Reconsideration Request Form

Version of 11 April 2013

1. Requester Information

Name: Dot Registry, LLC

Address: Contact Information Redacted

Email: Contact Information Redacted

Phone Number (optional):

Name: National Association of Secretaries of State

Address: Contact Information Redacted

Email: Contact Information Redacted

Phone Number (optional):

2. Request for Reconsideration of (Check one only):

___ Board action/inaction

X Staff action/inaction

3. Description of specific action you are seeking to have reconsidered.

Dot Registry, LLC ("Dot Registry") is seeking reconsideration of the Economic Intelligence Unit ("EIU") Community Priority Evaluation panel's (the "Panel") determination that Dot Registry's application, no. 1-880-35979 for .INC (the ".INC Community Application") did not meet the requirements for Community Priority specified in the Applicant Guidebook ("AGB") (the "Panel Determination") and subsequent placement of the Application into active contention by the New gTLD Programming Committee ("NGPC").

4. Date of action/inaction:

The Community Priority Evaluation Report (the "Report") lists the date of the Panel Determination as June 11, 2014. Dot Registry believes that as a result of the Panel Determination, the Application was placed into active contention by the NGPC shortly thereafter.

5. On what date did you became aware of the action or that action would not be taken?

Dot Registry became aware of the Determination on June 11, 2014 when Dot Registry received an email indicating the Community Priority Evaluation ("CPE") status for the .INC Community Application had been updated and to view its CSC portal for more information.

6. Describe how you believe you are materially affected by the action or inaction:

The Panel Determination, based on its violation and misapplication of the policies and processes set out in the AGB, CPE Guidelines and ICANN Bylaws, and the subsequent placement of the .INC Community Application into active contention by the NGPC, will materially affect Dot Registry because Dot Registry will now have to resolve contention of the Application with seven other applicants. This will cause significant material harm to Dot Registry. As a result of the Panel Determination, which is inconsistent with both AGB and ICANN policy, Dot Registry will incur significant additional expenses to participate in the contention auction and ultimately may and not be able to operate the .INC TLD.

7. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.

The improper denial of Community Priority status to the .INC Community Application will likely result in delegation of the .INC TLD to one of the non-community applicants, which as US government officials and Secretaries of State have stated, do not have enforceable safeguards in place. If the .INC TLD proceeds to auction and the string is awarded to a generic, non-community application, ICANN is not only ignoring the direct communication provided by US and state government officials, which calls for transparent, enforceable registration policies,[1] but it is then possible that anyone could register an .INC domain, even if they did not have an active corporation, which could result in significant harm to registered corporations within the US, the consumers that patronize them and the US government officials then tasked with combatting the damages. The majority of US Secretaries of States are charged with the administrative oversight associated with business registration and reporting compliance in the US. Thus, state's would be financially taxed by the additional time and staff needed to investigate registrants of .INC domain names that do not have an active INC. The use of the designation .INC implies that the company has the right to conduct business within the US. This designation if used haphazardly could create false consumer confidence, business identify theft and a legacy of damage that ultimately affects Registrants, end users and Registry operators. States are not adequately resourced to protect legitimate businesses from fraudulent operators. Furthermore, the use of an .INC domain name by a company or entity that does not have an active corporation would violate state laws that specifically prohibit portraying a business as a corporation if it is not properly registered with the state[2] and/or deceptive trade practices' laws.

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[1] *See* Annex 1.

[2] *See, e.g.*, http://www.leg.state.nv.us/NRS/NRS-078.html#NRS078Sec047.

Therefore, many Secretaries of State support a process which seeks to deter fraudulent business activities and provides some basic checks and balances in the use of domain extensions.

8. Detail of Board or Staff Action—Required Information

The Panel Determination, and the NGPC's subsequent placing of the .INC Community Application into active contention in reliance on the Panel Determination, is inconsistent with established policies and procedures in the AGB and ICANN Bylaws. The inconsistencies with established policies and procedures include: (1) the Panel's failure to properly validate all letters of support and opposition; (2) the Panel's repeated reliance on "research" without disclosure of the source or substance of such research; (3) the Panel's "double counting"; (4) the Panel's apparent evaluation of the .INC Community Application in connection with several other applications submitted by Dot Registry; and (5) the Panel's failure to properly apply the CPE criteria in the AGB in making the Panel Determination.

A. The Panel's Failure to Validate All Letters of Opposition

CPE Panels are required to validate all letters of support and opposition.[3] However, in evaluating the .INC Community Application for Community Priority, the Panel here did not meet this obligation becausethe Panel did not validate all of the letters that were purportedly submitted in opposition to the Application, particularly those submitted by a group of non-negligible size. This is important because the .INC Application only received 1 out of 2 points in the Opposition criteria, based on a purported opposition from a group of non-negligible size. Dot Registry is only aware of two letters submitted by a group of non-negligible size that could have been construed as in opposition to the application: a letter from the Secretary of State of Delaware, on March 5, 2014, stating his opinion that certain business identifier extensions should not be delegated[6] and a letter from the European Commission on March 4, 2014 expressing concern about Dot Registry's operation of .INC due to usage of the term "INC" outside of the US.[7] On March 20, 2014, the Secretary of State of Delaware submitted another letter clarifying that the State of Delaware was not opposed to the .INC Community Application, which was posted on the ICANN new gTLD website on March 20, 2014.[8] Similarly, the European Commission submitted a letter rescinding its earlier opposition to the application, which was posted to the ICANN website on

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[3] *See* Community Priority Evaluation FAQ's, http://newgtlds.icann.org/en/applicants/cpe/faqs-31oct13-en.pdf.

[6] https://www.icann.org/en/system/files/correspondence/bullock-to-dryden-radell-05mar13-en.pdf.

[7] https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/12359.

[8] http://newgtlds.icann.org/en/program-status/correspondence/bullock-to-crocker-20mar14-en.pdf.

March 25, 2014.[9] Notably, in addition to the letter being posted on the ICANN New gTLD website, the European Commission specifically asked that ICANN forward a copy of this communication to the Economist Intelligence Unit "for the avoidance of any potential confusion with the pending Community Priority Evaluation processes underway for Dot Registry." The follow up letters submitted by both the Delaware Secretary of State and the European Commission clearly show that these groups of non-negligible size do not oppose the .INC Community Application. Furthermore, the European Commission confirmed to Dot Registry that it was never contacted by EIU in connection with validation of the purported opposition, and it is Dot Registry's understanding that the Panel never attempted to contact the Delaware Secretary of State to validate any purported opposition to the .INC Community Application. If the Panel had done so, it would likely have learned that the European Commission's initial concerns were based on deceptive information provided to it by a competitor of Dot Registry, which led the European Commission to believe that the term "INC", as defined in the .INC Community Application, was used in Europe in connection with similar business structures, when, in fact, it is not.

In addition to the Panel's failure to validate all letters of support and opposition constituting a violation of established CPE process, its refusal to identify the group of non-negligible size, which purportedly opposed the .INC Community Application, is inconsistent with the ICANN policy and Bylaws requirement to operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.[10] In its Determination, the Panel stated that the relevant letter of opposition from an organization of non-negligible size "was on the grounds that limiting registration to US registered corporations only would unfairly exclude non-US businesses." What organization, other than the European Commission, who as discussed above, rescinded any opposition it might have had to the .INC Community Application, could the Panel be referring to? The Panel's refusal to disclose the identity of this organization of non-negligible size, which is purportedly in opposition to the .INC Community Application, is neither transparent nor fair. It is difficult to imagine what purpose the Panel could have for choosing not to identify this organization, since presumably any letter of opposition submitted by it would have been posted publicly anyway, and the Panel's failure to identify the organization calls into question whether such opposition actually exists. The BGC addressed this issue recently in its Determination of Reconsideration Request 14-1 regarding the Community Objection filed by the Independent Objector against the application or .MED. The BCG's language in that decision is instructive:

> "The Requester has provided the BGC with uncontroverted information demonstrating that the

[9] https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/12412.
[10] ICANN Bylaws, Article III, Section 1.

> public comments on which the Objection was based were not, in fact, in opposition to the Requester's application. Accordingly, the BGC concludes that ICANN not consider the Expert Determination at issue."[11]

Similarly, since there is no evidence of public comments of relevance in opposition to the .INC Community Application, the BGC should determine that the Panel Determination should not be considered.

B. The Panel's "Research"

In its Determination, the Panel repeatedly relies on its "research." For example, the Panel states that its decision not to award any points to the .INC Community Application for 1-A Delineation is based on "[r]esearch [that] showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an INC" and also that "[b]ased on the Panel's research, there is no evidence of INCs from different sectors acting as a community as defined by the Applicant Guidebook."[12] Similarly, the Panel states that its decision not to award any points for 1-B Extension is based on its determination that the .INC Community Application did not meet the criteria for Size or Longevity because "[b]ased on the Panel's research, there is no evidence of INCs from different sectors acting as a community as defined by the Applicant Guidebook."[13] Thus, the Panel's "research" was a key factor in its decision not to award at least four (but possibly more) points to the .INC Community Application. However, despite the significance of this "research", the Panel never cites any sources or gives any information about its substance or the methods or scope of the "research."

Dot Registry does not take issue with the Panel conducting independent research during its evaluation of the .INC Community Application, which is permitted by the AGB."[15] However, as discussed above, ICANN's Bylaws obligate it (and by extension Staff and expert panels working on behalf of ICANN) to operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.[16] To the extent that the Panel's "research" is a key factor in its decision not to award at least four (but possibly more) points to the .INC Community Application, it is not consistent with ICANN's obligation to operate in a transparent manner or with procedures designed to ensure fairness; to not include even a single citation or any information on the substance or method of the "research." The principles of transparency and fairness require that the Panel should have disclosed to Dot

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[11]https://www.icann.org/en/system/files/files/determination-medistry-21jun14-en.pdf.
[12]http://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf.
[13]*Id.*
[15]*See* Section 4.2.3.
[16]ICANN Bylaws, Article III, Section 1.

Registry (and the rest of the community) what "research" showed that firms are typically organized around specific industries, locales and other criteria not related to the entities structure as an INC and that there is no evidence of corporations from different sectors acting as a community as defined by the Applicant Guidebook.

C. The Panel's "Double Counting"

The AGB sets forth an established policy against "double counting" in the CPE criteria, such that "any negative aspect found in assessing an application for one criterion should only be counted there and should not affect the assessment for other criteria."[17] However AGB contains numerous instances of double counting as does the Determination. For example, one of the requirements for Delineation is that "there must be awareness and recognition of a community (as defined by the applicant) among its members." However, "awareness and recognition of a community (as defined by the applicant) among its members" is also a requirement for Size and for Longevity. Accordingly, if a CPE panel makes a determination that there is not sufficient awareness and recognition of a community (as defined by the applicant) among its members to award any points to an application for Delineation,[18] then this negative aspect found in assessing an application for this one criteria will also affect the assessment of Size and Longevity and result in no points being awarded for Extension; as well as it did here when the Panel determined in these sections that "[t]here is no evidence that these INCs would associate themselves with being part of the community as defined by the applicant."

The requirement for Uniqueness is an even more blatant violation of the principle of no double counting. The AGB states that in order to be eligible for a score of one for Uniqueness, the application must score a two or three for Nexus.[19] Accordingly, a negative aspect found in assessing Nexus will affect the assessment of Uniqueness, as it did in the Panel Determination as set forth below.

D. The Panel's Failure to Evaluate the .INC Community Application Independent of other Applications

It is a well-established ICANN policy within the new gTLD program that every application will be treated individually.[20] Evaluating multiple applications together with regard to community priority violates this policy as well as ICANN's mandate to operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness. Individual treatment aside, to the extent that the Panel is taking into account other applications when

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[17] AGB Section 4.2.3.
[18] http://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf.
[19] AGB Section 4.2.3.
[20] *See, e.g.*, http://newgtlds.icann.org/en/applicants/customer-service/faqs/faqs-en, Section 2.10.

making its determination, fairness and transparency dictate that it should disclose this fact. The EIU's actions in evaluating applications for community priority are inconsistent with ICANN's well-established policy of treating gTLD applications individually and the ICANN policy and mandate to operate in a fair and transparent manner. It is clear that the EIU panels for Dot Registry's .INC Community Application, .INC Community Application and .LLP Community Application (and likely the .GMBH Panel as well) were working in concert. First, the EIU panels gave the .INC, .LLP, and .INC Community Applications the exact same score, five out of sixteen.[21] Furthermore, all three Community Priority Evaluation Reports have virtually identical language and reasoning, with just some of the factual details swapped out, including heavy reliance on the yet as unidentified "research," to come to the same conclusions.[22] The failure of the Panel to evaluate the .INC Community Application on its own merit and reliance in information and analysis of other applications may have resulted in the .INC Community Application being penalized unjustly.

E. The Panel's Failure to Properly Apply the CPE Criteria

The process and criteria for evaluating Community Priority applications is set forth in Section 4 of the AGB. ICANN has also published the Community Priority Evaluation (CPE) Guidelines prepared by the EIU (CPE Guidelines),[23] the purpose of which, according to the ICANN website, is "to ensure quality, consistency and transparency in the evaluation process."[24] However, the "[CPE Guidelines] do not modify the framework or standards laid out in the AGB."[25] Accordingly, the policies and processes in the AGB control, as will be explained in more detail below, the scoring in and ultimate outcome of the Panel Determination is inconsistent with the CPE process set forth in the AGB.

1. Criterion #1: Community Establishment

The Panel determined that the community, as identified in the .INC Community Application, did not meet the criterion for Delineation or Extension, and awarded the .INC Application 0 out of 4 points for Community Establishment. This determination is not consistent with the AGB and CPE Guidelines.

a. Delineation

The Panel determined that the community, as identified in the .INC Community Application, did not meet the criterion for Delineation because the community did

[21] https://www.icann.org/sites/default/files/tlds/llc/llc-cpe-1-880-17627-en.pdf; http://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf; http://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf.
[22] *See* Annex 2, redlines of the .LLP and .INC Determination against the .INC Determination.
[23] http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf.
[24] http://newgtlds.icann.org/en/announcements-and-media/announcement-27sep13-en.
[25] *Id.*

not demonstrate sufficient delineation, organization and pre- existence and awarded the .INC Community Application 0 out of 2 points.

i. **Delineation**

According to the Panel Determination, two conditions must be met to fulfill the requirements for delineation: there must be a clear, straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.[26] The Panel acknowledged that the community definition in the .INC Community Application shows a clear and straightforward membership. However, the Panel determined that the community, as defined in the application, does not have awareness and recognition of a community among its members, because:

> "corporations operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an INC. Based on the Panel's research, there is no evidence of INCs from different sectors acting as a community as defined by the Applicant Guidebook. There is no evidence that these incorporated firms would associate themselves with being part of the community as defined by the applicant."

As discussed above, the Panel bases this determination on mysterious "research" to which it does not provide any citations or insight as to how the research was conducted. That aside, while firms may organize around specific industries, locales and other criteria not related to the entities structure as a corporation, this does not preclude firms from also organizing around the entities' structure as an corporation. In fact, while there may be a wide variation of the types of companies that elect to become corporations, there are still commonalities and binding requirements for any corporation registered in the US. Specifically, every registered corporations in the US would describe themselves as a registered corporation within the US, the exact definition of our community. Additionally each member of the INC community chose this particular legal entity type to operate as, with the understanding and expectation of the tax and legal benefits and liability protections that the entity type provides. Accordingly, all members of the INC community have a shared and common interest to the extent that there is a change to the legal or tax treatment of corporations, which would affect all members of the INC community. Furthermore, there is ample evidence that INCs would associate themselves as being part of the INC community because, at a minimum: (1) they chose to become a corporation and join the community; (2) they identify themselves as part of the community by including the word "INC" in their official name; and (3) they must identify

[26]http://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf.

themselves as part of the community when filing tax returns and filing out other legal documents.

ii. Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities. The Panel indicated that the community, as defined in the application, does not have at least one entity mainly dedicated to the community because:

> Although responsibility for corporate registrations and the regulations pertaining to corporate formation are vested in each individual US state, these government agencies are fulfilling a function, rather than representing the community. In addition, the offices of the Secretaries of State of US states are not mainly dedicated to the community as they have other roles/functions beyond processing corporate registrations.[28]

First, inclusion of the term "mainly" implies that the entity administering the community may have additional roles/functions beyond administering the community. In addition to administering filings and record keeping of corporations, many Secretaries of State are dedicated to providing information about corporations through their websites, pamphlets and other programs and support to existing members of the INC community, as well as those considering joining the INC community.

There is also ample evidence of community activities, which was seemingly ignored by the Panel. These activities include things that all members of the INC community must do such as file articles of incorporation, file an annual report and claim their status as an corporation on their state and federal tax returns—activities which identify them as members of the INC community; which they otherwise would not do if they were not part of the INC community.

iii. Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007. The Panel determined that the community defined in the .INC Community Application does not meet the requirements for pre-existence. However, rather than providing evidence or explanation for this determination, the Panel instead merely cites a sentence from the AGB[29] and

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[28]http://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf.

[29]"[Community Priority Evaluation Criteria] of the Applicant Guidebook the CPE process is conceived to identify qualified community-based applications, while preventing both "false positives" (awarding undue priority to an application that refers to a "community" construed merely to get a sought-after generic word as a

then makes the conclusory determination that the .INC Community Application refers to a "community" construed to obtain a sought-after corporate identifier as a gTLD string; which is based on the Panel's previous conclusion that corporations would typically not associate themselves with being part of the community as defined by the applicant—a conclusion that Dot Registry has shown is questionable at best. In fact, as the panel must be aware, corporations have existed in all 50 states long before September 2007.[30] Furthermore, 100% of the states have acknowledged that the community exists through the National Association of Secretaries of State.[31]

b. Extension

The Panel determined that the community, as identified in the application, did not meet the criterion for Extension because the .INC Community Application did not demonstrate considerable size or longevity for the community identified in the .INC Community Application, which is inconsistent with the AGB.

i. **Size**

According to the Panel, two conditions must be met to fulfill the requirements for size: (1) the community must be of considerable size and (2) must display an awareness and recognition of a community among its members.[32] However, the second requirement for size cited by the Panel—that the community must display an awareness and recognition of a community among its members—does not exist in the AGB definition of size. Rather, the AGB states that:

> "Size" relates both to the number of members and the geographical reach of the community, and will be scored depending on the context rather than on absolute numbers—a geographic location community may count millions of members in a limited location, a language community may have a million members with some spread over the globe, a community of service providers may have "only" some hundred members although well spread over the globe, just to mention some examples—all these can be regarded as of "considerable size."[33]

Similarly, the CPE Guidelines, which were prepared by EIU, do not list the requirement that the community must display an awareness and recognition of a community among its members as part of the criteria of size. The Panel's application of this additional requirement to the criteria of Size, is thus not only

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gTLD string) and "false negatives" (not awarding priority to a qualified community application)."

[30] 2005 CCH Federal Taxation Comprehensive Topics, CCH Incorporated, 2004, Chicago, IL; Section 14,015.

[31] *See* Annex 3.

[32] http://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf.

[33] AGB, Pgs. 4-11.

inconsistent with the established process in the AGB, but also violates the established policy of not "double counting" as discussed above; since the Panel erroneously determined that the members of the INC community do not have an awareness of their community.

As the Panel acknowledged, there are over eight million registered corporations in the US. Accordingly, when the AGB definition of "Size" is properly applied, it is clear that the community identified in the .INC Community Application meets this criteria and should have been awarded points.

ii. Longevity

According to the Panel, two conditions must be met to fulfill the requirements for size: (1) the community must demonstrate longevity; and (2) must display an awareness and recognition of a community among its members.[34] However, the second requirement for longevity cited by the Panel—that the community must display an awareness and recognition of a community among its members—does not exist in the AGB definition of size. Rather, the AGB states that:

> "Longevity" means that the pursuits of a community are of a lasting, non-transient nature.[35]

Similarly, the CPE Guidelines, which were prepared by EIU, do not list the requirement that the community must display an awareness and recognition of a community among its members as part of the criteria of longevity. The Panel's application of this additional requirement to the criteria of longevity, is thus not only inconsistent with the established process in the AGB, but also violates the established policy of not "double counting" as discussed above, since the Panel erroneously determined that the members of the INC community do not have an awareness of their community.

corporations are corporate structures that are intended to be perpetual until either the entity is wound down or the statutory requirements are not met. In other words, they are the direct opposite of transient. Accordingly, when the AGB definition of "longevity" is properly applied, it is clear that the community identified in the .INC Community Application meets this criteria and should have been awarded points.

