.

Criteria

The applied-for name (in this case .TENNIS) is evaluated for nexus and uniqueness.

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

(Guidebook §4.2.3)

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. 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 Tennis Australia application seems to fall squarely in this example. On a global scale, most tennis players or organisations would not form part of an Australian tennis community.

Tennis Australia Application for .TENNIS

Comment on Community Priority Evaluation

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 fulfil the requirement for a score of 1. If the applicant scores 0 for nexus, it automatically scores 0 for uniqueness.

(Guidebook §4.2.3)

Analysis

Nexus

Question 20 asks the applicant to explain the relationship between the applied-for gTLD string and the community identified in the application. The Applicant answers that *“The .TENNIS string matches the long-established name and brand of Tennis Australia, which is the applicant for the .TENNIS TLD and the representative national body of the Australian tennis community. The term ‘tennis’ has always been at the core of Tennis Australia’s corporate and legal identity. The Lawn Tennis Association of Australia, which trades as Tennis Australia, was established by the Member Associations of Australia and New Zealand 1904..... Approximately five years ago, Tennis Australia changed its brand to ‘Tennis’ (rather than Tennis Australia) and encouraged members of the Australian tennis community to do likewise in order to promote the game, rather than individual entities. The registered trademark for ‘TENNIS’ with 4 curved stripes intersecting to form the letter ‘A’ (Reg. 1210314) dates 9 November 2007. The name ‘Tennis’ provides a singular focal point and purpose to be clearly communicated by Tennis Australia to Australia and the world.”* (Q 20d.)

Clearly Tennis Australia is trying to argue that it is so closely associated with the word “tennis” that they are one and the same thing. There seems to be no support for this proposition, and a quick look at their website reveals that the “A” is integral to the overall visual design. It stretches credibility that the organisation itself is ever orally referred to as just “tennis”, since that would lead to total confusion in most normal sentences involving them.

In order to achieve a score of three, there should be a “match” between the community and the label. In this case, the applicant, seeking a score of three, might have narrowed its community definition and selected a name such as, Such as .TENNISAUSTRALIA. This is an identical situation to the Guidebook example regarding .TENNIS (see above), the applicant severely overreaches and merits zero points.

One can understand why the applicant selected a broader term: it is commercially advantageous to select the more recognizable term. In order to gain this advantage however, the applicant foregoes the right to claim strong nexus between the community and the label.

As a result, the name “TENNIS” does not qualify for a score of 3, nor does it meet the criteria for a score of 2.

Tennis Australia Application for .TENNIS

Comment on Community Priority Evaluation

In order to qualify for a 3, the applied-for name must be the name of the community. The Guidebook held out the score of 3 to those special cases only where a group decided to apply for exactly its name.

In order to qualify for a 2, the applied-for string should closely describe the community or the community members, "without over-reaching substantially beyond the community." The Guidebook criteria cites the example of the globally known but local tennis club applying for the globally oriented word "tennis." In that case, the local tennis club does not qualify for two points.

Uniqueness

The word "tennis" is clearly a generic word. Since this is the case, it would not seem to fulfill ICANN's guidance provided at <http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf>, p.103. (copied below)

"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)."

This puts the necessary balancing in the hands of the applicants. Does an applicant select a popular, well-recognized term that is not unique to a community such as .SCOUTS? Or do they select their own unique community name, such as .BOYSCOUTSOFAMERICA? (Cf., .tennis and .tennisaustralia.) This rationale makes sense as surely the scouts have a legitimate interest in protecting their exact name but should not be allowed to extend those rights into other, general areas.

"Uniqueness' relates to the meaning of the string." (see, <http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv3-15feb10-en.pdf>, p65) Therefore, the analysis must focus on the meaning (more accurately, meanings) of the word "TENNIS." Is it the unique name of the community created by the applicant? It is clear that the term "tennis" is not limited to Australian tennis.

In addition to the instant analysis, the Guidebook includes the following instruction:

" The phrasing "...beyond identifying the community" in the score of 1 for "uniqueness" implies a requirement that the string does identify the community, i.e. scores 2 or 3 for "Nexus," in order to be eligible for a score of 1 for "Uniqueness."

