

New TLD applicants flummoxed by objection results

BY ANDREW ALLEMANN - NOV 05, 2013  POLICY & LAW  1 COMMENT

Applicants ask ICANN to intervene in objection process.

A dozen applicants for new top level domain names have sent a letter ([pdf](#)) to ICANN urging the group to step in and fix what they believe are flawed new top level domain objection results.

The applicants are questioning the rhyme or reason to objection decisions, including a recent [bewildering decision](#) in a community objection against a .sport application.

While legal rights objections certainly frustrated some objectors and applicants, string confusion and community objections have been plagued by seemingly contradictory decisions. Winning (or losing) a string confusion case had more to do with who the panelist was than the merits of the case, and the same pattern seems to be emerging in community objections.

This lack of certainty and consistency isn't good for either applicants or objectors. Yet ICANN may decide it's easier to just sit back and watch it unfold.

<http://domainnamewire.com/2013/11/05/new-tld-applicants-flummoxed-by-objection-results/>

BreatheAccord wins community objection against .Breathe top level domain name

BY ANDREW ALLEMANN - OCT 29, 2013  POLICY & LAW  2 COMMENTS

The following is a satirical response to [news](#) that SportAccord won a community objection against the .sport top level domain name.

An International Chamber of Commerce panelist has upheld a community objection brought by BreatheAccord against dotBreathe LLC's top level domain name application for .breathe.

The decision by panelist Aru Kiddinme means that BreatheAccord, the only other applicant for .breathe, will now have a clear path to delegation for the domain name.

Panelist Kiddinme first determined that the breathe community is clearly delineated.

"It is clear to me that the community is easily defined," he wrote. "The formal boundaries of the community are defined by only those human beings who have ever breathed a breath on the planet Earth."

BreatheAccord argued that, through the various associations that are in its membership, it represents the approximately 7 billion living creatures who have ever breathed.

Kiddinme agreed that "although the objector might not represent all people who have ever breathed, it acts for a preponderant part of such community of human beings."

"In fact, it would be almost impossible for an institution to represent any community as a whole," Kiddinme wrote. "If such was the requirement, there would be no reason to provide for the possibility of community objections."

BreatheAccord had collected 12,982 e-signatures on Change.org from people in the breathing community who were opposed to dotBreathe, LLC getting the .breathe domain name.

dotBreathe, LLC argued that the "expressions of opposition from the Objector are small compared to the large composition of the alleged community of breathers of seven billion people".

<http://domainnamewire.com/2013/10/29/breatheaccord-wins-community-objection-against-breathe-top-level-domain-name/>

Famous Four vows to fight .sport objection loss

Kevin Murphy, October 31, 2013, 19:37:06 (UTC), [Domain Registries](#)

Famous Four Media has promised to pursue “all available legal avenues” after losing a Community Objection over the .sport gTLD to its Olympic-backed rival.

The portfolio applicant lost out to SportAccord in an October 23 decision by International Chamber of Commerce panelist Guido Santiago Tawil, meaning its .sport application should be rejected by ICANN.

But Famous Four says it's not over yet. In a statement today, the company said:

Famous Four Media shall pursue rigorously all available legal avenues available to it to have the decision independently reviewed by ICANN and/or others as the case may be, and reversed.

The logical first step of such a threat would be a Reconsideration Request, a relatively cheap way to challenge an ICANN decision with a virtually zero chance of succeeding.

That could be followed by a demand for an Independent Review Panel procedure, which would take much longer and cost significantly more. When ICM Registry won an IRP, the bill ran to millions.

Or Famous Four could try its luck in the courtroom, which could be flustered by the fact that all new gTLD applicants had to sign fairly one-sided legal waivers when they applied.

So what's the company so worked up about?

It's lost the chance to run .sport, because the ICC panelist ruled that SportAccord, which is backed by the International Olympic Committee and dozens of official sporting associations, represents the “sport” community and would be harmed if Famous Four were to run the TLD.

Famous Four had argued in its defense that SportAccord can only purport to represent a “subset” of this community — its sporting organization members — rather than everyone who has an interest in sport.

Rather amusingly, in its statement today, FFM linked to the [IOC's own marketing](#), which bears the slogan “Sport Belongs to All”, to prove its point:

it is Famous Four Media's unshakable belief that this statement is true and just and that is why Famous Four Media applied for an open TLD – a top level domain that is open to everyone and offered to everyone on a level and equitable basis. Trying to claim ownership and representation of sport is akin to claiming representation for the human race.

An alternative reading would be to state that the IOC's marketing slogan is, like all marketing slogans, bullshit.

But it actually cuts to the heart of the case itself, which Guido Santiago Tawil found in favor of SportAccord, writing:

The ICANN Guidebook does not require that an “entire” community agree on an objection to an application. In fact, it would be almost impossible for an institution to represent any community as a whole. If such was the requirement, there would be no reason to provide for the possibility of community objections.

It is difficult to imagine which other association may claim representation of the Sport Community besides an institution that represents, as Objector does, more than a hundred well-known sports federations and institutions related to sports.

Another key, and related, factor Community Objection panelists have to consider is whether a community is “clearly delineated”.

It's here where the arguments that an applicant can use to win a Legal Rights Objection seem to fail under Community Objection scrutiny.

Famous Four said that “sport” is not clearly delineated along the lines defined by SportAccord — ie, members of its federations — because it doesn't allow, say, hobbyists or the media to get involved.

Similar arguments were made in LROs.

Applicants regularly defended themselves against LROs — where the objector owns a trademark rather than purporting to represent a community — by pointing out all the non-infringing uses of the string.

That defense apparently doesn't work in Community Objections, with the .sport ICC panelist ruling:

<http://domainincite.com/14918-famous-four-vows-to-fight-sport-objection-loss>