2. Criterion #2: Nexus Between Proposed String and Community

The Panel determined that the .INC Community Application did not meet the criterion for Nexus of Uniqueness and awarded no points. However, the Panel's determination with regards to Nexus was based on incorrect factual information and the Panel's determination with regard to Uniqueness was based on its erroneous determination of Nexus.

a. Nexus

[34] http://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf.
[35] AGB, Pgs. 4-11.

The Panel determined that the .INC Community Application did not meet the criterion for Nexus because while the string identifies the community, it over-reaches substantially beyond the community.[36]

According to the Panel, "to receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. "Identify" means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community."

As an initial matter, it should be noted that according to the AGB, to receive the maximum score of three, "the essential aspect is that the applied for string is commonly known by others as the identification/name of the community." However, regardless of whether the AGB standard or the inconsistent Panel standard is applied, it is clear that the .INC Community Application should still receive the maximum number of points for Nexus. In fact, the Panel acknowledged that "the string identifies the name of the community."[37] However, unfortunately for Dot Registry, the Panel also erroneously determined that the string substantially overreaches because "INC" is also used in Canada, Australia, and the Philippines. While there may be some use of “INC” in several countries outside the US, , it is not used outside the US in connection with the .INC community described in the .INC Community Application. Notably, no relevant organization in Canada, Australia, or the Philippines submitted any opposition to the .INC Community Application. Furthermore, the AGB does not require applicants to define "any connotations the string may have beyond the community" and does not provide any direction in relation to scoring question 20A negatively if the designation is used outside of the community regardless of scale. Accordingly, it is clear that the .INC Community Application should receive full points for Nexus.

b. Uniqueness

The Panel determined that the application does not meet the criterion for Uniqueness because the string does not score a two or a three on Nexus. However, as discussed above, the only reason that the .INC Community Application did not score a two or three on Nexus was due to the Panel's erroneous determination. Furthermore, the Panel's basing of its decision with regard to Uniqueness (and the AGB's direction to do so) on the results of another criteria violates the established policy against double counting.**Criterion #3: Registration Policies**

The Panel correctly awarded the .INC Community Application points for Eligibility, Name Selection, and Content and Use, but determined that the .INC Community Application did not meet the criterion for Enforcement because it

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[36]http://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf.
[37]*Id.*

provided specific enforcement measures but did not include appropriate appeal mechanisms. However, the .INC Community Application does in fact contain an appropriate appeals mechanism.

According to the .INC Community Application, the enforcement mechanism is as follows:

> DOT Registry or it's designated agent will annually verify each registrants community status in order to determine whether or not the entity is still an "Active" member of the community. Verification will occur in a process similar to the original registration process for each registrant, in which each registrant's "Active" Status and registration information will be validated through the proper state authority. In this regard, the following items would be considered violations of DOT Registry's Registration Guidelines, and may result in dissolution of a registrant's awarded ".INC" domain:
>
> (a) If a registrant previously awarded the ".INC" domain ceases to be registered with the State.
>
> (b) If a registrant previously awarded a ".INC" domain is dissolved and/or forfeits the domain for any reason.
>
> (c) If a registrant previously awarded the ".INC" domain is administratively dissolved by the State.

The .INC Community Application also contains an appeals mechanism, which is that:

> Any registrant found to be "Inactive," or which falls into scenarios (a) through (c) above, will be issued a probationary warning by DOT Registry, allowing for the registrant to restore its active status or resolve its dissolution with its applicable Secretary of State's office. If the registrant is unable to restore itself to "Active" status within the defined probationary period, their previously assigned ".INC" will be forfeited.

The AGB states that "[t]he 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."[38] While the above-referenced appeal process may not be a traditional appeals process, it is appropriate to, and aligned with, the community-based purpose of the .INC Community Application. Here, the .INC Community Application is restricted to those with active corporations. Because Dot Registry will verify the status of the corporation,

[38]AGB, Pgs. 4-16.

which is the basis for a second level domain registration in .INC, it will be a simple matter to verify whether the corporation is "active" or not. To the extent that the corporation is not in "active" status, the registrant is issued a probationary warning. This warning allows the registrant to appeal Dot Registry's inactivity determination by resolving the issue with the relevant Secretary of State and restoring the domain name to active status. Notably, .edu utilizes a similar appeals mechanism.[39] Accordingly, the .INC Community Application should have received points for Enforcement.

3. Criterion #4: Community Endorsement

The Panel incorrectly determined that the .INC Community Application only partially met the criterion for Support and Opposition, which is inconsistent with the CPE process as set forth in the AGB.

a. Support

The Panel awarded the .INC Community Application only 1 out of 2 points for Support because it determined that while Dot Registry possesses documented support from at least one group with relevance, Dot Registry was not the recognized community institution(s)/member organization(s), nor did it have documented authority to represent the community or documented support from a majority of the recognized community institution(s)/member organization(s).

The Panel acknowledged that the .INC Community Application included letters of support from a number of Secretaries of State of US states which constituted groups with relevance, but that the Secretaries of State are not the recognized community institution(s)/member organization(s), as these government agencies are fulfilling a function, rather than representing the community. As discussed above, in addition to administering filings and record keeping of corporations, many Secretaries of State are dedicated to providing information about INCs through their websites, pamphlets and other programs and support to existing members of the INC community (including Dot Registry, which as an INC is a member of the community); as well as those considering joining the INC community, the Secretaries of State *are* the recognized community institutions. As also discussed above, numerous letters of support and endorsement were submitted by members of the INC community, including one from the National Association of Secretaries of State in which it described the agreement of 100% of the states for community operation of .INC. However, these letters appear not to have been considered by the Panel, and in any case were not validated by the Panel in connection with the .LCC Community Application. Accordingly, the .INC Community Application should have been awarded full points for Support.

b. Opposition

The Panel determined that the .INC Community Application partially met the criterion for Opposition because it received relevant opposition from one group of

[39] http://net.educause.edu/edudomain/show_faq.asp?code=EDUPOLICY#faq425.

non-negligible size. As discussed above, the only groups of non-negligible size that could even arguably be viewed as having submitted opposition are the Secretary of State of Delaware or the European Commission. However, the Secretary of State of Delaware clarified that it did not oppose the .INC Community Application and the European Commission rescinded any comments in opposition to the .INC Community Application. Furthermore, any opposition by the European Commission, even if it existed, which clearly it does not, is not relevant because the INC designation is not used in Europe. Additionally, as also discussed above, to the extent any opposition by the Secretary of State of Delaware or European Commission existed, which it does not, the Panel failed to validate any such letters in connection with the .INC Community Application. Accordingly, the .INC Community Application should have been awarded full points for Opposition.

9. What are you asking ICANN to do now?

(Describe the specific steps you are asking ICANN to take. For example, should the action be reversed, cancelled or modified? If modified, how should it be modified?)

Dot Registry is asking that ICANN reverse the decision of the Panel and grant Dot Registry's .INC TLD application Community Priority status. There is precedence for this when, as here, there is substantial and relevant evidence indicating that the Objection was inconsistent with ICANN procedures.[40] Just recently, the BCG concluded that ICANN not consider the Expert Determination in the Community Objection filed against .MED because the Requester provided the BGC with uncontroverted information demonstrating that the public comments on which the Objection was based were not, in fact, in opposition to the Requester's application, as is the case here. In the alternative, ICANN should disregard the results of the first Panel determination and assemble a new CPE Panel to reevaluate the Community Priority election by Dot Registry for its .INC TLD application in compliance with the policies and processes in the AGB, CPE Guidelines and ICANN Bylaws. To the extent that ICANN assembles a new Panel to re-evaluate the .INC Community Application for Community Priority, the Panel should not be affiliated with EIU, or at a minimum, should not consist of the same EIU panelists or anyone who participated in the initial CPE.

10. Please state specifically the grounds under which you have the standing and the right to assert this Request for Reconsideration and the grounds or justifications that support your request.

(Include in this discussion how the action or inaction complained of has resulted in material harm and adverse impact. To demonstrate material harm and adverse impact, the requester must be able to demonstrate well-known requirements: there must be a loss or injury suffered (financial or non-financial)

[40]https://www.icann.org/en/system/files/files/determination-medistry-21jun14-en.pdf.

that is a directly and causally connected to the Board or staff action or inaction that is the basis of the Request for Reconsideration. The requestor must be able to set out the loss or injury and the direct nature of that harm in specific and particular details. The relief requested from the BGC must be capable of reversing the harm alleged by the requester. Injury or harm caused by third parties as a result of acting in line with the Board's decision is not a sufficient ground for reconsideration. Similarly, injury or harm that is only of a sufficient magnitude because it was exacerbated by the actions of a third party is also not a sufficient ground for reconsideration.)

Dot Registry has standing and the right to assert this request for Reconsideration because the Panel's Determination, and the NGPC's subsequent placement of Dot Registry's .INC application into active contention, was based on the Panel's failure to follow the established policies and procedures for Community Priority Evaluation in the AGB and ICANN's Bylaws. ICANN has previously determined that the reconsideration process can properly be invoked for challenges to expert determinations rendered by panels formed by third party service providers, such as the EIU, where it can be stated that the Panel failed to follow the established policies or processes in reaching its determination, or that staff failed to follow its policies or processes in accepting that determination.[41] In addition, the NGPC's placement of the .INC Community Application into active contention based on the Panel Determination constitutes Staff or Board Action. Furthermore, Staff became involved with the Panel Determination when it responded to complaints that the Panel did not engage in uniform or consistent manner when questioning Secretaries of State as part of the validation process for letters of support, resulting in an apology from EIU to the Secretaries of State.[42]

This failure to follow established policies and procedures by the Panel and the NGPC will result in material harm to, and will have an adverse impact on, Dot Registry, registered businesses in the US and consumers, as a result of the Determination and placement of Dot Registry's .INC Application into active contention; at best, Dot Registry will have to expend significant additional funds to win the contention auction for .INC, and, at worst, Dot Registry will lose the contention auction and not be able to operate the .INC TLD and the string will be operated generically without necessary consumer protections in place.

This harm to Dot Registry, Secretaries of State, potential registrants and the public generally, can be reversed by setting aside the decision of the Panel and granting Dot Registry's .INC TLD application Community Priority status, or in the alternative, by assembling a new CPE Panel to reevaluate the Community

---

[41] *See* https://www.icann.org/en/system/files/files/determination-tennis-au-29apr14-en.pdf, DETERMINATION OF THE BOARD GOVERNANCE COMMITTEE (BGC) RECONSIDERATION REQUEST 14-12 and http://www.icann.org/en/groups/board/governance/reconsideration/recommendationbooking-01aug13-en.doc, BGC Recommendation on Reconsideration Request 13-5.

[42] *See* Annex 4.

Priority election by Dot Registry for its .INC TLD application, in compliance with the established policies and processes in the AGB and CPE Guidelines.

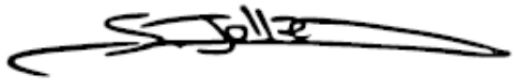
11. Are you bringing this Reconsideration Request on behalf of multiple persons or entities? (Check one)

X Yes

___ No

11a. If yes, is the causal connection between the circumstances of the Reconsideration Request and the harm the same for all of the complaining parties? Explain.

The causal connection between the circumstances of the Reconsideration Request and the harm caused by the awarding of the string to a non-community applicant are the same for Dot Registry and the National Association of Secretaries of State (NASS), on whose behalf this Request is also being made. Whereas the immediate harm to Dot Registry is material and financial, the harm to the Secretaries of State is related to their ability to prevent business fraud and consumer confusion. As discussed above, the improper denial of Community Priority to the .INC Community Application will likely result in delegation of the .INC TLD to one of the non-community applicants, which do not have enforceable safeguards in place, and could allow anyone to register a .INC domain name regardless of their actual business registration status and entity type. This could facilitate fraudulent business registration, business identity theft and other harmful online activity, as well as cause significant consumer confusion and protection issues. Over the last two and a half years, NASS and many of its individual members have expressed their clear concerns via numerous letters to ICANN, the GAC and the FTC calling for the issuance of these strings in a community format, in order to provide appropriate protections for both the community and consumers with the necessary recourse required to hold the Registry Operators accountable if these strings are not operated in a responsible manner. As most of the Secretaries of State in the US have the ultimate responsibility for INC registration and validation, this is of significant concern to them, and to NASS as well, which is acting on behalf of their interest. The issuance of these strings to a non-community applicant without enforceable protection mechanisms directly disregards the opinions expressed by the US Secretaries of State in regards to this matter and shows a blatant disregard by ICANN to operate accountably, as required by the ICANN bylaws.



_____ _June 26, 2014_____

Signature Date

Annex 1

State of Tennessee

The Secretary of State
Contact Information Redacted

Tre Hargett
Secretary of State

Con ac nforma ion Redac ed

November 15, 2013

The Honorable Edith Ramirez
Chairwoman
Federal Trade Commission
Contact Information Redacted

The Honorable Julie Brill
Commissioner
Federal Trade Commission
Contact Information Redacted

The Honorable Maureen Ohlhausen
Commissioner
Federal Trade Commission
Contact Information Redacted

The Honorable Joshua Wright
Commissioner
Federal Trade Commission
Contact Information Redacted

Dear Chairwoman Ramirez, Commissioner Brill, Commissioner Ohlhausen, and Commissioner Wright,

Along with the Federal Trade Commission, the National Association of Secretaries of State (NASS), of which I currently serve as President, has been following the Internet Corporation for Assigned Names and Numbers' (ICANN's) new generic top-level domain (gTLD) program for some time. We share the Commission's concerns (FTC release 12/11) about the potential for consumer fraud and abuse in new top-level domains (TLDs). We are particularly concerned about a special class of top-level domains commonly referred to as "corporate identifier" TLDs. Examples include: .CORP, .INC, and .LLP.

We recently learned that ICANN may consider awarding these highly-sensitive TLDs to registries that could sell domains to anyone, regardless of their legal standing with state registration authorities. We are concerned that instead of requiring entities to prove they are in good standing with a Secretary of State or Lieutenant Governor's office in order to register one of these domains, the ICANN Board is considering a move lax standard that would allow anyone to "attest" that they have the necessary standing to own one of these domains with no third party verification or validation. It is likely that those who wish to

perpetrate fraud and other crimes involving deception will take advantage of this process and provide false information to ensure they are able to register these domains.

NASS and many individual Secretaries have expressed our concerns in multiple letters to ICANN, clearly stating that any new business-related extension identifiers and the renewal thereof should only be extended to entities that are also legally and appropriately registered with the Secretary of State or the equivalent government agency in the U.S. This process would ostensibly include a verification of registration and good standing based upon a confirmation from the registrar.

To underscore the level of state agreement on this issue amongst state business registration authorities, Secretaries of State unanimously approved a resolution[1] at our July 2013 NASS national meeting calling on ICANN to accept the advice of ICANN's Government Advisory Committee and require higher levels of consumer protection. We also believe that the community application process ensures that safeguards and restrictions are enforced.

In closing, I hope the Commission urges the ICANN Board to support a stricter standard. The body should require a process that includes information verification for the protection of consumers and businesses, thereby reducing opportunities for fraud.

ICANN is meeting on November 18, 2013 to discuss this issue. I would appreciate any immediate attention and input that the Federal Trade Commission can provide.

Sincerely,

Tre Hargett
Secretary of State

[1] http://www.nass.org/index.php?option=com_docman&task=doc_download&gid=1435&Itemid=

NASS
National Association of Secretaries of State

Resolution of Recommendation to the International Corporation of Assigned Names and Numbers (ICANN) for Issuance of Corporate Internet Extensions

WHEREAS, the National Association of Secretaries of State (NASS) is an organization whose members include Secretaries of State and Lieutenant Governors of the 50 U.S. states and territories; and

WHEREAS, the majority of members are responsible for the administrative oversight of business entity registration processes in their respective states; and

WHEREAS, the International Corporation of Assigned Names and Numbers (ICANN) is in the process of awarding new Internet extensions that include business entity endings, including .INC, .LLC. .LLP and .CORP; and

WHEREAS, NASS and its members have followed this process closely and have expressed concerns regarding the potentially negative impacts of issuing generic gTLDs as corporate extensions, which we believe do not have enforceable safeguards to protect against misuse and could ultimately have a harmful effect on entities that are legally registered in the U.S. ; and

WHEREAS, NASS and many of its members have previously expressed in numerous letters to ICANN that these extensions may be unnecessary and irresponsible, but if allowed, should only be awarded to entities that are appropriately registered and in good-standing with Secretary of State or other state filing offices of jurisdiction; and

WHEREAS, there is a growing national concern relating to fraudulent business registration, business identity theft, online consumer protection and consumer confusion; and

WHEREAS, if these extensions were to be awarded without enforceable safeguards, it could allow anyone to operate a .INC, .LLC, .LLP or .CORP website, regardless of their actual business registration status/entity type; and

WHEREAS, the Government Advisory Committee to ICANN has issued advice in regards to the necessity of safeguards and restrictions on these particular Internet extensions and we believe these safeguards and restrictions are only enforceable in the community application process;

NOW, THEREFORE, BE IT RESOLVED THAT the National Association of Secretaries of State (NASS) recommends that if these extensions are approved, then ICANN should adopt the GAC recommendations and award the .INC, .LLC, .LLP and .CORP extensions with appropriate safeguards and restrictions designed to protect the U.S. business community and consumers.

Adopted the 21st day of July, 2013
in Anchorage, AK

EXPIRES: Summer 2018

Hall of States, Contact Information Redacted
Contact Information Redacted
www.nass.org

UNITED STATES OF AMERICA
Federal Trade Commission
Office of International Affairs
WASHINGTON, D.C. 20580

Laureen Kapin
Counsel for International Consumer Protection
Phone: Contact Information Redacted
Email: Contact Information Redacted

January 29, 2014

Shaul Jolles, CEO
Dot Registry, LLC
Contact Information Redacted

Dear Mr. Jolles:

Thank you for your November 14, 2013 letter to the Federal Trade Commission supporting the Commission's advocacy for stronger consumer protection safeguards in connection with ICANN's expansion of generic top-level domains (gTLDs). I was asked to respond to your letter because the Office of International Affairs for Consumer Protection works closely with the Department of Commerce via the Government Advisory Council (the GAC) to advise ICANN of concerns and make recommendations. The FTC has been involved in ICANN-related matters for over ten years, pressing ICANN and other stakeholders to improve policies that cause harm to consumers engaged in e-commerce or that impede law enforcement efforts to identify and locate bad actors. In addition, our involvement has included testifying before Congress, participating in ICANN meetings, and issuing statements on various ICANN policy initiatives.

We appreciate your concerns over the launch of TLDs, such as corporate identifiers (*e.g.,* .inc, .llc, .llp, .corp), without proper safeguards. As you know, the Commission has expressed similar concerns, albeit in a broader context, with proposed domains associated with various regulated or professional sectors, including corporate identifiers.[1] FTC staff advice and concerns about the need for further consumer protection safeguards for regulated and professional extensions are reflected in the GAC Beijing Communiqué issued on April 11, 2013: https://gacweb.icann.org/display/gacweb/Governmental+Advisory+Committee. The communiqué set forth several concerns regarding the new gTLDs. In particular, the communiqué recommended three additional safeguards for market sectors that have regulated entry requirements such as corporate identifiers. They are: 1) verification and validation of registrant's credentials for participation in the sector specified in the domain name; 2) consultation with relevant supervisory authorities in case of doubt regarding authenticity of credentials; and 3) post-registration checks to ensure registrant's validity and continuing compliance with their credentialing requirements. We believe this is the type of proactive approach required to combat fraudulent websites.