See AGB at 4-14 (emphasis added). Due to Tennis Australia's lack of showing in the nexus requirement, earning zero points, it cannot score a point for uniqueness.

Tennis Australia Application for .TENNIS

Comment on Community Priority Evaluation

The ubiquity betrays applicants claim to a label uniquely matched to its community. "TENNIS" cannot be restricted to organisations and persons within Australia. The applicant had to make the choice between a well-known, broadly used identifier *and* a string very unique to a segment of a broad industry. The applicant chose the former. In making the decision to apply for the mainstream, general name, the applicant sacrificed the ability to achieve points in nexus and uniqueness necessary to carry the day as a community applicant.

Conclusion

This application should not be awarded points in this area as they have chosen a name that is not the exact name of the broad organization they have created; they have chosen a name that vastly over-reaches their community, and which is specifically identified in the Applicant Guidebook as being precisely the sort of application that is not entitled to points. In addition, "TENNIS" is not the sort of unique name (such as .boyscoutsofamerica) that merits an extra point for uniqueness.

Criteria 3: Registration Policies – The Tennis Australia application should receive few, if any points for registration policies: registration eligibility is overly broad; there are effectively no restrictions on content and use; the enforcement plan lacks rigor.

Summary

- The applicant's eligibility requirements in fact open the string to potential registration globally on payment of an appropriate "corporate partner" fee, which fall far short of the requirements for limiting the application to a clearly delineated community.
- There are essentially no clear content and use restrictions in the application, and the enforcement plan is vague.

Criteria

The Applicant Guidebook provides as follows:

- "Registration policies" are the conditions that the future registry will set for prospective registrants, i.e. those desiring to register second-level domain names under the registry.
- Eligibility: Eligibility restricted to community members receives one point.
Largely unrestricted approach to eligibility receives zero points.
- Name selections: One point if policies include name selection rules consistent with the articulated community based purpose of the applied for gTLD.
- Content and use: One point if policies include rules for content and use consistent with the articulated community based purpose of the applied for gTLD.
- Enforcement: One point if policies include specific enforcement measures (e.g. investigation

Tennis Australia Application for .TENNIS

Comment on Community Priority Evaluation

practices, penalties, takedown procedures) constituting a coherent set with appropriate appeal mechanisms.

With respect to “Name Selection,” “Content and Use,” and “Enforcement,” scoring of applications against these subcriteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed. For example, an application proposing a TLD for a language community may feature strict rules imposing this language for name selection as well as for content and use, scoring 1 on both B and C above. It could nevertheless include forbearance in the enforcement measures for tutorial sites assisting those wishing to learn the language and still score 1 on D. More restrictions do not automatically result in a higher score. The restrictions and corresponding enforcement mechanisms proposed by the applicant should show an alignment with the community-based purpose of the TLD and demonstrate continuing accountability to the community named in the application.

(Guidebook §4.2.3)

Analysis

Eligibility

With respect to “Eligibility,” “the limitation to community ‘members’ can invoke a formal membership but can also be satisfied in other ways, depending on the structure and orientation of the community at hand. For example, for a geographic location community TLD, a limitation to members of the community can be achieved by requiring that the registrant’s physical address is within the boundaries of the location.” §4.2.3

However, a strict policy is required to score an eligibility point. In a policy advisory, ICANN noted, “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...” (See, <http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf>, p.103.)

In the CPE, the applicant is forced to choose between narrowly described eligibility criteria and qualify as a community TLD within the meaning of the Guidebook, or provide a more open, commercially oriented TLD. Tennis Australia has attempted to do both.

In response to 18(1), the TA Application expressly states: “Only individuals and entities belonging to the Tennis Australia community will be eligible to register”, i.e., according to the express definition, as discussed in the analysis for Criteria 1, the eight Member Associations of Tennis Australia.