[1] *See* http://www.ftc.gov/news-events/press-releases/2011/12/ftc-warns-rapid-expansion-internet-domain-name-system-could-leave

We will continue to monitor ICANN's response to the communiqué and work with the GAC to help ensure that the communiqué's recommended consumer protection safeguards are implemented in a concrete and meaningful manner. We will also continue to work with our law enforcement partners to share information and perspectives about how to best protect consumers from illicit activities associated with the domain name system.

We appreciate you taking the time to raise the concerns expressed in your letter. If you have any questions or wish to discuss this matter further, please contact me at Contact nformation Redacted

Very truly yours,

Laureen Kapin

State of North Carolina
Department of the Secretary of State

ELAINE F. MARSHALL
SECRETARY OF STATE

February 13, 2012

Dot Registry
Contact Information Redacted

Dear Ladies and Gentlemen:

This letter advises that the Department of the Secretary of State of North Carolina is charged with overseeing the business formation process for the formation of corporations, limited liability companies (LLCs), non-profit companies, professional associations, and several other types of business structures, as well as the maintenance of North Carolina's database relating to the aforementioned business entities. The businesses registered with this office are members of the larger community of corporations authorized to conduct business in the United States.

We understand that the Internet Corporation for Assigned Names and Numbers (ICANN) will be accepting applications for new web extensions this year. This office has been informed that companies, such as DOT Registry, LLC, will be applying for the strings, ".INC" and ".LLC" with restrictions that are intended to protect U.S. companies and consumers that are registered with their state's administrator.

In the event ICANN decides to issue these strings and in order to further the public policy reasons for which entities file at the state level, we believe that such strings should only be issued to companies that are registered with a Secretary of State or equivalent agency. I believe that entities not appropriately registered and maintained in any state should be prohibited from strings that would misrepresent their existence. As most Secretaries of State are not equipped to verify legitimate entity existence, even though we maintain that information, the verification process should be a requirement, albeit not ours.

Sincerely,

Elaine F. Marshall

Elaine F. Marshall

Contact nformation Redacted

website: www.sosnc.com

Telephone Contact Information Redacted
Facsimile Contact Information Redacted

Contact Information Redacted

ROBIN CARNAHAN
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
Contact Information Redacted

February 24, 2012

DOT Registry
Contact Information Redacted

Dear Ladies and Gentlemen:

This letter advises that the Secretary of State of Missouri is charged with overseeing the business formation process for the formation of corporations, limited liability companies (LLCs), non-profit companies, professional associations, and several other types of business structures, as well as the maintenance of Missouri's database relating to the aforementioned business entities. The businesses registered with this office are members of the larger community of corporations authorized to conduct business in the United States.

We understand that the Internet Corporation for Assigned Names and Numbers (ICANN) will be accepting applications for new web extensions this year. This office has been informed that companies, such as DOT Registry, LLC, will be applying for the strings, "INC" and "LLC" with restrictions that are intended to protect U.S. companies and consumers that are registered with their state's administrator.

In the event ICANN decides to issue these strings and in order to further the public policy reasons for which entities file at the state level, we believe that such strings should only be issued to companies that are registered with the Secretary of State or equivalent agency. I believe that entities not appropriately registered and maintained in any state should be prohibited from strings that would misrepresent their existence. As most Secretaries of State are not equipped to verify legitimate entity existence, even though we maintain that information, the verification process should be a requirement, albeit not ours.

Very truly yours,

Robin Carnahan

Robin Carnahan
Secretary of State

Contact Information Redacted
www.sos.mo.gov

STATE OF DELAWARE
DEPARTMENT OF STATE

JEFFREY W. BULLOCK
SECRETARY OF STATE

March 20, 2012

ICANN
Attn: gTLD Program
4676 Admiralty Way
Suite 330
Marina del Rey, CA 90292-6601

To Whom It May Concern:

As Delaware's Secretary of State, I administer the State's company registry and am responsible for protecting the integrity of Delaware's legal entity registration system. Nearly one million legal entities, such as corporations and limited liability companies, (LLC) are organized in the United States under the laws of the State of Delaware.

The State of Delaware is the legal domicile of 63% of Fortune 500 companies, 55% of the firms listed on the two major U.S. stock exchanges, and 80% of new initial public offerings in the United States. Delaware is also the legal home to many of America's largest private-held and non-profit companies and hundreds of thousands of subsidiaries and affiliates of major companies around the world.

I understand that the Internet Corporation for Assigned Names and Numbers ("ICANN") will be accepting applications for new generic Top Level Domain (gTLD) name extensions this year. I have been informed that at least one firm – DOT Registry LLC – and possibly several other firms, plan to apply for the strings ".INC", ".CORP", ".LLC" and other potentially related extensions that state registries define as "company endings".

I join a chorus of federal and state officials who urge ICANN to proceed cautiously and deliberately in any approvals of new gTLDs. Delaware's view is that the granting of such name extensions creates a number of public policy issues and concerns – not the least of which is increasing the potential for fraud and abuse. As such, it is absolutely critical that if ICANN determines to grant such name extensions, that it does so in a restricted manner that is intended to protect consumers and the community of interest that exists among validly registered U.S. companies and my fellow State secretaries of state and other State company registrars that are responsible for administering the nation's legal entity registration system.

Contact Information Redacted

FAX: Contact nformation Redacted

CARVEL STATE OFFICE BUILDING
Contact Information Redacted

FAX: Contact nformation Redacted

ICANN – gTLD program
March 20, 2012

I therefore request that ICANN reject any request for the unrestricted use of ".INC", ".LLC", ".LLP", ".CORP", ".BANK", ".TRUST" or similar commonly used company endings in the United States. The State of Delaware will object to the granting of such strings without restrictions.

I further request that, at a minimum, any approval for company ending strings be restricted in such a way that reasonably assures that the legal entity is, in fact, an active and validly registered legal entity in the United States, as DOT Registry LLC has proposed within its application. Specifically, any firm awarded the responsibility of administering such strings should be required to confirm whether the legal entity is validly formed according to criteria and documentation established by the states, and be required to check annually at renewal that the entity remains validly registered and actively in good standing according to criteria and documentation established by the states. The restrictions should further require that the homepage of such websites provide a mechanism that provides for the disclosure of the jurisdiction in which the entity is legally domiciled or include a geographic tag within the website name.

In order to reduce the risk of fraudulent activity, Delaware law places additional restrictions on the use of words such as "bank" and "trust" that are commonly associated with financial institutions. I therefore urge ICANN to seriously consider comment letters that have been submitted by the American Bankers Association and others urging ICANN to reject or place very significant restrictions on applications for the use of name extensions such as ".BANK" and ".TRUST".

If you have any questions, please contact me or Richard J. Geisenberger, Chief Deputy Secretary of State, at Contact information Redacted Thank you for your consideration of this request.

Sincerely,

Jeffrey W. Bullock
Secretary of State

cc: Richard J. Geisenberger, Chief Deputy Secretary of State
Leslie Reynolds, Executive Director, National Association of Secretaries of State

OFFICE OF THE SECRETARY OF STATE

ROSS MILLER
Secretary of State

March 8, 2013

Internet Corporation of Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles CA 90094-2536

RE: Restricted Use of Domains using .inc, .llc, .corp and .llp

TO WHOM IT MAY CONCERN;

My office is responsible for processing the organizational, amendatory and annual filings for Nevada corporations, limited liability companies, limited partnerships and other statutory business entities. These entities do business as Nevada entities not only in Nevada, but throughout the U.S. and around the world. My office is the second most popular business entity filing jurisdiction in the country, behind Delaware.

Fraudulent use of corporate entities, business identity theft and consumer protection are of growing concern to me, as is the potential of abuse by those offering online services. The free and unregulated issuance of names using these extensions is also a concern because of possible confusion or deception caused by entities that are not properly registered in my office.

It is my understanding that DOT Registry, LLC has applied to you for the use of the domain names with these extensions. I believe that restrictions and policies must be crafted not only to protect Nevada and U.S. entities, but also the consumers utilizing the associated web sites. I also understand that DOT Registry, LLC's application may include provisions protecting entities on file with my office, other Secretaries of State and state filing offices. Regardless of the applicant, such restrictions and protections must be in place.

I remain available if I can be of further assistance.

Respectfully,

ROSS MILLER
Secretary of State

Contact Information Redacted

NASS
National Association of Secretaries of State

April 1, 2014

Economist Intelligence Unit
Contact nformation Redacted

To Whom it May Concern:

The National Association of Secretaries of State (NASS) recently reviewed the comments posted to the Internet Corporation of Assigned Names and Numbers (ICANN) website regarding the issuance of corporate identifier extensions .INC, .LLC, .LLP, and .CORP. On behalf of our Executive Board, I would like to make some minor clarifications and update you on the latest resolution adopted by our group.

As you may know, NASS is a not-for-profit professional association whose membership includes Secretaries of State and Lieutenant Governors representing U.S. states and territories. With a majority of members who are responsible for the oversight of business entity registration processes in their respective states, we are strongly united in our belief that ICANN should only award these extensions according to Government Advisory Committee (GAC) recommendations, which urge the adoption of appropriate safeguards, accountability of applicants, verification of business entity registrations and restrictions designed to protect the U.S. business community and consumers.

In July 2013, NASS unanimously passed a resolution solidifying this position as an organization. The resolution, available online, reiterates the membership's collective concerns and recognizes our shared belief that not having "enforceable safeguards to protect against misuse could ultimately have a harmful effect on entities that are legally registered in the U.S." Additionally, it notes that NASS and its members "have previously expressed in numerous letters to ICANN that these extensions may be unnecessary and irresponsible, but if allowed, they should only be awarded to entities that are appropriately registered and in good-standing with Secretary of State or state filing offices of jurisdiction."

Our position also affirms that the community application process is the only option to ensure that safeguards and restrictions to protect U.S. businesses can and will be enforced, stating, "[T]he Government Advisory Committee to ICANN has issued advice in regards to the necessity of safeguards and restrictions on these particular Internet extensions and we believe these safeguards and restrictions

Contact Information Redacted
Contact Information Redacted Fax | www nass.org

are only enforceable in the community application process." It is important to note that the entity designations under consideration (INC, LLC, CORP, LLP) are not generic terms. These abbreviations have been used for decades in the United States to identify registered business entities with the ability to conduct commerce.

As the only community applicant in this process, DOT Registry LLC has spent the last several years reaching out to NASS and more importantly, the Secretaries themselves, to actively seek an understanding of how the business entity registration process works in each state. In turn, the Secretaries of State have shared with DOT Registry LLC the processes and guidelines that would be deemed appropriate for maintaining the integrity and security of such entities in establishing a registry of corporate identifier TLDs. Any award by ICANN should be to the applicant that will commit to maintaining and enforcing a system with regular, real-time verification of each company's legal status, in accordance with state law.

While we respect the important role that ICANN must play in convening global stakeholders, the process for issuing the aforementioned corporate identifier strings must not threaten the stability and legally-established protections of registered businesses in the U.S., as well as the state government agencies that register and maintain information on the standing of such entities. As our July 2013 resolution states, "there is a growing national concern relating to fraudulent business registration, business identity theft, online consumer protection, and consumer confusion," and " if these extensions were to be awarded without enforceable safeguards, it could allow anyone to operate a .INC, .LLC, .LLP or .CORP website, regardless of their actual business registration status/entity type."

We reiterate member sentiments that ICANN must proceed "cautiously and deliberately" in its review of applications for these gTLDs, giving careful consideration to the necessity of a community application process. If the ability to grant these designations is necessary, then it is our desire that only a responsible steward be awarded the opportunity to administer these corporate identifier extensions relating to these long-standing business designations.

Regards,

Hon. Tre Hargett, Tennessee Secretary of State
President, National Association of Secretaries of State

cc: Dr. Stephen Crocker, Chairman of the Board, ICANN

Contact Information Redacted
Contact Information Redacted Fax | www.nass.org

> -----Original Message-----

> From: Andrei Franklin [mailto:Contact Information Redacted

> Sent: Tuesday, April 22, 2014 2:43 PM

> To: Contact Information Redacted

> Subject: Confirmation of authenticity of support for new generic Top Level Domain (.INC)

>

> To whom it may concern:

>

> I am writing to you on behalf of the Internet Corporation for Assigned Names and Numbers (ICANN) in relation to the New gTLD Program. The Economist Intelligence Unit (EIU) has been selected as the Community Priority Evaluation Panelist to authenticate letters from entities providing letters of support or objection to community-based

> applications.

>

> Dot Registry LLC has applied for the gTLD .INC, for which we received documentation of support from your organization.

>

> Consistent with the New gTLD Program rules, we seek confirmation of the authenticity of your organization's letter as well as confirmation that the sender of the letter had the authority to indicate your organization's support for the application.

>

> We kindly request that you respond to this request via email to Andrei Franklin Contact Information Redacted A short email response confirming the above points are correct would be greatly appreciated.

>

> We would be grateful if you could respond to this request by 22/05/2014.

> We will follow up via email and telephone in the interim on a regular basis.

>

> Thank you for your assistance in this matter.

>

> Regards,

>

>

> Andrei Franklin

> Contact Information Redacted

>

>

NASS
National Association of Secretaries of State

Resolution of Recommendation to the International Corporation of Assigned Names and Numbers (ICANN) for Issuance of Corporate Internet Extensions

WHEREAS, the National Association of Secretaries of State (NASS) is an organization whose members include Secretaries of State and Lieutenant Governors of the 50 U.S. states and territories; and

WHEREAS, the majority of members are responsible for the administrative oversight of business entity registration processes in their respective states; and

WHEREAS, the International Corporation of Assigned Names and Numbers (ICANN) is in the process of awarding new Internet extensions that include business entity endings, including .INC, .LLC. .LLP and .CORP; and

WHEREAS, NASS and its members have followed this process closely and have expressed concerns regarding the potentially negative impacts of issuing generic gTLDs as corporate extensions, which we believe do not have enforceable safeguards to protect against misuse and could ultimately have a harmful effect on entities that are legally registered in the U.S. ; and

WHEREAS, NASS and many of its members have previously expressed in numerous letters to ICANN that these extensions may be unnecessary and irresponsible, but if allowed, should only be awarded to entities that are appropriately registered and in good-standing with Secretary of State or other state filing offices of jurisdiction; and

WHEREAS, there is a growing national concern relating to fraudulent business registration, business identity theft, online consumer protection and consumer confusion; and

WHEREAS, if these extensions were to be awarded without enforceable safeguards, it could allow anyone to operate a .INC, .LLC, .LLP or .CORP website, regardless of their actual business registration status/entity type; and

WHEREAS, the Government Advisory Committee to ICANN has issued advice in regards to the necessity of safeguards and restrictions on these particular Internet extensions and we believe these safeguards and restrictions are only enforceable in the community application process;

NOW, THEREFORE, BE IT RESOLVED THAT the National Association of Secretaries of State (NASS) recommends that if these extensions are approved, then ICANN should adopt the GAC recommendations and award the .INC, .LLC, .LLP and .CORP extensions with appropriate safeguards and restrictions designed to protect the U.S. business community and consumers.

Adopted the 21st day of July, 2013
in Anchorage, AK

EXPIRES: Summer 2018

Contact Information Redacted

www.nass.org

Annex 2

New gTLD Program Community Priority Evaluation Report Report Date:
11 June 2014

Application ID:	1-880-
Applied-for String:	~~LLC~~I
Applicant Name:	Dot Registry LLC

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Did Not Prevail

Thank you for your participation in the New gTLD Program. After- careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that -the application did not -meet -the requirements specified -in the Applicant Guidebook. Your -application did not- prevail in Community Priority Evaluation.

Your -application may still resolve -string- contention through the other methods as described in Module 4 of the Applicant Guidebook.

Panel Summary

Overall Scoring 5 Point(s)

Criteria	Earned	Achievable
#1: Community Establishment	0	4
#2: Nexus between Proposed String and Community	0	4
#3: Registration Policies	3	4
#4: Community Endorsement	2	4
Total	5	16

Minimum Required Total Score to Pass 14

Criterion #1: Community Establishment 0/4 Point(s)

1-A Delineation *0/2 Point(s)*

The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community demonstrates insufficient delineation, organization and pre-existence. The application received a score of 0 out of 2 points under criterion 1-A: Delineation.

Delineation

Two conditions must be met to fulfill the requirements for delineation: there must be a clear

straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.

The community defined in the application ~~("LLC")~~("INC") is:

> Members of the community are defined as businesses registered as ~~limited liability companies with~~corporations within the United States or its territories. ~~Limited Liability Companies~~This would include Corporations, Incorporated Businesses, Benefit Corporations, Mutual Benefit Corporations and Non-Profit Corporations. Corporations or ~~(LLC's)~~"INC's" as they are commonly abbreviated, represent one of the most ~~popnlar~~complex business entity structures in the ~~US. LLC's~~U.S. Corporations commonly participate in acts of commerce, public services, and product creation….
>
> ~~An LLC~~ A corporation is defined as a ~~flexible form~~business created under the laws of ~~enterprise~~a State as a separate legal entity, that ~~blends elements of partnership~~has privileges and liabilities that are distinct from those of its members. While corporate ~~structures. It is a legal form of company that provides limited liability to its owners~~law varies in ~~the vast majority of United States~~different jurisdictions~~. LLC's are a unique entity type because they~~, there are ~~considered a hybrid, having certain~~four characteristics of ~~both a corporation~~ the business corporation that remain consistent: legal personality, limited liability, transferable shares, and ~~a partnership or sole proprietorship. LLC's are closely related to~~centralized management under a board structure. Corporate statutes typically empower corporations ~~in the sense that they pru:ticipate in similar activities~~to own property, sign binding contracts, and ~~provide limited liability to their partners. Additionally, LLC's share a key characteristic with partnerships through the availability of pass-through income taxation. LLC's are a more flexible~~
> ~~entity type than a corporation and are often well suited for businesses owned by a single owner~~pay taxes in a capacity separate from that of its shareholders.

This community definition shows a clear and straightforward membership. While broad, the community is clearly defined, as membership requires formal registration as a ~~limited liability company~~corporation with the relevant US state. In addition, ~~limited liability companies~~corporations must comply with US state law and show proof of best practice in commercial dealings to the relevant state authorities.

However, the community as defined in the application does not have awareness and recognition of a community among its members. This is because ~~limited liability companies~~corporations operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an INC. Based on the Panel's research, there is no evidence of ~~LLCs~~INCs from different sectors acting as a community as defined by the Applicant Guidebook. There is no evidence that these ~~limited liability companies~~incorporated firms would associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

The community as defined in the application does not have at least one entity mainly dedicated to the community. Although responsibility for corporate registrations and the regulations pertaining to corporate formation are vested in each individual US state, these government agencies are fulfilling a function, rather than representing the community. In addition, the offices of the Secretaries of State of US states are not mainly dedicated to the community as they have other roles/functions beyond processing corporate registrations. According to the application:

> ~~LLC's~~Corporations can be formed through any jurisdiction of the United States. Therefore members

of this community exist in all 50 US states and its territories. ~~LLC~~Corporation formation guidelines are dictated by state law and can vary based on each State's regulations. Persons form ~~an LLC~~ a corporation by filing required documents with the appropriate state authority, usually the Secretary of State. Most states require the filing of Articles of Incorporation. These are considered public documents and are similar to articles of ~~incorporation~~organization, which establish a ~~corporation~~ limited liability company as a legal entity. At minimum, the Articles of ~~organization~~Incorporation give a brief description of ~~the intended~~proposed business ~~purposes,~~ activities, shareholders, stock issued and the registered ~~agent, and registered~~ business address. ~~LLC's are expected to conduct business in conjunction with the policies of the state in which they are formed, and the Secretary of State periodically evaluates a LLC's level of good standing based on their commercial interactions with both the state and consumers.~~

The community as defined in the application does not have documented evidence of community activities. As there is no entity that is mainly dedicated to the community as defined in the ~~.LLC~~.INC application, there is no

documented evidence of community activities.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for organization.

Pre-existence
To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed).

The community as defined in the application was not active prior to September 2007. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE process is conceived to identify qualified community-based applications, while preventing both "false positives" (awarding undue priority to an application that refers to a "community" construed merely to a get a sought-after generic word as a gTLD string) and "false negatives" (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a "community" construed to obtain a sought-after corporate identifier as a gTLD string, as these corporations would typically not associate themselves with being part of the community as defined by the applicant. The community therefore could not have been active prior to the above date (although its constituent parts were active).

The Community Priority Evaluation panel determined that the community as defined in the application does not fulfill the requirements for pre-existence.!

1-B Extension *0 / 2 Point(s)*

The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not demonstrate considerable size or longevity for the community. The application received a score of 0 out of 2 points under criterion 1-B: Extension.

Size
Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.

The community as defined in the application is of a considerable size. The community for .~~LLC~~INC as defined in the application is large in terms of number of members. According to the application:

> With ~~the number of~~almost 470,000 new corporations registered ~~LLC's~~ in the United States ~~totaling over five million~~ in 2010 (as reported by the International Association of Commercial Administrators) resulting in over 8,000,000 total corporations in the US, it is hard for the average consumer to not conduct business with ~~an LLC~~a corporation.

However, as previously stated, the community as defined in the application does not have awareness and recognition of a community among its members. This is because ~~limited liability companies~~corporations operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an ~~LLC~~INC. Based on the Panel's research, there is no evidence of ~~LLCs~~INCs from different sectors acting as a community as defined by the Applicant Guidebook. These ~~limited liability companies~~incorporated firms would therefore not typically associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for size.

~~Lo~~

Longevity

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application does not demonstrate longevity. As mentioned previously, according to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE process is conceived to identify qualified community-based applications, while preventing both "false positives" (awarding undue priority to an application that refers to a "community" construed merely to a get a sought-after generic word as a gTLD string) and "false negatives" (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to a ""community"" construed to obtain a sought-after corporate identifier as a gTLD string, as these ~~limited liability companies~~corporations would typically not associate themselves with being part of the community as defined by

the applicant. Therefore, the pursuits of the .~~LLC~~INC community are not of a lasting, non-transient nature.

Additionally, as previously stated, the community as defined in the application does not have awareness and recognition of a community among its members. This is because ~~limited liability companies~~corporations operate in vastly different sectors, which sometimes have little or no association with one another. -!Research showed that firms are-
typically organized around specific industries, locales, and other criteria not related to the entities structure as an ~~LLC~~INC. Based on the Panel's research, there is no evidence of ~~LL.Cs~~INCs from different sectors acting as a community as defined by the Applicant Guidebook. These ~~limited liability companies~~incorporated firms would therefore not typically associate themselves with being part of the community as defined by the applicant.

!
The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for longevity.

Criterion #2: Nexus between Proposed String and Community **0/4 Point(s)**

2-A Nexus *0/3 Point(s)*

The Community Priority Evaluation panel determined that the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the community, but over-reaches substantially beyond the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.

To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. ""Identify"" means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.

The applied-for string (.~~LLC~~INC) over-reaches substantially, as the string indicates a wider or related community of which the applicant is a part but is not specific to the applicant's community. According to the application documentation:

> ~~".LLC"~~".INC" was chosen as our gTLD string because it is the commonly used abbreviation for the entity type that makes up the membership of -our community. In the English language ~~Limited Liability Company~~the word incorporation is primarily shortened to ~~LLC~~Inc. when used to delineate business entity types. For example, McMillion Incorporated would additionally be referred to as McMillion Inc. Since all of our community members are ~~limited liability companies~~incorporated businesses we believed that ~~".LLC"~~".INC" would be the simplest, most straightforward way to accurately represent our community.
>
> ~~LLC~~Inc. is a recognized abbreviation in all 50 states and US Territories denoting the ~~registration~~

~~type~~corporate status of ~~a business~~an entity. ~~The Panel's~~Our research indicates that ~~while~~Inc. as corporate identifier is used in three other jurisdictions ~~use LLC as a corporate identifier.~~(Canada, Australia, and the Philippines) though their ~~definitions~~formation regulations are ~~quite~~ different ~~and there are no other known associations or definitions~~from the United States and their entity designations would not fall within the boundaries of ~~LLC in the English language~~our community definition.

While the string identifies the name of the community, it captures a wider geographical remit than the

community has, as the corporate identifier is used in ~~other jurisdictions (outside~~Canada, Australia and the ~~US).~~Philippines. Therefore, there is a substantial over-reach between the proposed string and community as defined by the applicant.

The Community Priority Evaluation panel determined that the applied-for string over-reaches substantially beyond the community. It therefore does not meet the requirements for nexus.

2-B Uniqueness *0 / 1 Point(s)*

The Community Priority Evaluation panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1 point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application does not demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus and is therefore ineligible for a score of 1 for Uniqueness. The Community Priority Evaluation panel determined that the applied-for string does not satisfy the condition to fulfill the requirements for Uniqueness.

Criterion #3: Registration Policies **3/4 Point(s)**

3-A Eligibility *1 / 1 Point(s)*

The Community Priority Evaluation panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.

To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by limiting eligibility to registered ~~limited liability companies~~corporations and by cross-referencing their documentation against the applicable US state's registration records in order to verify the accuracy of their application, etc. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.

3-B Name Selection *1 / 1 Point(s)*

The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.

To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining a comprehensive list of name selection rules, such as requirements that second level domain names should match or include a substantial part of the registrant's legal name, and specifying that registrants will not be able to register product line registrations, amongst other requirements. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.

3-C Content and Use	*1 / 1 Point(s)*

The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.

To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by noting that all registrants must adhere to the content restrictions outlined in the applicant's abuse policies. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Content and Use.

3-D Enforcement	*0 / 1 Point(s)*

The Community Priority Evaluation panel determined that the application did not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the application provided specific enforcement measures but did not include appropriate appeal mechanisms. The application received a score of 0 out of 1 point under criterion 3-D: Enforcement.

Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. For example, if a registrant wrongfully applied for and was awarded a second level domain name, the right to hold this domain name will be immediately forfeited. (Comprehensive details are provided in Section 20e of the applicant documentation). However, the application did not outline an appeals process. The Community Priority Evaluation panel determined that the application satisfies only one of the two conditions to fulfill the requirements for Enforcement.

Criterion #4: Community Endorsement	**2/4 Point(s)**
4-A Support	*1 / 2 Point(s)*

The Community Priority Evaluation panel determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.

To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. "Relevance" refers to the communities explicitly and implicitly addressed.

The Community Priority Evaluation panel determined that the applicant was not the recognized community institution(s)/member organization(s), nor did it have documented authority to represent the community, or documented support from a majority of the recognized community institution(s)/member organization(s). However, the applicant possesses documented support from at least one group with relevance and this documentation contained a description of the process and rationale used in arriving at the expression of support.

The application included letters from a number of Secretaries of State of US states, which were considered to constitute support from groups with relevance, as each Secretary of State has responsibility for corporate registrations and the regulations pertaining to corporate formation in its jurisdiction. These entities are not the recognized community institution(s)/member organization(s), as these government agencies are fulfilling a function, rather than representing the community. The viewpoints expressed in these letters were not consistent across states. While several US states expressed clear support for the applicant during the Letters of Support verification process, others either provided qualified support, refrained from endorsing one particular applicant over another, or did not respond to the verification request. Letters of support from other entities did not meet the requirement for relevance based on the Applicant Guidebook criteria, as they were not from the recognized community institutions/member organizations. The Community Priority Evaluation Panel determined that the applicant partially satisfies the requirements for Support.

4-B Opposition *1 / 2 Point(s)*

The Community Priority Evaluation panel determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received relevant opposition from one group of non-negligible size. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.

The application received several letters of opposition, one of which was determined to be relevant opposition from an organization of non-negligible size. This opposition was from a community that was not identified in the application but which has an association to the applied-for string. Opposition was on the grounds that limiting registration to US registered corporations only would unfairly exclude non-US businesses. The remaining letters were either from groups/individuals of negligible size, or were not from communities which were not mentioned in the application but which have an association to the applied for string. The Community Priority Evaluation Panel determined that the applicant partially satisfied the requirements for Opposition.

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.

New gTLD Program Community Priority Evaluation Report Report Date:
11 June 2014

Application ID:	1-880-
Applied-for String:	LLC
Applicant Name:	Dot Registry LLC

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Did Not Prevail

Thank you for your participation in the New gTLD Program. After- careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that -the application did not -meet -the requirements specified -in the Applicant Guidebook. Your -application did not- prevail in Community Priority Evaluation.

Your -application may still resolve -string- contention through the other methods as described in Module 4 of the Applicant Guidebook.

Panel Summary

Overall Scoring 5 Point(s)

Criteria	Earned	Achievable
#1: Community Establishment	0	4
#2: Nexus between Proposed String and Community	0	4
#3: Registration Policies	3	4
#4: Community Endorsement	2	4
Total	5	16

Minimum Required Total Score to Pass 14

Criterion #1: Community Establishment 0/4 Point(s)

1-A Delineation ***0 / 2 Point(s)***

The -Community Priority Evaluation panel -determined that -the community as identified in the application did not -meet -the criterion for Delineation as specified -in section 4.2.3 (Community Priority Evaluation Criteria)

_of the Applicant Guidebook, as the community demonstrates insufficient delineation, organization and pre-existence. The -application received -a score -of 0 out -of 2 points under- criterion 1-A: Delineation.

Delineation

Two -conditions must -be met -to fulfill the requirements for delineation: there -must- be a clear straightforward membership definition and there -must- be awareness and recognition of a community (as defined by the applicant) among its members.

The community defined in the application ~~("LLC")~~("LLP") is:

> Members of the community are defined as businesses registered as ~~limited liability companies~~Limited Liability Partnerships with the United States or its territories. Limited Liability ~~Companies~~Partnerships or (~~LLC's~~LLP's) as they are commonly abbreviated, are specifically designed to represent ~~one of the most popnlar business entity structures in the US. LLC's commonly pru:ticipate in acts of commerce, public services, and product creation….~~professional service businesses in the US . Limited Liability Partnerships are commonly adopted by businesses which focus on: accounting, attorneys, architects, dentists, doctors and other fields treated as professionals under each state's law….
>
> ~~An LLC is defined as a flexible form of enterprise that blends elements of partnership and corporate structures. It is a legal form of company that provides limited liability to its owners in the vast majority of United States jurisdictions. LLC's are a unique entity type because they are considered a hybrid, having certain characteristics of both a corporation and a partnership or sole proprietorship. LLC's are closely related to corporations in the sense that they pru:ticipate in similar activities and provide limited liability to their partners. Additionally, LLC's share a key characteristic with partnerships through the availability of pass through income taxation. LLC's are a more flexible entity type than a corporation and are often well suited for businesses owned by a single owner.~~ A Limited Liability Partnership is defined as a partnership in which some or all partners (depending on jurisdiction) have limited liability. LLP's therefore exhibit qualities of both partnerships and corporations. In an LLP, one partner is not responsible or liable for another partner's misconduct or negligence. This distinction is why the LLP is a popular business entity amongst accountants, doctors, and lawyers; which deal heavily with issues that could inspire mal-practice lawsuits.

This community definition shows a clear and straightforward membership. While broad, the community is clearly defined, as membership requires formal registration as a limited liability ~~company~~partnership with the relevant US state~~.~~ (LLPs operate in about 40 US states). In addition, limited liability ~~companies~~partnerships must comply with US state law and show proof of best practice in commercial dealings to the relevant state authorities.

However, the community as defined in the application does not have awareness and recognition of a community among its members. This is because limited liability ~~companies~~partnerships operate in vastly different sectors, which sometimes have little or no association with one another. ~~-~~!Research showed that firms are~~-~~
typically organized around specific industries, locales, and other criteria not related to the entities structure as an ~~LLC~~LLP. Based on the Panel's research, there is no evidence of ~~LLCs~~LLPs from different sectors acting as a community as defined by the Applicant Guidebook. There is no evidence that these limited liability ~~companies~~partnerships would associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

The community as defined in the application does not have at least one entity mainly dedicated to the community. Although responsibility for corporate registrations and the regulations pertaining to corporate formation are vested in each individual US state, these government agencies are fulfilling a function, rather than representing the community. In addition, the offices of the Secretaries of State of US states are not mainly dedicated to the community as they have other roles/~~-~~functions beyond processing corporate

registrations. According to the application:

> ~~LLC's~~Limited Liability Partnerships can be formed through ~~any jurisdiction of~~ all but ten states in the United States.~~-~~
> Therefore members of this community exist in ~~all 50~~close to forty US states~~ and its territories. LLC~~. LLP formation guidelines are dictated by state law and can vary based on each ~~state's~~state's regulations. Persons form an ~~LLC~~LLP by filing required documents with the appropriate state authority, usually the Secretary of State.~~ Most states require the filing of Articles of Organization. These are considered public documents and are similar to ru:ticles of incorporation, which establish a corporation as a legal entity. At minimum, the articles of organization give a brief description of the intended business purposes, the registered agent, and registered business address. LLC's are expected to conduct business in conjunction with the policies of the state in which they are formed, and the Secretary of State periodically evaluates a LLC's level of good standing based on their commercial interactions with both the state and consumers.~~

The community as defined in the application does not have documented evidence of community activities. As there is no entity that is mainly dedicated to the community as defined in the .~~LLC~~LLP application, there is no documented evidence of community activities.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for organization.

Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed).

The community as defined in the application was not active prior to September 2007. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE process is conceived to identify qualified community-based applications, while preventing both "false positives" (awarding undue priority to an application that refers to a "community" construed merely to a get a sought-after generic word as a gTLD string) and "false negatives" (not awarding priority to a qualified community application).). The Community Priority Evaluation panel determined that this application refers to a "community" construed to obtain a sought-after corporate identifier as a gTLD string, as these limited liability ~~companies~~partnerships would typically not associate themselves with being part of the community as defined by the applicant. The community therefore could not have been active prior to the above date (although its constituent parts were active)..

The Community Priority Evaluation panel determined that the community as defined in the application does not fulfill the requirements for pre-existence.

1-B Extension *0 / 2 Point(s)*

The Community Priority Evaluation panel determined that the community as identified in the application did not meet the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not demonstrate considerable size or longevity for the community. The application received a score of 0 out of 2 points under criterion 1-B: Extension.

Size

Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.

The community as defined in the application is of a considerable size. The community for .~~LLC~~LLP as defined in the application is large in terms of number of members. According to the application~~:~~, "LLP's represent a small but prestigious sector of business in the United States."

> ~~With the number of registered LLC's in the United States totaling over five million in 2010 (as reported by the International Association of Commercial Administrators) it is hard for the average consumer to not conduct business with an LLC.~~

However, as previously stated, the community as defined in the application does not have awareness and recognition of a community among its members. This is because limited liability partnerships operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an ~~LLC~~LLP. Based on the Panel's research, there is no evidence of ~~LLCs~~LLPs from different sectors acting as a community as defined by the Applicant Guidebook. These limited liability ~~companies~~partnerships would therefore not typically associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for size.

Longevity

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application does not demonstrate longevity. As mentioned previously, according to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook the CPE

process is conceived to identify qualified community-based applications, while preventing both "false positives" (awarding undue priority to an application that refers to a "community" construed merely to a get a sought-after generic word as a gTLD string) and "false negatives" (not awarding priority to a qualified community application). The Community Priority Evaluation panel determined that this application refers to

a "community" construed to obtain a sought-after corporate identifier as a gTLD string, as these limited liability partnerships would typically not associate themselves with being part of the community as defined by the applicant. Therefore, the pursuits of the .LLP community are not of a lasting, non-transient nature.

Additionally, as previously stated, the community as defined in the application does not have awareness and recognition of a community among its members. This is because limited liability partnerships operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an ~~LLC~~LLP. Based on the Panel's research, there is no evidence of ~~LLC~~LLPs from different sectors acting as a community as defined by the Applicant Guidebook. These limited liability partnerships would therefore not typically associate themselves with being part of the community as defined by the applicant.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for longevity.

Criterion #2: Nexus between Proposed String and Community **0/4 Point(s)**

2-A Nexus *0/3 Point(s)*

The Community Priority Evaluation panel determined that the application did not meet the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the community, but over-reaches substantially beyond the community. The application received a score of 0 out of 3 points under criterion 2-A: Nexus.

To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. "Identify" means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.

The applied-for string (.~~LLC~~LLP) over-reaches substantially, as the string indicates a wider or related community of which the applicant is a part but is not specific to the applicant's community. According to the application documentation:

> ~~".LLC"~~".LLP" was chosen as our gTLD string because it is the commonly used abbreviation for the entity type that makes up the membership of our community. In the English language Limited Liability ~~Company~~Partnership is primarily shortened to ~~LLC~~LLP when used to delineate business entity types~~. Since all of our community members are limited liability companies we believed that ".LLC" would be the simplest, most straight forward way to accurately represent our community.~~…
>
> ~~LLC~~LLP is a recognized abbreviation in all 50 states and US territories denoting the registration type of a business entity. ~~The Panel's~~Our research indicates that ~~while~~LLP as corporate identifier is used in eleven other jurisdictions ~~use LLC as a corporate identifier,~~(Canada, China, Germany, Greece, India, Japan, Kazakhstan, Poland, Romania, Singapore, and the United Kingdom) though their ~~definitions~~formation regulations are ~~quite~~ different ~~and there are no other known associations or definitions~~from the United States and their entity designations would not fall within the boundaries of ~~LLC in the English language~~our community definition.

While the string identifies the name of the community, it captures a wider geographical remit than the

community has, as the corporate identifier is used in ~~other jurisdictions (outside~~Poland, the ~~US).~~UK, Canada and Japan, amongst others. Therefore, there is a substantial over-reach between the proposed string and community as defined by the applicant.

The Community Priority Evaluation panel determined that the applied-for string over-reaches substantially beyond the community. It therefore does not meet the requirements for Nexus.

2-B Uniqueness	*0 / 1 Point(s)*

The Community Priority Evaluation panel determined that the application did not meet the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the string does not score a 2 or a 3 on Nexus. The application received a score of 0 out of 1 point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application does not demonstrate uniqueness as the string does not score a 2 or a 3 on Nexus and is therefore ineligible for a score of 1 for Uniqueness. The Community Priority Evaluation panel determined that the applied-for string does not satisfy the condition to fulfill the requirements for Uniqueness.

Criterion #3: Registration Policies	**3/4 Point(s)**
3-A Eligibility	*1 / 1 Point(s)*

The Community Priority Evaluation panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.

To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by limiting eligibility to registered limited liability partnerships and by cross-referencing their documentation against the applicable US state's registration records in order to verify the accuracy of their application. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.

3-B Name Selection	*1 / 1 Point(s)*

The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.

To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by outlining a comprehensive list of name selection rules, such as requirements that second level domain names should match or include a substantial part of the registrant's legal name, and specifying that registrants will not be able to register product line registrations, amongst other requirements. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.

3-C Content and Use	*1 / 1 Point(s)*

The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.

To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by noting that all registrants must adhere to the content restrictions outlined in the applicant's abuse policies. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Content and Use.

3-D Enforcement *0 / 1 Point(s)*

The Community Priority Evaluation panel determined that the application did not meet the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as the application provided specific enforcement measures but did not include appropriate appeal mechanisms. The application received a score of 0 out of 1 point under criterion 3-D: Enforcement.

Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. For example, if a registrant wrongfully applied for and was awarded a second level domain name, the right to hold this domain name will be immediately forfeited. (Comprehensive details are provided in Section 20e of the applicant documentation). However, the application did not outline an appeals process. The Community Priority Evaluation panel determined that the application satisfies only one of the two conditions to fulfill the requirements for Enforcement.

Criterion #4: Community Endorsement **2/4 Point(s)**

4-A Support *1 / 2 Point(s)*

The Community Priority Evaluation panel determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.

To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. "Relevance" refers to the communities explicitly and implicitly addressed.

The Community Priority Evaluation panel determined that the applicant was not the recognized community institution(s)/member organization(s), nor did it have documented authority to represent the community, or documented support from a majority of the recognized community institution(s)/member organization(s). However, the applicant possesses documented support from at least one group with relevance and this documentation contained a description of the process and rationale used in arriving at the expression of support.