Tennis Australia Application for .TENNIS

Comment on Community Priority Evaluation

However, the majority of persons (8 out of 10) identified on a "definitive" list by Tennis Australia as being eligible to register websites would not actually be the Member Associations of Tennis Australia:

	Permitted registrant	Tennis Australia Member Association?	Commentary
1	Tennis Australia internal departments	Yes	
2	Tennis Australia Member Associations	Yes	
3	Tennis Australia Member Association-Affiliated Clubs	No	Strictly speaking, no. It is only if we widen the strictly delineated definition of community from Member Association, to include "the representative body of all affiliated clubs, centres, associations, regions and their members in their respective State or Territory" of the Member Associations, that Tennis Australia would be permitted to register Affiliates.
4	Tennis Australia Corporate Partners	No	Clearly not a Member Association, this group is completely undelineated, it is impossible to delineate the set of potential "corporate partners" of Tennis Australia, current and future.
5	Tennis Australia Coach Members	No	Strictly speaking, no. It is only if we widen the strictly delineated definition of community from Member Association, to include "the representative body of all affiliated clubs, centres, associations, regions and their members in their respective State or Territory" of the Member Associations that Tennis Australia would, by its own criteria, be allowed to register coaches.

Tennis Australia Application for .TENNIS

Comment on Community Priority Evaluation

6	Tennis Australia-Endorsed or Sanctioned Tournament Organisers	No	A tournament organizer can clearly can include non-Member Associations, e.g. corporates, and again this group is completely undelineated, making it is impossible to quantify the set of potential "tournament organisers" for Tennis Australia.
7	Tennis Australia Member Association Affiliates	No	Strictly speaking, no. It is only if we widen the strictly delineated definition of community from Member Association, to include "the representative body of all affiliated clubs, centres, associations, regions and their members in their respective State or Territory" of the Member Associations, that Tennis Australia would be permitted to register Affiliates.
8	Tennis Australia and Member Association Competition Organisers	No	Clearly can include non-Member Associations and again this group is completely undelineated, it is impossible to delineate the set of potential "competition organisers" for Tennis Australia - as this can be outsourced to third parties, including corporates.
9	Hot Shots Deliverers	No	Clearly can include (whether now or in future) non-Member Associations and again this group is completely undelineated, it is impossible to delineate the set of potential "Hot Shots delivers" for Tennis Australia - as this can be outsourced to third parties, including corporates.
10	Cardio Tennis Deliverers	No	Clearly can include (whether now or in future) non-Member Associations and again this group is completely undelineated, it is impossible to delineate the set of potential "Cardio Tennis deliverers" for Tennis Australia- as this can be outsourced to third parties, including corporates.

Tennis Australia Application for .TENNIS

Comment on Community Priority Evaluation

As demonstrated above, the largely unrestricted approach to eligibility should receive zero points.

Name Selection

This provides one point if policies include name selection rules consistent with the articulated community based purpose of the applied for gTLD.

To the best of our understanding, this is the only policy/rule relating to limiters for content and use in the TA Application:

"The registration name must be an exact match of the member or represent activities of that member."

The only rule pertaining to the registration name must be an exact match of the member or represent activities of that member. As pointed out, in the case of "corporate partners", or third party "organisers" or "deliverers", the name and activities of each of these corporates, organisers or deliverers will be entirely independent from anything to do with Tennis Australia, so to that extent, the Tennis Australia name selection policy offers no protection whatsoever, as expressed, with Tennis Australia's articulated goals of serving and promoting the "Australian tennis community".

Clearly no points should be awarded under this heading.

Content and Use

This provides one point if policies include rules for content and use consistent with the articulated community based purpose of the applied for gTLD.

In response to Question 20e, the TA Application simply states:

"Given the inherent connection between the mission/purpose of the TLD and the community it is intended to serve, the registration policy will state that .TENNIS domain names must not be used in a manner inconsistent with the mission/purpose of the TLD."

No guidance is provided as to how any of the domain names will be limited, which Tennis Australia is required here to do in order to score points under this heading.

The registrant is meant to self-certify that that the requested second level .TENNIS domain name "will not be used in a manner which is inconsistent with the mission of making Australia the greatest tennis nation on the planet"

Given the undefineable, unquantifiable, geographically unrestricted potential number of "corporate sponsors", the self-certification strategy is simply a non-starter. For example, if a hotdog manufacturer becomes a Tennis Australia "corporate partner" and provides hot-dogs at

Tennis Australia Application for .TENNIS

Comment on Community Priority Evaluation

a Tennis Australia event, does that make the goals of the hot-dog manufacturer consistent with those of Tennis Australia?