The application included letters from a number of Secretaries of State of US states, which were considered to

constitute support from groups with relevance, as each Secretary of State has responsibility for corporate registrations and the regulations pertaining to corporate formation in its jurisdiction. These entities are not the recognized community institution(s)/member organization(s), as these government agencies are fulfilling a function, rather than representing the community. The viewpoints expressed in these letters were not consistent across states. While several US states expressed clear support for the applicant during the Letters of Support verification process, others either provided qualified support, refrained from endorsing one

particular applicant over another, or did not respond to the verification request. Letters of support from other entities did not meet the requirement for relevance based on the Applicant Guidebook criteria, as they were not from the recognized community institutions/member organizations. The Community Priority Evaluation Panel determined that the applicant partially satisfies the requirements for Support.

4-B Opposition	*1/2 Point(s)*

The Community Priority Evaluation panel determined that the application partially met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received relevant opposition from one group of non-negligible size. The application received a score of 1 out of 2 points under criterion 4-B: Opposition.

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.

The application received several letters of opposition, one of which was determined to be relevant opposition from an organization of non-negligible size. This opposition was from a community that was not identified in the application but which has an association to the applied-for string. Opposition was on the grounds that limiting registration to US registered corporations only would unfairly exclude non-US businesses. The remaining letters were either from groups/individuals of negligible size, or were not from communities which were not mentioned in the application but which have an association to the applied for string. The Community Priority Evaluation Panel determined that the applicant partially satisfied the requirements for Opposition.

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.

Annex 3

NASS
National Association of Secretaries of State

April 1, 2014

Economist Intelligence Unit
Contact Information Redacted

To Whom it May Concern:

The National Association of Secretaries of State (NASS) recently reviewed the comments posted to the Internet Corporation of Assigned Names and Numbers (ICANN) website regarding the issuance of corporate identifier extensions .INC, .LLC, .LLP, and .CORP. On behalf of our Executive Board, I would like to make some minor clarifications and update you on the latest resolution adopted by our group.

As you may know, NASS is a not-for-profit professional association whose membership includes Secretaries of State and Lieutenant Governors representing U.S. states and territories. With a majority of members who are responsible for the oversight of business entity registration processes in their respective states, we are strongly united in our belief that ICANN should only award these extensions according to Government Advisory Committee (GAC) recommendations, which urge the adoption of appropriate safeguards, accountability of applicants, verification of business entity registrations and restrictions designed to protect the U.S. business community and consumers.

In July 2013, NASS unanimously passed a resolution solidifying this position as an organization. The resolution, available online, reiterates the membership's collective concerns and recognizes our shared belief that not having "enforceable safeguards to protect against misuse could ultimately have a harmful effect on entities that are legally registered in the U.S." Additionally, it notes that NASS and its members "have previously expressed in numerous letters to ICANN that these extensions may be unnecessary and irresponsible, but if allowed, they should only be awarded to entities that are appropriately registered and in good-standing with Secretary of State or state filing offices of jurisdiction."

Our position also affirms that the community application process is the only option to ensure that safeguards and restrictions to protect U.S. businesses can and will be enforced, stating, "[T]he Government Advisory Committee to ICANN has issued advice in regards to the necessity of safeguards and restrictions on these particular Internet extensions and we believe these safeguards and restrictions

Hall of States, Contact Information Redacted
Contact Information Redacted Fax | www.nass.org

are only enforceable in the community application process." It is important to note that the entity designations under consideration (INC, LLC, CORP, LLP) are not generic terms. These abbreviations have been used for decades in the United States to identify registered business entities with the ability to conduct commerce.

As the only community applicant in this process, DOT Registry LLC has spent the last several years reaching out to NASS and more importantly, the Secretaries themselves, to actively seek an understanding of how the business entity registration process works in each state. In turn, the Secretaries of State have shared with DOT Registry LLC the processes and guidelines that would be deemed appropriate for maintaining the integrity and security of such entities in establishing a registry of corporate identifier TLDs. Any award by ICANN should be to the applicant that will commit to maintaining and enforcing a system with regular, real-time verification of each company's legal status, in accordance with state law.

While we respect the important role that ICANN must play in convening global stakeholders, the process for issuing the aforementioned corporate identifier strings must not threaten the stability and legally-established protections of registered businesses in the U.S., as well as the state government agencies that register and maintain information on the standing of such entities. As our July 2013 resolution states, "there is a growing national concern relating to fraudulent business registration, business identity theft, online consumer protection, and consumer confusion," and " if these extensions were to be awarded without enforceable safeguards, it could allow anyone to operate a .INC, .LLC, .LLP or .CORP website, regardless of their actual business registration status/entity type."

We reiterate member sentiments that ICANN must proceed "cautiously and deliberately" in its review of applications for these gTLDs, giving careful consideration to the necessity of a community application process. If the ability to grant these designations is necessary, then it is our desire that only a responsible steward be awarded the opportunity to administer these corporate identifier extensions relating to these long-standing business designations.

Regards,

Tre Hargett

Hon. Tre Hargett, Tennessee Secretary of State
President, National Association of Secretaries of State

cc: Dr. Stephen Crocker, Chairman of the Board, ICANN

Hall of States, Contact Information Redacted
Contact Information Redacted Fax | www.nass.org

Annex 4

From: Leila Butt [mailto: Contact Informat on Redacted
Sent: Tuesday, May 27, 2014 8:58 AM
To: Jaeger, Al A.
Subject: Apology and explanation of letter authenticity process for generic Top Level Domains .LLC, .LLP and .INC

Dear Secretary Jaeger

My name is Leila Butt and I am writing to you on behalf of the Economist Intelligence Unit (EIU), which has been selected as the Community Priority Evaluation Panelist to authenticate letters from entities providing letters of support or objection to community-based applications as part of ICANN's new gTLD program. I am the project manager for the ICANN project at the EIU.

Several of our evaluators have recently been in contact with you to seek confirmation as to whether your organization supports Dot Registry LLC's application for three gTLDs: .LLC, .LLP and .INC. We realize that in some cases receiving multiple emails may have caused confusion and inconvenience, for which we apologize.

We would like to take the opportunity to clarify our evaluation process. As we are evaluating the three gTLD applications separately, we need to maintain separate formal records of all communications related to each particular application. This was our rationale for sending you three separate emails, each of which related to a different gTLD application.

Going forward, I will be your sole point of contact. After reviewing the feedback that you have already supplied with regard to these three applications, we do not have additional questions.

Thank you for clarifying your position towards Dot Registry's application for the three gTLDs. Again, we are sorry for any inconvenience or confusion this may have caused.

Yours sincerely

Leila Butt

Project Manager

The Economist Intelligence Unit

--

Shaul Jolles, CEO
Dot Registry, LLC
Contact nformation Redacted
Skype Contact Information Redacted

US Corporate Domain Community
www.DotRegistry.org
Contact Information Redacted

---------- Forwarded message ----------
From: **New gTLD Customer Support** <newgtld@icann.org>
Date: Fri, May 23, 2014 at 5:57 PM
Subject: RE: Concerns regarding CPE [ref: 00Dd0huNE._500d0HmLkf:ref]
To: Contact Information Redacted >
Cc: Contact Information Redacted
Contact Information Redacted

Dear Shaul Jolles,

Thank you for sharing your experiences and your concerns regarding the Community Priority Evaluation (CPE) CPE letters of support validation process. We apologize for any confusion and frustration this has caused you and your supporters. The EIU has been made aware of the frustration that some authors of the letters of support are experiencing during the validation process, both from us and the authors themselves. They are making adjustments to streamline the communication process and where possible, and to consolidate communications to individuals that need to be contacted several times.

The validation of letters of support (or opposition) is a standard part of the CPE Panel's overall process while conducting the evaluation Community Priority Evaluation (CPE), and was articulated in the CPE Guidelines document developed by the Panel . This process is designed to verify the authenticity of these letters and ensure they meet the requirements as stated:

1. clearly expressing the organization's support for the community based application,
2. demonstrating the organization's understanding of the string being requested,
3. that the organization exists and,
4. the author has the authority to represent the organization.

Consistent with all phases of the program, each application is reviewed on an individual basis. In your case, 3 of your applications (LLC, LLP, INC) are simultaneously undergoing CPE. Each application has its own team of evaluators working in parallel, thus performing the validation process for the particular TLD to which they are assigned. The letters of support associated with your applications often reference all of your applied for strings in the same letter. With the evaluations occurring in parallel as-described above, the communications were sent to the same secretaries of state from several different evaluators at the EIU.

Additionally, some of the letters submitted did not clearly express the organization's support for your specific application(s) for the TLD(s). In these cases the EIU evaluators have followed up with the authors of these letters to confirm that their organizations support your specific application. While this has led to several additional email exchanges, it is necessary for the panel to have the documented evidence of the author's intentions relative to supporting the application, rather than to require the evaluators to interpret the letter.

Also, as stated in their email communication to the author, the EIU evaluators send frequent follow up and reminder emails in order receive a response so that they can complete the evaluation in a timely manner. These reminder emails are followed up by a phone call if an email response is not received. This was based on their experience as one of the Geographic

Names Panel firms, if they did not follow up, they often would not get an answer, and could not complete their evaluation in a timely manner.

The new gTLD team is working with the EIU to streamline the communications with supporters and reduce the total number of messages sent. We are also working with the EIU to ensure that all communications are professional and courteous, and reference both ICANN and the New gTLD program in an effort to clarify the intent and purpose of the communications. We apologize for any frustration and inconvenience this process has cause for you or the supporters of your applications.

Please let us know if you have further concerns.

Sincerely,

Russ Weinstein

Sr. Manager, gTLD Operations

---------- Original Message ----------
From: New gTLD Customer Support [newgtld@icann.org]
Sent: 5/19/2014 10:37 PM
To: Contact Information Redacted
Subject: RE: Concerns regarding CPE [ref:_00Dd0huNE._500d0HmLkf:ref]

Dear Shaul Jolles,
Thank you for your inquiry.

We have a status meeting with the CPE evaluators later in the week. We will follow up on this topic with them and respond to you later this week with a more detailed response.

Regards,
New gTLD Operations Team

---------- Original Message ----------
From: Shaul Jolles Contact Informat on Redacted
Sent: 5/19/2014 3:02 PM
To: Contact Information Redacted
Con ac nforma ion Redac ed

Contact Information Redacted

Subject: Concerns regarding CPE

Good afternoon Christine,

We are reaching out to ICANN with serious concerns brought to our attention over the EIU's handling of the CPE Authenticity process for Dot Registry's applications for .inc, .llc and .llp.

Over the last several months, the evaluators have reached out to all of the authors of Dot Registry's support letters attached to our applications, requesting that they; (1) first, prove their authority to write such letters of support and (2) after sending a second letter, that they give their "explicit" consent and authorization of Dot Registry to operate the respective gTLDs. Many Secretaries of State have been contacted in upwards of five or more times for the same letter of support and have expressed their concerns that this process reflects poorly on ICANN's ability to manage the CPE process. Much like the President of the U.S., these Secretaries of State have also been sworn to office, under oath, to act in an official governmental capacity. The repeated contact by the evaluators of these government officials, which already carry heavy work-loads, has become excessive and burdensome.

Dot Registry has been contacted by all of the Secretaries of State offices, expressing their increased irritation level with having to repeatedly verify that they are a government official. Each office has indicated that it appears their responses, like their previous support correspondence over the last two years, has fallen on deaf ears and is not being taken seriously by ICANN. They have all indicated that this reflects poorly on ICANN and we are finding it difficult to defend the EIU's actions, ICANN and the process, without clear and convincing examples, to the contrary.

Further, the response period requested by the evaluators at this point is over the 90 day from evaluation start time-line, which indicates that the evaluations are not on schedule. Dot Registry kindly requests that ICANN ensure that the schedule is adhered to as established and set forth. If a deviation in the schedule is required, the affected applicant should be promptly notified. To date, that has not been the case.

In closing, we would greatly appreciate it if ICANN would review the concerns set forth in this email and take appropriate remedial action to stop the barrage of emails going to Secretaries of State and ensure the CPE timeline is adhered to. Below are several examples received today, as outlined above, to demonstrate the growing frustration mounting with Dot Registry's community.

From one Secretary of State after receiving 5 requests:

Sara, Andrei, and Conrad,
I have responded to each of you twice regarding the top level domains of .LLC, .LLP, .CORP, and .INC and the verification of the letters I have written as well as the support for Dot Registry's community application.
I though it might be helpful to make sure you also have a letter from the National Association of Secretaries of State (NASS), which I am a member of, that clearly details the support of the entire organization and how critical a community application is for the issuance of these specific top level domains.

From another Secretary of State after "additional verification" request:

Andrei…

I am a bit concerned with the tone and aggressiveness in your email below.

I had already responded to a Mr. Conrad Heine at the Economist and now question the veracity of your request as well the role of "the Economist".

Frankly, I am now questioning if your contact is a legitimate email? If so, what is the interest of The Economist in "verifying the authenticity of our position".

Further, Mr. Heine (email of May 8) asked for a response by June 7 – and now you are requesting a response by May 30.

As your letter states, *"**we must confirm whether or not your organization explicitly supports this community based application"** .*

This statement seems a bit drastic, and hence has raised red flags.

I also question why you wrote to the public email for my office and not the direct email to me?

– As Mr. Heine used.

- As was on my original letter.

Before I have any further communications with you or your organization, I would like some type of confirmation on:

· Who you are?

· Who you represent?

· *Confirmation* of your representation?

· What is the intent of any communication with me or my office?

· Will this response or any of those received from other Secretaries of State be in an article in your publication?

Thank you…

Thanks for your attention Christine.

--
Shaul Jolles, CEO
Dot Registry, LLC
Contact Information Redacted

Skype Contact Information Redacted

ref:_00Dd0huNE._500d0HmLkf:ref

--
Shaul Jolles, CEO
Dot Registry, LLC
Contact Information Redacted

Skype Contact Information Redacted

US Corporate Domain Community
www.DotRegistry.org
Contact Information Redacted

Reconsideration Request Form

Version of 11 April 2013

1. Requester Information

Name: Dot Registry, LLC

Address: Contact Information Redacted

Email: Contact Information Redacted

Phone Number (optional):

Name: National Association of Secretaries of State

Address: Contact Information Redacted

Email: Contact Information Redacted

Phone Number (optional):

2. Request for Reconsideration of (Check one only):

___ Board action/inaction

X_ Staff action/inaction

3. Description of specific action you are seeking to have reconsidered.

Dot Registry, LLC ("Dot Registry") is seeking reconsideration of the Economic Intelligence Unit ("EIU") Community Priority Evaluation panel's (the "Panel") determination that Dot Registry's application, no. 1-880-35508 for .LLP (the ".LLP Community Application") did not meet the requirements for Community Priority specified in the Applicant Guidebook ("AGB") (the "Panel Determination") and subsequent placement of the Application into active contention by the New gTLD Programming Committee ("NGPC").

4. Date of action/inaction:

The Community Priority Evaluation Report (the "Report") lists the date of the Panel Determination as June 11, 2014. Dot Registry believes that as a result of the Panel Determination, the Application was placed into active contention by the NGPC shortly thereafter.

5. On what date did you became aware of the action or that action would not be taken?

Dot Registry became aware of the Determination on June 11, 2014 when Dot Registry received an email indicating the Community Priority Evaluation ("CPE") status for the .LLP Community Application had been updated and to view its CSC portal for more information.

6. Describe how you believe you are materially affected by the action or inaction:

The Panel Determination, based on its violation and misapplication of the policies and processes set out in the AGB, CPE Guidelines and ICANN Bylaws, and the subsequent placement of the .LLP Community Application into active contention by the NGPC, will materially affect Dot Registry because Dot Registry will now have to resolve contention of the Application with seven other applicants. This will cause significant material harm to Dot Registry. As a result of the Panel Determination, which is inconsistent with both AGB and ICANN policy, Dot Registry will incur significant additional expenses to participate in the contention auction and ultimately may and not be able to operate the .LLP TLD.

7. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.

The improper denial of Community Priority status to the .LLP Community Application will likely result in delegation of the .LLP TLD to one of the non-community applicants, which as US government officials and Secretaries of State have stated, do not have enforceable safeguards in place. If the .LLP TLD proceeds to auction and the string is awarded to a generic, non-community application, ICANN is not only ignoring the direct communication provided by US and state government officials, which calls for transparent, enforceable registration policies,[1] but it is then possible that anyone could register an .LLP domain, even if they did not have an active limited liability partnership, which could result in significant harm to registered limited liability partnerships within the US, the consumers that patronize them and the US government officials then tasked with combatting the damages. The majority of US Secretaries of States are charged with the administrative oversight associated with business registration and reporting compliance in the US. Thus, state's would be financially taxed by the additional time and staff needed to investigate registrants of .LLP domain names that do not have an active limited liability partnership. The use of the designation .LLP implies that the company has the right to conduct business within the US. This designation if used haphazardly could create false consumer confidence, business identify theft and a legacy of damage that ultimately affects Registrants, end users and Registry operators. States are not adequately resourced to protect legitimate businesses from fraudulent operators. Furthermore, the use of a .LLP domain name by a company or entity that does not have an active limited liability partnership would violate state laws that specifically prohibit portraying a business as a limited

[1] *See* Annex 1.

liability partnership if it is not properly registered with the state[2] and/or deceptive trade practices' laws. Therefore, many Secretaries of State support a process which seeks to deter fraudulent business activities and provides some basic checks and balances in the use of domain extensions.

8. Detail of Board or Staff Action—Required Information

The Panel Determination, and the NGPC's subsequent placing of the .LLP Community Application into active contention in reliance on the Panel Determination, is inconsistent with established policies and procedures in the AGB and ICANN Bylaws. The inconsistencies with established policies and procedures include: (1) the Panel's failure to properly validate all letters of opposition; (2) the Panel's repeated reliance on "research" without disclosure of the source or substance of such research; (3) the Panel's "double counting"; (4) the Panel's apparent evaluation of the .LLP Community Application in connection with several other applications submitted by Dot Registry; and (5) the Panel's failure to properly apply the CPE criteria in the AGB in making the Panel Determination.

A. The Panel's Failure to Validate All Letters of Opposition

CPE Panels are required to validate all letters of support and opposition.[3] However, in evaluating the .LLP Community Application for Community Priority, the Panel here did not meet this obligation because the Panel did not validate all of the letters that were purportedly submitted in opposition to the Application, particularly those submitted by a group of non-negligible size. This is important because the .LLP Application only received 1 out of 2 points in the Opposition criteria, based on a purported opposition from a group of non-negligible size. Dot Registry is only aware of two letters submitted by a group of non-negligible size that could have been construed as in opposition to the application: a letter from the Secretary of State of Delaware, on March 5, 2014, stating his opinion that certain business identifier extensions should not be delegated[4] and a letter from the European Commission on March 4, 2014 expressing concern about Dot Registry's operation of .LLP due to usage of the term "LLP" outside of the US.[5] On March 20, 2014, the Secretary of State of Delaware submitted another letter clarifying that the State of Delaware was not opposed to the .LLP Community Application, which was posted on the ICANN new gTLD website on March 20, 2014.[6] Similarly, the European Commission submitted a letter rescinding its

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[2] *See, e.g.*, http://www.leg.state.nv.us/NRS/NRS-088.html#NRS088Sec6062

[3] *See* Community Priority Evaluation FAQ's, http://newgtlds.icann.org/en/applicants/cpe/faqs-31oct13-en.pdf.

[4] https://www.icann.org/en/system/files/correspondence/bullock-to-dryden-radell-05mar13-en.pdf.

[5] https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/12359.

[6] http://newgtlds.icann.org/en/program-status/correspondence/bullock-to-crocker-20mar14-en.pdf.

earlier opposition to the application, which was posted to the ICANN website on March 25, 2014.[7] Notably, in addition to the letter being posted on the ICANN New gTLD website, the European Commission specifically asked that ICANN forward a copy of this communication to the Economist Intelligence Unit "for the avoidance of any potential confusion with the pending Community Priority Evaluation processes underway for Dot Registry." The follow up letters submitted by both the Delaware Secretary of State and the European Commission clearly show that these groups of non-negligible size do not oppose the .LLP Community Application. Furthermore, the European Commission confirmed to Dot Registry that it was never contacted by EIU in connection with validation of the purported opposition, and it is Dot Registry's understanding that the Panel never attempted to contact the Delaware Secretary of State to validate any purported opposition to the .LLP Community Application.

In addition to the Panel's failure to validate all letters of support and opposition constituting a violation of established CPE process, its refusal to identify the group of non-negligible size, which purportedly opposed the .LLP Community Application, is inconsistent with the ICANN policy and Bylaws requirement to operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.[8] In its Determination, the Panel stated that the relevant letter of opposition from an organization of non-negligible size "was on the grounds that limiting registration to US registered limited liability partnerships only would unfairly exclude non-US businesses." What organization, other than the European Commission, who as discussed above, rescinded any opposition it might have had to the .LLP Community Application, could the Panel be referring to? The Panel's refusal to disclose the identity of this organization of non-negligible size, which is purportedly in opposition to the .LLP Community Application, is neither transparent nor fair. It is difficult to imagine what purpose the Panel could have for choosing not to identify this organization, since presumably any letter of opposition submitted by it would have been posted publicly anyway, and the Panel's failure to identify the organization calls into question whether such opposition actually exists. The BGC addressed this issue recently in its Determination of Reconsideration Request 14-1 regarding the Community Objection filed by the Independent Objector against the application or .MED. The BCG's language in that decision is instructive:

> "The Requester has provided the BGC with uncontroverted information demonstrating that the public comments on which the Objection was based were not, in fact, in opposition to the Requester's application. Accordingly, the BGC concludes that ICANN not consider the Expert Determination at

[7] https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/12412.
[8] ICANN Bylaws, Article III, Section 1.

issue."[9]

Similarly, since there is no evidence of public comments of relevance in opposition to the .LLP Community Application, the BGC should determine that the Panel Determination should not be considered.

B. The Panel's "Research"

In its Determination, the Panel repeatedly relies on its "research." For example, the Panel states that its decision not to award any points to the .LLP Community Application for 1-A Delineation is based on "[r]esearch [that] showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an LLP" and also that "[b]ased on the Panel's research, there is no evidence of LLPs from different sectors acting as a community as defined by the Applicant Guidebook."[10] Similarly, the Panel states that its decision not to award any points for 1-B Extension is based on its determination that the .LLP Community Application did not meet the criteria for Size or Longevity because "[b]ased on the Panel's research, there is no evidence of LLPs from different sectors acting as a community as defined by the Applicant Guidebook."[11] Thus, the Panel's "research" was a key factor in its decision not to award at least four (but possibly more) points to the .LLP Community Application. However, despite the significance of this "research", the Panel never cites any sources or gives any information about its substance or the methods or scope of the "research."

Dot Registry does not take issue with the Panel conducting independent research during its evaluation of the .LLP Community Application, which is permitted by the AGB."[12] However, as discussed above, ICANN's Bylaws obligate it (and by extension Staff and expert panels working on behalf of ICANN) to operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.[13] To the extent that the Panel's "research" is a key factor in its decision not to award at least four (but possibly more) points to the .LLP Community Application, it is not consistent with ICANN's obligation to operate in a transparent manner or with procedures designed to ensure fairness; to not include even a single citation or any information on the substance or method of the "research." The principles of transparency and fairness require that the Panel should have disclosed to Dot Registry (and the rest of the community) what "research" showed that firms are typically organized around specific industries, locales and other criteria not related to the entities structure as an LLP and that there is no evidence of limited liability partnerships from different sectors acting as a community as defined by

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[9]https://www.icann.org/en/system/files/files/determination-medistry-21jun14-en.pdf.
[10]http://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf.
[11]*Id.*
[12]*See* Section 4.2.3.
[13]ICANN Bylaws, Article III, Section 1.

the Applicant Guidebook.

C. The Panel's "Double Counting"

The AGB sets forth an established policy against "double counting" in the CPE criteria, such that "any negative aspect found in assessing an application for one criterion should only be counted there and should not affect the assessment for other criteria."[14] However AGB contains numerous instances of double counting as does the Determination. For example, one of the requirements for Delineation is that "there must be awareness and recognition of a community (as defined by the applicant) among its members." However, "awareness and recognition of a community (as defined by the applicant) among its members" is also a requirement for Size and for Longevity. Accordingly, if a CPE panel makes a determination that there is not sufficient awareness and recognition of a community (as defined by the applicant) among its members to award any points to an application for Delineation,[15] then this negative aspect found in assessing an application for this one criteria will also affect the assessment of Size and Longevity and result in no points being awarded for Extension; as well as it did here when the Panel determined in these sections that "[t]here is no evidence that these LLPs would associate themselves with being part of the community as defined by the applicant."

The requirement for Uniqueness is an even more blatant violation of the principle of no double counting. The AGB states that in order to be eligible for a score of one for Uniqueness, the application must score a two or three for Nexus.[16] Accordingly, a negative aspect found in assessing Nexus will affect the assessment of Uniqueness, as it did in the Panel Determination as set forth below.

D. The Panel's Failure to Evaluate the .LLP Community Application Independent of other Applications

It is a well-established ICANN policy within the new gTLD program that every application will be treated individually.[17] Evaluating multiple applications together with regard to community priority violates this policy as well as ICANN's mandate to operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness. Individual treatment aside, to the extent that the Panel is taking into account other applications when making its determination, fairness and transparency dictate that it should disclose this fact. The EIU's actions in evaluating applications for community priority are inconsistent with ICANN's well-established policy of treating gTLD applications individually and the ICANN policy and mandate to operate in a fair and

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[14] AGB Section 4.2.3.
[15] http://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf.
[16] AGB Section 4.2.3.
[17] *See, e.g.*, http://newgtlds.icann.org/en/applicants/customer-service/faqs/faqs-en, Section 2.10.

transparent manner. It is clear that the EIU panels for Dot Registry's .LLP Community Application, .LLP Community Application and .LLP Community Application (and likely the .GMBH Panel as well) were working in concert. First, the EIU panels gave the .LLP, .LLP, and .LLP Community Applications the exact same score, five out of sixteen.[18] Furthermore, all three Community Priority Evaluation Reports have virtually identical language and reasoning, with just some of the factual details swapped out, including heavy reliance on the yet as unidentified "research," to come to the same conclusions.[19] The failure of the Panel to evaluate the .LLP Community Application on its own merit and reliance in information and analysis of other applications may have resulted in the .LLP Community Application being penalized unjustly.

E. The Panel's Failure to Properly Apply the CPE Criteria

The process and criteria for evaluating Community Priority applications is set forth in Section 4 of the AGB. ICANN has also published the Community Priority Evaluation (CPE) Guidelines prepared by the EIU (CPE Guidelines),[20] the purpose of which, according to the ICANN website, is "to ensure quality, consistency and transparency in the evaluation process."[21] However, the "[CPE Guidelines] do not modify the framework or standards laid out in the AGB."[22] Accordingly, the policies and processes in the AGB control, as will be explained in more detail below, the scoring in and ultimate outcome of the Panel Determination is inconsistent with the CPE process set forth in the AGB.

1. Criterion #1: Community Establishment

The Panel determined that the community, as identified in the .LLP Community Application, did not meet the criterion for Delineation or Extension, and awarded the .LLP Application 0 out of 4 points for Community Establishment. This determination is not consistent with the AGB and CPE Guidelines.

a. Delineation

The Panel determined that the community, as identified in the .LLP Community Application, did not meet the criterion for Delineation because the community did not demonstrate sufficient delineation, organization and pre- existence and awarded the .LLP Community Application 0 out of 2 points.

i. **Delineation**

[18]https://www.icann.org/sites/default/files/tlds/llc/llc-cpe-1-880-17627-en.pdf; http://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf; http://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf.
[19]*See* Annex 2, redlines of the .LLP and .INC Determination against the .INC Determination.
[20]http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf.
[21]http://newgtlds.icann.org/en/announcements-and-media/announcement-27sep13-en.
[22]*Id.*

According to the Panel Determination, two conditions must be met to fulfill the requirements for delineation: there must be a clear, straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.[23] The Panel acknowledged that the community definition in the .LLP Community Application shows a clear and straightforward membership. However, the Panel determined that the community, as defined in the application, does not have awareness and recognition of a community among its members, because:

> "limited liability partnerships operate in vastly different sectors, which sometimes have little or no association with one another. Research showed that firms are typically organized around specific industries, locales, and other criteria not related to the entities structure as an LLP. Based on the Panel's research, there is no evidence of LLPs from different sectors acting as a community as defined by the Applicant Guidebook. There is no evidence that these limited liability partnerships would therefore not typically associate themselves with being part of the community as defined by the applicant."

As discussed above, the Panel bases this determination on mysterious "research" to which it does not provide any citations or insight as to how the research was conducted. That aside, while firms may organize around specific industries, locales and other criteria not related to the entities structure as a limited liability partnership, this does not preclude firms from also organizing around the entities' structure as a limited liability partnership. In fact, while there may be a wide variation of the types of companies that elect to become limited liability partnerships, there are still commonalities and binding requirements for any limited liability partnership registered in the US. Specifically, every registered limited liability partnerships in the US would describe themselves as a registered limited liability partnership within the US, the exact definition of our community. Additionally each member of the LLP community chose this particular legal entity type to operate as, with the understanding and expectation of the tax and legal benefits and liability protections that the entity type provides. Accordingly, all members of the LLP community have a shared and common interest to the extent that there is a change to the legal or tax treatment of limited liability partnerships, which would affect all members of the LLP community. Furthermore, there is ample evidence that LLPs would associate themselves as being part of the LLP community because, at a minimum: (1) they chose to become a limited liability partnership and join the community; (2) they identify themselves as part of the community by including the word "LLP" in their official name; and (3) they must identify themselves as part of the community when filing tax returns and filing out other legal documents.

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[23] http://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf.

ii. Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities. The Panel indicated that the community, as defined in the application, does not have at least one entity mainly dedicated to the community because:

> Although responsibility for corporate registrations and the regulations pertaining to corporate formation are vested in each individual US state, these government agencies are fulfilling a function, rather than representing the community. In addition, the offices of the Secretaries of State of US states are not mainly dedicated to the community as they have other roles/functions beyond processing corporate registrations.[24]

First, inclusion of the term "mainly" implies that the entity administering the community may have additional roles/functions beyond administering the community. In addition to administering filings and record keeping of limited liability partnerships, many Secretaries of State are dedicated to providing information about limited liability partnerships through their websites, pamphlets and other programs and support to existing members of the LLP community, as well as those considering joining the LLP community.

There is also ample evidence of community activities, which was seemingly ignored by the Panel. These activities include things that all members of the LLP community must do such as filing an annual report and other documents and claim their status as an limited liability partnership on their state and federal tax returns—activities which identify them as members of the LLP community; which they otherwise would not do if they were not part of the LLP community.

iii. Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007. The Panel determined that the community defined in the .LLP Community Application does not meet the requirements for pre-existence. However, rather than providing evidence or explanation for this determination, the Panel instead merely cites a sentence from the AGB[25] and then makes the conclusory determination that the .LLP Community Application

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[24] http://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf.

[25] "[Community Priority Evaluation Criteria] of the Applicant Guidebook the CPE process is conceived to identify qualified community-based applications, while preventing both "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) and "false negatives" (not awarding priority to a qualified community application)."

refers to a "community" construed to obtain a sought-after corporate identifier as a gTLD string; which is based on the Panel's previous conclusion that limited liability partnerships would typically not associate themselves with being part of the community as defined by the applicant—a conclusion that Dot Registry has shown is questionable at best. In fact, as the panel must be aware, limited liability partnerships have existed in all 50 states long before September 2007. Furthermore, 100% of the states have acknowledged that the community exists through the National Association of Secretaries of State.[27]

b. Extension

The Panel determined that the community, as identified in the application, did not meet the criterion for Extension because the .LLP Community Application did not demonstrate considerable size or longevity for the community identified in the .LLP Community Application, which is inconsistent with the AGB.

i. **Size**

According to the Panel, two conditions must be met to fulfill the requirements for size: (1) the community must be of considerable size and (2) must display an awareness and recognition of a community among its members.[28] However, the second requirement for size cited by the Panel—that the community must display an awareness and recognition of a community among its members—does not exist in the AGB definition of size. Rather, the AGB states that:

> "Size" relates both to the number of members and the geographical reach of the community, and will be scored depending on the context rather than on absolute numbers—a geographic location community may count millions of members in a limited location, a language community may have a million members with some spread over the globe, a community of service providers may have "only" some hundred members although well spread over the globe, just to mention some examples—all these can be regarded as of "considerable size."[29]

Similarly, the CPE Guidelines, which were prepared by EIU, do not list the requirement that the community must display an awareness and recognition of a community among its members as part of the criteria of size. The Panel's application of this additional requirement to the criteria of Size, is thus not only inconsistent with the established process in the AGB, but also violates the established policy of not "double counting" as discussed above; since the Panel erroneously determined that the members of the LLP community do not have an awareness of their community.

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[27] *See* Annex 3.
[28] http://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf.
[29] AGB, Pgs. 4-11.

As the Panel acknowledged, “[t]he community as defined in the application is of a considerable size..[t]he community for .LLP as defined in the application is large in terms of number of members.”. Accordingly, when the AGB definition of "Size" is properly applied, it is clear that the community identified in the .LLP Community Application meets this criteria and should have been awarded points.

ii. Longevity

According to the Panel, two conditions must be met to fulfill the requirements for size: (1) the community must demonstrate longevity; and (2) must display an awareness and recognition of a community among its members.[30] However, the second requirement for longevity cited by the Panel—that the community must display an awareness and recognition of a community among its members—does not exist in the AGB definition of size. Rather, the AGB states that:

> "Longevity" means that the pursuits of a community are of a lasting, non-transient nature.[31]

Similarly, the CPE Guidelines, which were prepared by EIU, do not list the requirement that the community must display an awareness and recognition of a community among its members as part of the criteria of longevity. The Panel's application of this additional requirement to the criteria of longevity, is thus not only inconsistent with the established process in the AGB, but also violates the established policy of not "double counting" as discussed above, since the Panel erroneously determined that the members of the LLP community do not have an awareness of their community.

limited liability partnerships are corporate structures that are intended to be perpetual until either the entity is wound down or the statutory requirements are not met. In other words, they are the direct opposite of transient. Accordingly, when the AGB definition of "longevity" is properly applied, it is clear that the community identified in the .LLP Community Application meets this criteria and should have been awarded points.

2. Criterion #2: Nexus Between Proposed String and Community

The Panel determined that the .LLP Community Application did not meet the criterion for Nexus of Uniqueness and awarded no points. However, the Panel's determination with regards to Nexus was based on incorrect factual information and the Panel's determination with regard to Uniqueness was based on its erroneous determination of Nexus.

a. Nexus

The Panel determined that the .LLP Community Application did not meet the criterion for Nexus because while the string identifies the community, it over-

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[30] http://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf.
[31] AGB, Pgs. 4-11.

reaches substantially beyond the community.[32]

According to the Panel, "to receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. "Identify" means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community."

As an initial matter, it should be noted that according to the AGB, to receive the maximum score of three, "the essential aspect is that the applied for string is commonly known by others as the identification/name of the community." However, regardless of whether the AGB standard or the inconsistent Panel standard is applied, it is clear that the .LLP Community Application should still receive the maximum number of points for Nexus. In fact, the Panel acknowledged that "the string identifies the name of the community."[33] However, unfortunately for Dot Registry, the Panel also erroneously determined that the string substantially overreaches because "LLP" is also used in some countries outside the US. While there may be some use of “LLP” in countries outside the US, it is not used outside the US in connection with the .LLP community described in the .LLP Community Application. Notably, no relevant organization in any of these countries submitted any opposition to the .LLP Community Application. Furthermore, the AGB does not require applicants to define "any connotations the string may have beyond the community" and does not provide any direction in relation to scoring question 20A negatively if the designation is used outside of the community regardless of scale. Accordingly, it is clear that the .LLP Community Application should receive full points for Nexus.

b. Uniqueness

The Panel determined that the application does not meet the criterion for Uniqueness because the string does not score a two or a three on Nexus. However, as discussed above, the only reason that the .LLP Community Application did not score a two or three on Nexus was due to the Panel's erroneous determination. Furthermore, the Panel's basing of its decision with regard to Uniqueness (and the AGB's direction to do so) on the results of another criteria violates the established policy against double counting.

3. Criterion #3: Registration Policies

The Panel correctly awarded the .LLP Community Application points for Eligibility, Name Selection, and Content and Use, but determined that the .LLP Community Application did not meet the criterion for Enforcement because it provided specific enforcement measures but did not include appropriate appeal mechanisms. However, the .LLP Community Application does in fact contain an appropriate appeals mechanism.

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[32] http://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf.
[33] *Id.*

According to the .LLP Community Application, the enforcement mechanism is as follows:

> DOT Registry or it's designated agent will annually verify each registrants community status in order to determine whether or not the entity is still an "Active" member of the community. Verification will occur in a process similar to the original registration process for each registrant, in which each registrant's "Active" Status and registration information will be validated through the proper state authority. In this regard, the following items would be considered violations of DOT Registry's Registration Guidelines, and may result in dissolution of a registrant's awarded ".LLP" domain:
>
> (a) If a registrant previously awarded the ".LLP" domain ceases to be registered with the State.
>
> (b) If a registrant previously awarded a ".LLP" domain is dissolved and/or forfeits the domain for any reason.
>
> (c) If a registrant previously awarded the ".LLP" domain is administratively dissolved by the State.

The .LLP Community Application also contains an appeals mechanism, which is that:

> Any registrant found to be "Inactive," or which falls into scenarios (a) through (c) above, will be issued a probationary warning by DOT Registry, allowing for the registrant to restore its active status or resolve its dissolution with its applicable Secretary of State's office. If the registrant is unable to restore itself to "Active" status within the defined probationary period, their previously assigned ".LLP" will be forfeited.

The AGB states that "[t]he 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."[34] While the above-referenced appeal process may not be a traditional appeals process, it is appropriate to, and aligned with, the community-based purpose of the .LLP Community Application. Here, the .LLP Community Application is restricted to those with active limited liability partnerships. Because Dot Registry will verify the status of the limited liability partnership, which is the basis for a second level domain registration in .LLP, it will be a simple matter to verify whether the limited liability partnership is "active" or not. To the extent that the limited liability partnership is not in "active" status, the registrant is issued a probationary warning. This warning allows the

[34] AGB, Pgs. 4-16.

registrant to appeal Dot Registry's inactivity determination by resolving the issue with the relevant Secretary of State and restoring the domain name to active status. Notably, .edu utilizes a similar appeals mechanism.[35] Accordingly, the .LLP Community Application should have received points for Enforcement.

4. Criterion #4: Community Endorsement

The Panel LLPorrectly determined that the .LLP Community Application only partially met the criterion for Support and Opposition, which is inconsistent with the CPE process as set forth in the AGB.

a. Support

The Panel awarded the .LLP Community Application only 1 out of 2 points for Support because it determined that while Dot Registry possesses documented support from at least one group with relevance, Dot Registry was not the recognized community institution(s)/member organization(s), nor did it have documented authority to represent the community or documented support from a majority of the recognized community institution(s)/member organization(s).

The Panel acknowledged that the .LLP Community Application included letters of support from a number of Secretaries of State of US states which constituted groups with relevance, but that the Secretaries of State are not the recognized community institution(s)/member organization(s), as these government agencies are fulfilling a function, rather than representing the community. As discussed above, in addition to administering filings and record keeping of limited liability partnerships, many Secretaries of State are dedicated to providing information about LLPs through their websites, pamphlets and other programs and support to existing members of the LLP community (including Dot Registry, which as an LLP is a member of the community); as well as those considering joining the LLP community, the Secretaries of State *are* the recognized community institutions. As also discussed above, numerous letters of support and endorsement were submitted by members of the LLP community, including one from the National Association of Secretaries of State in which it described the agreement of 100% of the states for community operation of .LLP. However, these letters appear not to have been considered by the Panel, and in any case were not validated by the Panel in connection with the .LCC Community Application. Accordingly, the .LLP Community Application should have been awarded full points for Support.

b. Opposition

The Panel determined that the .LLP Community Application partially met the criterion for Opposition because it received relevant opposition from one group of non-negligible size. As discussed above, the only groups of non-negligible size that could even arguably be viewed as having submitted opposition are the Secretary of State of Delaware or the European Commission. However, the Secretary of State of Delaware clarified that it did not oppose the .LLP

[35] http://net.educause.edu/edudomain/show_faq.asp?code=EDUPOLICY#faq425.