The mission and goal of the hot-dog manufacturer are to sell hotdogs. Is that consistent or inconsistent with making Australia the planet's leading tennis nation? Or if a global brand of energy drink based, say, in the U.S. or Austria or Fiji, wishes to register a .TENNIS string for any reason, what would stop it being a financial sponsor of Tennis Australia without another involvement in the "Australian tennis community" other than monetary or other contributions? In addition, there is no geographical limiter as to the location or activities of the "corporate sponsor". Or for example, if a well-known tennis racquet company based in Germany which is well-known sponsor of German tennis becomes a "corporate sponsor" of Tennis Australia in order to qualify for a .TENNIS string. Would the mission and goals of this German tennis-supporting "corporate sponsor" be inconsistent with those of Tennis Australia? The list of permutations is endless.

For this reason, the TA Application should be awarded a score of zero under the heading policies which "include rules for content and use consistent with the articulated community based purpose of the applied for gTLD."

Enforcement

This provides one point if policies include specific enforcement measures (e.g. investigation practices, penalties, takedown procedures) constituting a coherent set with appropriate appeal mechanisms.

The TA Application provides that:

Registrants in the .TENNIS TLD will be required to warrant upon registration as follows:

- 1. The registrant satisfies one of the categories of eligibility of the .TENNIS TLD.*
- 2. The domain name is consistent with the naming restrictions imposed in the relevant category of eligibility.*
- 3. The registrant's use of the domain name will not be in a manner inconsistent with the mission/purpose of the TLD, which is to provide a dedicated, distinctive namespace that enhances the Australian tennis community's online presence and supports interactivity, engagement, the availability of authoritative information and promotion of the activities of the Australian tennis community.*
- 4. The registrant will not use the .TENNIS TLD to make available content that is inconsistent with the mission/purpose of the TLD.*

Further, the registration policy will stipulate that the following will fall within the scope of the Anti-Abuse Policy:

Tennis Australia Application for .TENNIS

Comment on Community Priority Evaluation

- *Registration of a domain name by a registrant not satisfying any eligibility category*
- *Registration of a domain name that is not consistent with the naming restrictions imposed in the relevant category of eligibility*
- *Registration of a .TENNIS domain name through a Registrar that is not ICANN-accredited*
- *Use of a domain name in a manner inconsistent with the mission/purpose of the TLD*

The TA Application also states: "*In addition to restrictions on which domain names may be registered and who may register them, restrictions will also be imposed on how domain names may be used. The content must be consistent with the mission and purpose of the TLD and regular audits will be conducted internally to ensure this practice.*"

However, the only method of enforcing all the foregoing requirements appears to be retrospective. There is no method of assessing the applications in advance as all Tennis Australia will rely on is self-certification. It remains for a third party with a concern to actually challenge the validity of the registration by lodging a complaint with the .TENNIS TLD Registry Policy Team of Tennis Australia.

And even if a complaint is lodged, one cannot see that any "TLD Registry Policy Team" of Tennis Australia which is constituted will successfully be able to resolve questions on whether the "activities" of the "corporate sponsor" of hot-dog manufacturer as described on the website "hotdog-seller.TENNIS" are in conflict with the mission and goals of either Tennis Australia to promote Australian tennis to the exclusion of all other tennis nations. The same uncertainty would reign in respect of any of the other example cases set out in the section on Name Selections, above. In addition, how the Tennis Association would actually implement an audit is also highly questionable and, with respect, entirely unachievable in the cases mentioned.

For the foregoing reasons, no points should be awarded in this Section.

Conclusion

We do not believe that the TA Application should be awarded any points under criterion 3, because it appears that insufficient rigor has been included in the registration process to say that the TLD will be purely run in the interests of the alleged community.

Tennis Australia Application for .TENNIS

Comment on Community Priority Evaluation

Criteria 4: Community Endorsement – The support for the TA Application does not represent the majority or the global reach of the newly formed “community” nor do the individual letters include the requisite details that describe how support was developed.