Community Application and the European Commission rescinded any comments in opposition to the .LLP Community Application. Furthermore, any opposition by the European Commission, even if it existed, which clearly it does not, is not relevant because the LLP designation is not used in Europe. Additionally, as also discussed above, to the extent any opposition by the Secretary of State of Delaware or European Commission existed, which it does not, the Panel failed to validate any such letters in connection with the .LLP Community Application. Accordingly, the .LLP Community Application should have been awarded full points for Opposition.

9. What are you asking ICANN to do now?

(Describe the specific steps you are asking ICANN to take. For example, should the action be reversed, cancelled or modified? If modified, how should it be modified?)

Dot Registry is asking that ICANN reverse the decision of the Panel and grant Dot Registry's .LLP TLD application Community Priority status. There is precedence for this when, as here, there is substantial and relevant evidence indicating that the Objection was inconsistent with ICANN procedures.[36] Just recently, the BCG concluded that ICANN not consider the Expert Determination in the Community Objection filed against .MED because the Requester provided the BGC with uncontroverted information demonstrating that the public comments on which the Objection was based were not, in fact, in opposition to the Requester's application, as is the case here. In the alternative, ICANN should disregard the results of the first Panel determination and assemble a new CPE Panel to reevaluate the Community Priority election by Dot Registry for its .LLP TLD application in compliance with the policies and processes in the AGB, CPE Guidelines and ICANN Bylaws. To the extent that ICANN assembles a new Panel to re-evaluate the .LLP Community Application for Community Priority, the Panel should not be affiliated with EIU, or at a minimum, should not consist of the same EIU panelists or anyone who participated in the initial CPE.

10. Please state specifically the grounds under which you have the standing and the right to assert this Request for Reconsideration and the grounds or justifications that support your request.

Dot Registry has standing and the right to assert this request for Reconsideration because the Panel's Determination, and the NGPC's subsequent placement of Dot Registry's .LLP application into active contention, was based on the Panel's failure to follow the established policies and procedures for Community Priority Evaluation in the AGB and ICANN's Bylaws. ICANN has previously determined that the reconsideration process can properly be invoked for challenges to expert determinations rendered by panels formed by third party service providers, such as the EIU, where it can be stated that the Panel failed to follow the established

[36] https://www.icann.org/en/system/files/files/determination-medistry-21jun14-en.pdf.

policies or processes in reaching its determination, or that staff failed to follow its policies or processes in accepting that determination.[37] In addition, the NGPC's placement of the .LLP Community Application into active contention based on the Panel Determination constitutes Staff or Board Action. Furthermore, Staff became involved with the Panel Determination when it responded to complaints that the Panel did not engage in uniform or consistent manner when questioning Secretaries of State as part of the validation process for letters of support, resulting in an apology from EIU to the Secretaries of State.[38]

This failure to follow established policies and procedures by the Panel and the NGPC will result in material harm to, and will have an adverse impact on, Dot Registry, registered businesses in the US and consumers, as a result of the Determination and placement of Dot Registry's .LLP Application into active contention; at best, Dot Registry will have to expend significant additional funds to win the contention auction for .LLP, and, at worst, Dot Registry will lose the contention auction and not be able to operate the .LLP TLD and the string will be operated generically without necessary consumer protections in place.

This harm to Dot Registry, Secretaries of State, potential registrants and the public generally, can be reversed by setting aside the decision of the Panel and granting Dot Registry's .LLP TLD application Community Priority status, or in the alternative, by assembling a new CPE Panel to reevaluate the Community Priority election by Dot Registry for its .LLP TLD application, in compliance with the established policies and processes in the AGB and CPE Guidelines.

11. Are you bringing this Reconsideration Request on behalf of multiple persons or entities? (Check one)

X Yes

___ No

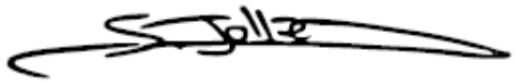
11a. If yes, is the causal connection between the circumstances of the Reconsideration Request and the harm the same for all of the complaining parties? Explain.

The causal connection between the circumstances of the Reconsideration Request and the harm caused by the awarding of the string to a non-community applicant are the same for Dot Registry and the National Association of Secretaries of State (NASS), on whose behalf this Request is also being made. Whereas the immediate harm to Dot Registry is material and financial, the harm

[37] *See* https://www.icann.org/en/system/files/files/determination-tennis-au-29apr14-en.pdf, DETERMINATION OF THE BOARD GOVERNANCE COMMITTEE (BGC) RECONSIDERATION REQUEST 14-12 and http://www.icann.org/en/groups/board/governance/reconsideration/recommendationbooking-01aug13-en.doc, BGC Recommendation on Reconsideration Request 13-5.

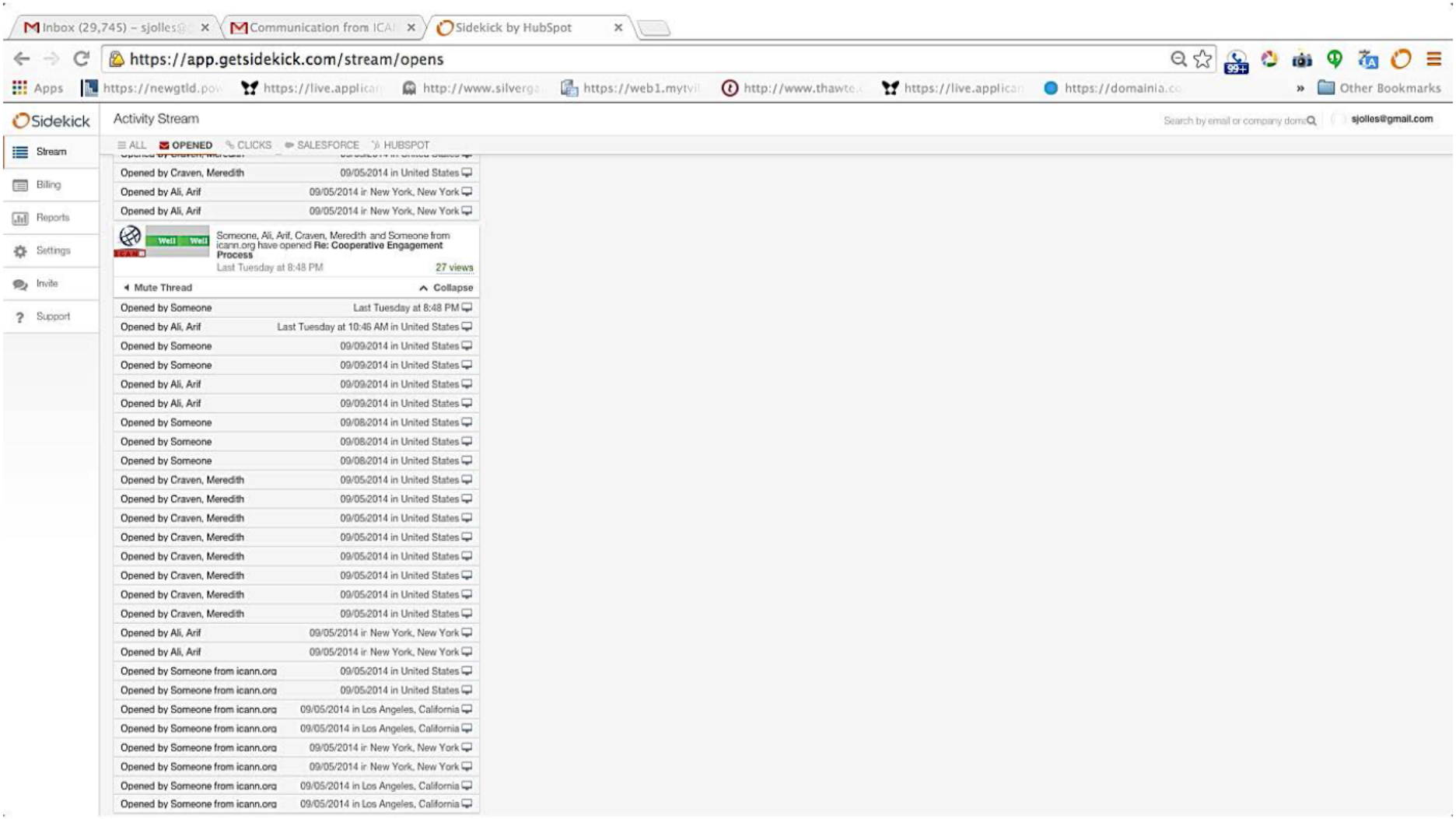
[38] *See* Annex 4.

to the Secretaries of State is related to their ability to prevent business fraud and consumer confusion. As discussed above, the improper denial of Community Priority to the .LLP Community Application will likely result in delegation of the .LLP TLD to one of the non-community applicants, which do not have enforceable safeguards in place, and could allow anyone to register a .LLP domain name regardless of their actual business registration status and entity type. This could facilitate fraudulent business registration, business identity theft and other harmful online activity, as well as cause significant consumer confusion and protection issues. Over the last two and a half years, NASS and many of its individual members have expressed their clear concerns via numerous letters to ICANN, the GAC and the FTC calling for the issuance of these strings in a community format, in order to provide appropriate protections for both the community and consumers with the necessary recourse required to hold the Registry Operators accountable if these strings are not operated in a responsible manner. As most of the Secretaries of State in the US have the ultimate responsibility for LLP registration and validation, this is of significant concern to them, and to NASS as well, which is acting on behalf of their interest. The issuance of these strings to a non-community applicant without enforceable protection mechanisms directly disregards the opinions expressed by the US Secretaries of State in regards to this matter and shows a blatant disregard by ICANN to operate accountably, as required by the ICANN bylaws.



_____ _June 26, 2014_____

Signature Date


Inbox (29,745) – sjolles@g
Communication from ICA
Sidekick by HubSpot
https://app.getsidekick.com/stream/opens
Apps
https://newgtld.pov
https://live.applican
http://www.silverga
https://web1.mytvil
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Other Bookmarks
Sidekick
Activity Stream
Search by email or company dom
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Stream
Billing
Reports
Settings
Invite
Support
ALL
OPENED
CLICKS
SALESFORCE
HUBSPOT
Opened by Craven, Meredith 09/05/2014 in United States
Opened by Ali, Arif 09/05/2014 in New York, New York
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Last Tuesday at 8:48 PM
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Opened by Ali, Arif Last Tuesday at 10:46 AM in United States
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From: "Shaul Jolles" Contact Information Redacted
Date: Sep 10, 2014 1:16 PM
Subject: Communication from ICANN regarding the CEP
To: <john.jeffrey@icann.org>
Cc:

Dear Mr. Jeffrey,
I am writing to request confirmation that ICANN intends to participate in the Cooperative Engagement Process ("CEP") with Dot Registry, LLC ("Dot Registry"), which Dot Registry timely invoked on Friday, September 5, 2014. Please see the attached correspondence, which was sent to your email address and to independentreview@icann.org.

According to ICANN's Bylaws, and the guidelines for Cooperative Engagement Process – Requests for Independent Review incorporated by reference therein, ICANN must designate a single executive as the point of contact for the CEP and notify the requestor within three business days of receiving such request. Consequently, Dot Registry expected to receive a notice from ICANN yesterday, September 9, identifying the name of ICANN's representative and his or her contact information. As of the date and time of this communication, we have not received any such communication.

Please confirm that ICANN intends to participate in the CEP with Dot Registry and provide an estimated date by which ICANN will designate a representative. Please also confirm that Dot Registry's deadline to file an IRP will be extended by one day for each additional day that ICANN takes to complete the steps for a CEP required of it pursuant to its Bylaws, in order to ensure that both Dot Registry and ICANN have the benefit of the full time period allotted to work together to resolve or narrow the issues Dot Registry is contemplating bringing in an IRP.

Sincerely,

Shaul Jolles

Weil, Gotshal & Manges LLP

Contact Informat on Redacted

BY E-MAIL

Arif H. Ali
Contact Information Redacted

September 17, 2014

John O. Jeffrey
General Counsel & Secretary
Internet Corporation for Assigned Names and Numbers
Office of the General Counsel
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
john.jeffrey@icann.org

Re: Request for Response from ICANN regarding Dot Registry's Notice Invoking the CEP and the Eligibility of gTLDs .INC, .LLC and .LLP for Auction

Dear Mr. Jeffrey:

I am writing to you on behalf of my client, Dot Registry, LLC ("Dot Registry"), after Dot Registry's repeated attempts to contact you have gone unanswered. The purpose of this letter is to request that ICANN (i) promptly respond to Dot Registry's notice invoking the Cooperative Engagement Process ("CEP") relating to its applications to the Internet Corporation for Assigned Names and Numbers ("ICANN") for the generic Top-Level Domains ("gTLDs") .INC, .LLC and .LLP, as required by ICANN's Bylaws; (ii) promptly confirm in writing that ICANN will extend Dot Registry's deadline to file an IRP by one day for each additional day that ICANN takes to complete the steps required of it in a CEP under its Bylaws; and (iii) immediately revert the status of the contention sets for the aforementioned strings to "on hold" and ineligible for auction on the basis of a pending an accountability mechanism.

Cooperative Engagement Process

Dot Registry timely invoked the CEP with ICANN relating to its applications for .INC, .LLC and .LLP on September 5, 2014, by emailing a notice to independentreview@icann.org and to you.[1] The CEP procedures, which are incorporated by reference into ICANN's Bylaws, expressly provide that within

[1] A copy of the email and attached notice is appended hereto as Appendix "A."

three business days of a party initiating the CEP, "ICANN ***shall*** designate a single executive to serve as the point of contact for the resolution of the issue, and provide notice of the designation to the requestor."[2] Accordingly, ICANN should have communicated to Dot Registry by no later than September 9, 2014, its point of contact for the CEP. On September 10, 2014, the chief executive officer of Dot Registry sent an email to you requesting confirmation that ICANN intends to participate in the CEP and that ICANN will extend Dot Registry's deadline to file a notice of request for Independent Review Process ("IRP") for one day for each additional day that ICANN takes to complete the steps for a CEP required of its pursuant to its Bylaws. Although the chief executive officer of Dot Registry received "read receipts" confirming that each of the emails sent to these addresses was, in fact, delivered and opened, Dot Registry has not received any response from ICANN as of the date of this letter.

It is difficult to understand why ICANN has not complied with the simple steps enumerated in the CEP procedures and designated a point of contact for the CEP or, at the very least, instructed a staff member to telephone or email Dot Registry to explain why ICANN might be delayed in responding. Instead, ICANN has left Dot Registry uncertain as to both ICANN's commitment to the CEP and the potential efficacy of eventually engaging in any CEP with ICANN. This is an odd position for an applicant to be in when ICANN expressly states in its CEP procedures that "the complainant is ***urged*** to enter into a period of cooperative engagement with ICANN for the purpose of resolving or narrowing the issues that are contemplated to be brought to the IRP."[3] ICANN's failure to timely respond—or respond at all—leaves Dot Registry no choice but to file a notice of request for IRP or risk losing the opportunity to engage further with ICANN in its accountability mechanisms. ICANN's inaction and this result hardly seem consistent with ICANN's purported commitment to accountability and transparency.

Notice of Eligibility for Auction

Eleven days ***after*** Dot Registry submitted its notice invoking the CEP, Dot Registry received a notification through ICANN's customer portal that provided a link to its Contention Set Status page, which indicated that ICANN had changed the status of the contention sets for strings .INC, .LLC and .LLP from "on-hold," as a result of pending accountability mechanisms, to "active," and, therefore, eligible for auction, and provided a new date (January 21, 2015) for the auctions to be held.[4] ICANN's actions are inconsistent with its Articles of Incorporation and Bylaws and, therefore, Dot Registry requests that ICANN immediately return the status of the contention sets for these strings to "on-hold" and ineligible for auction on the basis of Dot Registry invoking the CEP.

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[2] Bylaws, Art. IV, § 3(14); ICANN Cooperative Engagement Process – Requests for Independent Review, ¶ 3 (11 April 2013) [hereinafter CEP Procedures] (emphasis added).

[3] CEP Procedures at p. 1 (emphasis added).

[4] A copy of the notice is appended hereto as Appendix "B."

Auction is a mechanism of "last resort," as per the terms of ICANN's gTLD Applicant Guidebook.[5] The gTLD Applicant Guidebook evidences ICANN's preference that applicants resolve string contention amongst themselves or through the Community Priority Evaluation ("CPE") process, as Dot Registry attempted to do. Where, as is the situation here, at each opportunity available within the context of ICANN's accountability mechanisms, an applicant has raised serious concerns about the CPE process with respect to certain strings as well as specific claims about actions (as well as inaction) by ICANN staff and the Board in violation of ICANN's Articles of Incorporation and Bylaws, it would be wholly incongruous for ICANN to proceed with facilitating auctions for such strings.

In addition, ICANN's own "Update on Application Status and Contention Sets Advisory" (the "Advisory") provides as an example of why a contention set's status might be "on-hold," pending "ICANN accountability mechanisms."[6] The Advisory further explains that the "on-hold" status for a contention set means that "[t]here are pending activities that may impact the processing of the applications in the set" and that "[a]pplications in the set cannot complete certain Program processes such as Auction" until such status is cleared.[7] In other words, ICANN acknowledges that it is inappropriate to proceed with an auction when a CEP or an IRP is ongoing because such activities have the potential to impact the processing of the applications in the contention set.

Furthermore, we note that ICANN has placed other contention sets on hold pending the outcome of accountability mechanisms involving strings in the set. Although it may not always be appropriate for ICANN to do so, where Dot Registry's request for CEP was timely and proper, and the deadline for Dot Registry to file an IRP relating to these strings has not yet expired, it is particularly appropriate for ICANN to immediately halt any preparations for auctioning .INC, .LLC and .LLP and return the status of the contention sets for these strings to "on hold" and ineligible for auction.

Dot Registry's Requests

For all of these reasons, Dot Registry requests that ICANN (i) promptly respond to its notice invoking the CEP relating to its applications to ICANN for .INC, .LLC and .LLP, first by designating a single point of contact and notifying Dot Registry of the identify of and contact information for such person; (ii) promptly confirm in writing that ICANN will extend Dot Registry's deadline to file an IRP by one day for each additional day that ICANN takes to complete the steps required of it in a CEP under its

[5] gTLD Applicant Guidebook, Module 4.3 (June 2012), *available at* http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf.

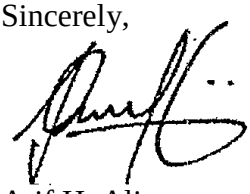
[6] Update on Application Status and Contention Sets Advisory (Sept. 4, 2014), http://newgtlds.icann.org/en/applicants/advisories/application-contention-set-14mar14-en.

[7] *Id.*

Bylaws; and (iii) immediately revert the status of the contention sets for the aforementioned strings to "on hold" and ineligible for auction on the basis of a pending accountability mechanism. We are confident that ICANN can comply with these requests, as Dot Registry merely asks that ICANN act in accordance with its Articles of Incorporation and Bylaws, including, without limitation, the CEP procedures incorporated therein by reference.

Dot Registry reserves all of its rights at law and in equity, including, without limitation, relating to the issues raised in this letter.