Summary

- Tennis Australia has received letters of support from its 8 Member Associations.
- However, it claims in response to 18(b)iv that "Only full members of the Tennis Australia community, from established Tennis Australia membership sub-groups (see below), will be able to register"; but has failed to produce a single letter of support from any "established Tennis Australia membership subgroups", which should include affiliates, clubs, coaches, third party corporate partners, event organisers and deliverers.
- Nor has Tennis Australia demonstrated any show of support from the undefined "1.8 million participants" and "players" which it impliedly claims are part of the wider Australian tennis community with whom it has a "direct link".

In short, it has (with very little effort) produced 8 letters of a community constituting 8 Member Associations, but no letters from the potentially very wide community of "sub groups", "or the "directly linked" 1.8 million "players" and "participants".

Criteria

Support:

- To win two points: Applicant is, or has documented support from, the recognized community institution(s)/member organization(s) or has otherwise documented authority to represent the community. 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. To win one point: Documented support from at least one group with relevance, but insufficient support for a score of 2. 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.(Guidebook §4.2.3).
- As discussed above, Tennis Australia has not demonstrated support from its claimed community and should be awarded a maximum of 1 point under this heading.

Tennis Australia Application for .TENNIS

Comment on Community Priority Evaluation

Analysis

Support & Opposition

As regards Support, clearly the TA Application has limited its letters of support to the community as initially claimed, but not included the wider community it later claims to be the community it represents. As a minimum, one would expect each of the supporting organisations to demonstrate that they have the authority to provide such support on behalf of all or majority of their members: this has not been done. Further, as expressed in the Guidebook, 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 letters attached to the TA Application do not do this. "Relevance" and "relevant" refer to the communities explicitly and implicitly addressed. (Guidebook 4.2.3).

None of the letters of support include any meaningful description for arriving at that conclusion (as is required for even a score of one point). The letters of support published by Tennis Australia seem to match each other in content (*i.e.*, cookie-cutter content).

Clearly, as regards opposition, if an applicant has over-reached in the definition of their community, it is likely that potential community members or organizations that are claimed in the scope of the application are unaware of the applicants' claim to authoritatively represent all members of the applied for community. In such cases of over-reach the applicant cannot score 2 points in Opposition due to an inability of the panel to fairly judge Opposition due to the over-reach of the applicant.

Whilst not strictly opposition to the TA Application as such, it is worth noting that not all prominent persons within Australian tennis industry are supportive of, or consider themselves part of, Tennis Australia:

Lawyer Weekly reported on 25 January 2012, <http://www.lawyersweekly.com.au/news/broken-tennis-strings-getting-fixed> ":

"Healy spoke to Lawyers Weekly from Melbourne where he is attending the event. He said that after becoming president and chairman of the board of Tennis Australia (Tennis Australia) in October 2010, he has tried to "bring inside" former Australian tennis champions such as Pat Rafter – now captain of the Australian Davis Cup team – who had previously criticised the methods of player development being used by Tennis Australia before Healy started his tenure.

"The first thing I tried to do was communicate and talk to people, listen to their grievances and bring people inside," said Healy when asked how he has tried to respond to previous criticism of Tennis Australia from prominent members of the "Australian

Tennis Australia Application for .TENNIS

Comment on Community Priority Evaluation

tennis community" such as Rafter Lleyton Hewitt, Pat Cash and Jason Stoltenberg. To that end, we have either tried to adjust things or explain to them the facts of what we were doing and the path we were on."

In other words, shortly before the TA Application was filed, there was substantial opposition to Tennis Australia (in general terms) at the highest level from some of the most prominent members of the "Australian tennis community" identified by Lawyer Weekly, which Healy acknowledges to exist. ". The criticism of the "former tennis champions", is highly relevant since it is clear that at least in January 2012, Tennis Australia was far from being the "the name that all share to identify themselves within the community and beyond.", as stated in their application (at 20(d)).

Conclusion

It is clear that the evidence of support offered by Tennis Australia is extremely limited. In addition, since the community has been substantially overreached, it is impossible for the panel to ascertain the true level of opposition to the TA Application. For this reason, the TA Application should lose points on both support and opposition.