Sincerely,



Arif H. Ali

cc: Shaul Jolles, chief executive officer, Dot Registry Services, LLC

Dear Tess Pattison-Wade,

We are writing to inform you that the Auction date for the LLC contention set, has been adjusted from 17 December 2014 to 21 January 2015. This adjustment to the schedule is being made after further consideration by ICANN and Power Auctions for the capacity of the Auction. Moving this and the three other contention sets most recently notified of ICANN's intent to Auction from December to January will help us meter the total number of sets in both months closer to the target of 20 sets per Auction. These Auction dates are preliminary and will be confirmed via a case in the customer portal at least three (3) weeks prior to the Auction.

ICANN provides the current Auction Dates for all Contention Sets on the Contention Set Status pagehttps://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus.

If the members of the contention set wish to advance or postpone the date of this auction, all members of the set must submit the Auction Date Advancement/Postponement Request form (http://newgtlds.icann.org/en/applicants/auctions/date-advancement-postponement-form-10jul14-en.pdf) no later than 45 days prior to the scheduled Auction.

Please feel free to add a comment to this case if you have any questions or concerns.

Best Regards,

Grant Nakata
New gTLD Operations Team

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

ICDR Case No. 50 117 T 00224 08

In the Matter of an Independent Review Process:

ICM REGISTRY, LLC,

Claimant,

v.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS ("ICANN"),

Respondent

DECLARATION OF THE INDEPENDENT REVIEW PANEL

Judge Stephen M. Schwebel, *Presiding*
Mr. Jan Paulsson
Judge Dickran Tevrizian

February 19, 2010

who understandably react negatively to pornography, and, in some cases, their reactions may be more visceral than rational. But they may also have had doubts, as did the Board, that ICM would be able successfully to achieve what it claimed .XXX would achieve.

151. The Board's resolution of March 30, 2007, rejecting ICM's proposed agreement and denying its request for delegation of the .XXX sTLD lists four grounds for so holding in addition to failure to meet sponsored community criteria (*supra,* paragraph 47). The essence of these grounds appears to be the Board's understanding that the ICM application "raises significant law enforcement compliance issues ... therefore obligating ICANN to acquire responsibility related to content and conduct ... there are credible scenarios that lead to circumstances in which ICANN would be forced to assume an ongoing management and oversight role regarding Internet content, which is inconsistent with its technical mandate." ICM interprets these grounds, and statements of Dr. Twomey and Dr. Cerf, as seeking to impose on ICM responsibility for "enforcing restrictions around the world on access to illegal and offensive content" (*supra,* paragraph 66-67). ICM avers that it never undertook "to enforce the laws of the world on pornography", an undertaking that it could never discharge. It did undertake, in the event of the approval and activation of .XXX, to install tools that would make it far easier for governments to restrict access to content that they deemed illegal and offensive. ICM argues that its application was rejected in part because of its inability to comply with a contractual undertaking to which it never had agreed in the first place *(supra,* paragraphs 66-71). To the extent that this is so – and the facts and the conclusions drawn from the facts by the ICANN Board in its resolution of March 30, 2007, in this regard are not fully coherent – the Panel finds ground for questioning the neutral and objective performance of the Board, and the consistency of its so doing with its obligation not to single out ICM Registry for disparate treatment.

PART FIVE: CONCLUSIONS OF THE INDEPENDENT REVIEW PANEL

152. The Panel concludes, for the reasons stated above, that:

First, the holdings of the Independent Review Panel are advisory in nature; they do not constitute a binding arbitral award.

Second, the actions and decisions of the ICANN Board are not entitled to deference whether by application of the "business judgment" rule or otherwise; they are to be appraised not deferentially but objectively.

Third, the provision of Article 4 of ICANN's Articles of Incorporation prescribing that ICANN "shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law," requires ICANN to operate in conformity with relevant general principles of law (such as good faith) as well as relevant principles of international law, applicable international conventions, and the law of the State of California.

Fourth, the Board of ICANN in adopting its resolutions of June 1, 2005, found that the application of ICM Registry for the .XXX sTLD met the required sponsorship criteria.

Fifth, the Board's reconsideration of that finding was not consistent with the application of neutral, objective and fair documented policy.

Sixth, in respect of the first foregoing holding, ICANN prevails; in respect of the second foregoing holding, ICM Registry prevails; in respect of the third foregoing holding, ICM Registry prevails; in respect of the fourth foregoing holding, ICM Registry prevails; and in respect of the fifth foregoing holding, ICM Registry prevails. Accordingly, the prevailing party is ICM Registry. It follows that, in pursuance of Article IV, Section 3(12) of the Bylaws, ICANN shall be responsible for bearing all costs of the IRP Provider. Each party shall bear its own attorneys' fees. Therefore, the administrative fees and expenses of the International Centre for Dispute Resolution, totaling $4,500.00, shall be borne entirely by ICANN, and the compensation and expenses of the Independent Review Panel, totaling $473,744.91, shall be borne entirely by ICANN. ICANN shall accordingly reimburse ICM Registry with the sum of $241,372.46, representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by ICM Registry.

Judge Tevrizian is in agreement with the first foregoing conclusion but not the subsequent conclusions. His opinion follows.

Stephen M. Schwebel

Date: February 19, 2010

Jan Paulsson

Date: 16 February 2010

Dickran Tevrizian

Date: February 18, 2010

Resources

- About ICANN
- Board
- Accountability & Transparency
- Governance
- Groups
- Contractual Compliance
- Registrars
- Registries
- ccTLDs
- Internationalized Domain Names
- TLD Acceptance

AFFIRMATION OF COMMITMENTS BY THE UNITED STATES DEPARTMENT OF COMMERCE AND THE INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

This page is available in: العربية | Deutsch | English | Español | Français | Italiano | 日本語 | 한국어 | Português | русский | 中文

1. This document constitutes an Affirmation of Commitments (Affirmation) by the United States Department of Commerce ("DOC") and the Internet Corporation for Assigned Names and Numbers ("ICANN"), a not-for-profit corporation. In recognition of the conclusion of the Joint Project Agreement and to institutionalize and memorialize the technical coordination of the Internet's domain name and addressing system (DNS)[1], globally by a private sector led organization, the parties agree as follows:

2. The Internet is a transformative technology that will continue to empower people around the globe, spur innovation, facilitate trade and commerce, and enable the free and unfettered flow of information. One of the elements of the Internet's success is a highly decentralized network that enables and encourages decision-making at a local level. Notwithstanding this decentralization, global technical coordination of the Internet's underlying infrastructure - the

- Policy
- Public Comment
- Contact
- Help

DNS - is required to ensure interoperability.

3. This document affirms key commitments by DOC and ICANN, including commitments to: (a) ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent; (b) preserve the security, stability and resiliency of the DNS; (c) promote competition, consumer trust, and consumer choice in the DNS marketplace; and (d) facilitate international participation in DNS technical coordination.

4. DOC affirms its commitment to a multi-stakeholder, private sector led, bottom-up policy development model for DNS technical coordination that acts for the benefit of global Internet users. A private coordinating process, the outcomes of which reflect the public interest, is best able to flexibly meet the changing needs of the Internet and of Internet users. ICANN and DOC recognize that there is a group of participants that engage in ICANN's processes to a greater extent than Internet users generally. To ensure that its decisions are in the public interest, and not just the interests of a particular set of stakeholders, ICANN commits to perform and publish analyses of the positive and negative effects of its decisions on the public, including any financial impact on the public, and the positive or negative impact (if any) on the systemic security, stability and resiliency of the DNS.

5. DOC recognizes the importance of global Internet users being able to use the Internet in their local languages and character sets, and endorses the rapid introduction of internationalized country code top level domain names (ccTLDs), provided related security, stability and resiliency issues are first addressed. Nothing in this document is an expression of support by DOC of any specific plan or proposal for the implementation of new generic top level domain names (gTLDs) or is an expression by DOC of a view that the potential consumer benefits of new gTLDs outweigh the potential costs.

6. DOC also affirms the United States Government's commitment to ongoing participation in ICANN's Governmental Advisory Committee (GAC). DOC recognizes the important role of the GAC with respect to ICANN decision-making and execution of tasks and of the effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the Internet DNS.

7. ICANN commits to adhere to transparent and accountable budgeting processes, fact-based policy development, cross-community deliberations, and responsive consultation procedures that provide detailed explanations of the basis for decisions, including how comments have influenced the development of policy consideration, and to publish each year an annual report that sets out ICANN's progress against ICANN's bylaws, responsibilities, and strategic and operating plans. In addition, ICANN commits to provide a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied.

8. ICANN affirms its commitments to: (a) maintain the capacity and ability to coordinate the Internet DNS at the overall level and to work for the maintenance of a single, interoperable Internet; (b) remain a not for profit corporation, headquartered in the United States of America with offices around the world to meet the needs of a global community; and (c) to operate as a multi-stakeholder, private sector led organization with input from the public, for whose benefit ICANN shall in all events act. ICANN is a private organization and nothing in this Affirmation should be construed as control by any one entity.

9. Recognizing that ICANN will evolve and adapt to fulfill its limited, but important technical mission of coordinating the DNS, ICANN further commits to take the following specific actions together with ongoing commitment reviews specified below:

> 9.1 Ensuring accountability, transparency and the interests of global Internet users: ICANN commits to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders by: (a) continually assessing and improving ICANN Board of Directors (Board) governance which shall include an ongoing evaluation of Board performance, the Board selection process, the extent to which Board composition meets ICANN's present and future needs, and the consideration of an appeal mechanism for Board decisions; (b) assessing the role and effectiveness of the GAC and its interaction with the Board and making

recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS; (c) continually assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof); (d) continually assessing the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community; and (e) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development. ICANN will organize a review of its execution of the above commitments no less frequently than every three years, with the first such review concluding no later than December 31, 2010. The review will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC, the Chair of the Board of ICANN, the Assistant Secretary for Communications and Information of the DOC, representatives of the relevant ICANN Advisory Committees and Supporting Organizations and independent experts. Composition of the review team will be agreed jointly by the Chair of the GAC (in consultation with GAC members) and the Chair of the Board of ICANN. Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations. Each of the foregoing reviews shall consider the extent to which the assessments and actions undertaken by ICANN have been successful in ensuring that ICANN is acting transparently, is accountable for its decision-making, and acts in the public interest. Integral to the foregoing reviews will be assessments of the extent to which the Board and staff have implemented the recommendations arising out of the other commitment reviews enumerated below.

9.2 Preserving security, stability and resiliency: ICANN has developed a plan to enhance the operational

stability, reliability, resiliency, security, and global interoperability of the DNS, which will be regularly updated by ICANN to reflect emerging threats to the DNS. ICANN will organize a review of its execution of the above commitments no less frequently than every three years. The first such review shall commence one year from the effective date of this Affirmation. Particular attention will be paid to: (a) security, stability and resiliency matters, both physical and network, relating to the secure and stable coordination of the Internet DNS; (b) ensuring appropriate contingency planning; and (c) maintaining clear processes. Each of the reviews conducted under this section will assess the extent to which ICANN has successfully implemented the security plan, the effectiveness of the plan to deal with actual and potential challenges and threats, and the extent to which the security plan is sufficiently robust to meet future challenges and threats to the security, stability and resiliency of the Internet DNS, consistent with ICANN's limited technical mission. The review will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC, the CEO of ICANN, representatives of the relevant Advisory Committees and Supporting Organizations, and independent experts. Composition of the review team will be agreed jointly by the Chair of the GAC (in consultation with GAC members) and the CEO of ICANN. Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations.

9.3 Promoting competition, consumer trust, and consumer choice: ICANN will ensure that as it contemplates expanding the top-level domain space, the various issues that are involved (including competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection) will be adequately addressed prior to

implementation. If and when new gTLDs (whether in ASCII or other language character sets) have been in operation for one year, ICANN will organize a review that will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion. ICANN will organize a further review of its execution of the above commitments two years after the first review, and then no less frequently than every four years. The reviews will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC, the CEO of ICANN, representatives of the relevant Advisory Committees and Supporting Organizations, and independent experts. Composition of the review team will be agreed jointly by the Chair of the GAC (in consultation with GAC members) and the CEO of ICANN. Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations.

9.3.1 ICANN additionally commits to enforcing its existing policy relating to WHOIS, subject to applicable laws. Such existing policy requires that ICANN implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information, including registrant, technical, billing, and administrative contact information. One year from the effective date of this document and then no less frequently than every three years thereafter, ICANN will organize a review of WHOIS policy and its implementation to assess the extent to which WHOIS policy is effective and its implementation meets the legitimate needs of law enforcement and promotes consumer trust. The review will be performed by volunteer community members and the review team will be constituted and published for

public comment, and will include the following (or their designated nominees): the Chair of the GAC, the CEO of ICANN, representatives of the relevant Advisory Committees and Supporting Organizations, as well as experts, and representatives of the global law enforcement community, and global privacy experts. Composition of the review team will be agreed jointly by the Chair of the GAC (in consultation with GAC members) and the CEO of ICANN. Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations.

10. To facilitate transparency and openness in ICANN's deliberations and operations, the terms and output of each of the reviews will be published for public comment. Each review team will consider such public comment and amend the review as it deems appropriate before it issues its final report to the Board.

11. The DOC enters into this Affirmation of Commitments pursuant to its authority under 15 U.S.C. 1512 and 47 U.S.C. 902. ICANN commits to this Affirmation according to its Articles of Incorporation and its Bylaws. This agreement will become effective October 1, 2009. The agreement is intended to be long-standing, but may be amended at any time by mutual consent of the parties. Any party may terminate this Affirmation of Commitments by providing 120 days written notice to the other party. This Affirmation contemplates no transfer of funds between the parties. In the event this Affirmation of Commitments is terminated, each party shall be solely responsible for the payment of any expenses it has incurred. All obligations of the DOC under this Affirmation of Commitments are subject to the availability of funds.

FOR THE NATIONAL
TELECOMMUNICATIONS
INFORMATION ADMINISTRATION:

_____

Name: Lawrence E. Strickling
Title: Assistant Secretary for

Communications and Information

Date: September 30, 2009

FOR THE INTERNET CORPORATION
AND FOR ASSIGNED NAMES AND
NUMBERS:

_____

Name: Rod Beckstrom
Title: President and CEO

Date: September 30, 2009

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[1]For the purposes of this Affirmation the Internet's domain name and addressing system (DNS) is defined as: domain names; Internet protocol addresses and autonomous system numbers; protocol port and parameter numbers. ICANN coordinates these identifiers at the overall level, consistent with its mission.

Who We Are

Get Started
Learning
Participate
Board
CEO
Staff
Careers
Newsletter

Contact Us

Security Team
PGP Keys
Certificate Authority
Registry Liaison
AOC Review
Organizational Reviews
Request a Speaker
Offices
For Journalists

Accountability & Transparency

Governance
Agreements
Accountability Mechanisms
Independent Review Process
Request for Reconsideration
Ombudsman
AOC Review
Annual Report
Financials
Document Disclosure
Planning
Correspondence
Dashboard
RFPs
Litigation

Help

Dispute Resolution
Domain Name Dispute Resolution
Name Collision
Registrar Problems
WHOIS

IN THE MATTER OF AN INDEPENDENT REVIEW PROCESS BEFORE THE INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

ICDR Case No. 50 117 T 1083 13

DotConnectAfrica Trust,	)
	)
Claimant,	)
	)
v.	)
	)
Internet Corporation for Assigned Names and Numbers,	)
	)
Respondent.	)

REQUEST FOR EMERGENCY ARBITRATOR AND INTERIM MEASURES OF PROTECTION

Weil, Gotshal, Manges, LLP
Contact Information Redacted

Counsel for Claimant

I. INTRODUCTION

1. Pursuant to ICDR Rules 37 and 21, DotConnectAfrica Trust ("DCA") hereby requests the appointment of an Emergency Arbitrator to decide DCA's request for interim measures of protection preventing the Internet Corporation for Assigned Names and Numbers ("ICANN") from completing the delegation of rights to the .AFRICA generic top-level domain name ("gTLD") to a third party pending the outcome of an ICANN-created accountability procedure known as an Independent Review Process ("IRP"), which DCA invoked in October 2013.[1]

2. The purpose of the IRP is to resolve a dispute arising from ICANN's failure to abide by its Bylaws, Articles of Incorporation and applicable principles of international law in its processing of DCA's application for rights to administer the .AFRICA gTLD. ICANN wrongfully rejected DCA's application based on complaints raised by the partner of the only other applicant for .AFRICA, in contravention of its own procedures and the applicable law. DCA has requested a declaration from the IRP Panel that ICANN violated its Articles of Incorporation and Bylaws by not allowing DCA's application to complete the full gTLD review process so that it can compete on an equal footing for the rights to the .AFRICA gTLD. DCA

[1] *See* DCA's Amended Notice of IRP and exhibits thereto, on file with the ICDR; references to numbered exhibits refer to the exhibits submitted with DCA's Amended Notice. Although the ICDR Supplementary Procedures for Internet Corporation for Assigned Names and Numbers Independent Review Process ("Supplementary Procedures") expressly exclude Article 37 from applying in the context of an IRP, on 25 March 2014, ICANN's counsel, Mr. Jeffrey LeVee, informed the ICDR and DCA for the first time that Article 37's emergency arbitrator procedures could be invoked because of ICANN's failure to put in place a standing panel to hear requests for emergency relief, as required by ICANN's Bylaws and the Supplementary Procedures. *See* Email from Jeffrey LeVee to Carolina Cardenas-Soto (25 March 2014), Annex A hereto. Prior to Mr. LeVee's 25 March email, ICANN's consent to the application of Article 37 is stated nowhere. Indeed, the ICDR itself did not believe that Article 37 applied in the IRP. *See* Email from Carolina Cardenas-Soto to the parties (25 March 2014) ("[P]lease be advised that there is no Standing Panel yet in place, in addition, Article 37 of the International Rules does not apply, therefore the only option regarding interim measures at this time is to make the application to the IRP panel once constituted."), Annex B hereto. Nonetheless, on 26 March, DCA accepted ICANN's consent to the availability of the emergency arbitrator. Email from Marguerite Walter to Carolina Cardenas-Soto (26 March 2014), Annex C hereto.

Annex A

Email from Jeffrey LeVee to Carolina Cardenas-Soto (25 March 2014)

-------- Original Message --------
Subject: RE: DCA Trust v ICANN
From: Jeffrey LeVee Contact Information Redacted
To: "Carolina Cardenas-Soto, LL.M." Contact Information Redacted
CC: "Ali, Arif" Contact Information Redacted, "Franzetti, Erica" Contact Information Redacted, "Walter, Marguerite" Contact Information Redacted Eric P. Enson" Cindy Reichline Contact Information Redacted

Dear Carolina,

I received your email of 25 March 2014 (below) and was surprised by the ICDR's interpretation of the Supplementary Procedures as it relates to providing the parties an opportunity to seek emergency relief, and in particular a stay. ICANN had fully anticipated that, because a Standing Panel had not yet been convened, the emergency measures set forth in Article 37 would be available to the parties, particularly if the ICDR or a claimant (in this instance, DotConnectAfrica Trust (DCA)) had requested that this Article be reinstated for this particular proceeding.

ICANN is committed to ensuring that procedural options are available to the parties in Independent Review Proceedings. Given that there is no Standing Panel yet in place, ICANN does not have any objection to the ICDR appointing a neutral and allowing that neutral to consider an application from DCA for emergency relief, if DCA chooses to submit such an application. Although ICANN believes that any such application for emergency relief would be frivolous, ICANN believes that DCA should have the right to pursue emergency relief, particularly since DCA is not responsible for appointing the Standing Panel.

To be clear, in the event DCA moves for emergency relief, ICANN at present intends to oppose DCA's application on its merits, including the fact that DCA has delayed so substantially in seeking such relief.

Regards,

Jeff LeVee
JONES DAY® - One Firm Worldwide
Telephone: Contact Information Redacted

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| From: |
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Cooperative Engagement Process – Requests for Independent Review
11 April 2013

As specified in Article IV, Section 3 of the ICANN Bylaws, prior to initiating an independent review process, the complainant is urged to enter into a period of cooperative engagement with ICANN for the purpose of resolving or narrowing the issues that are contemplated to be brought to the IRP. It is contemplated that this cooperative engagement process will be initiated prior to the requesting party incurring any costs in the preparation of a request for independent review. Cooperative engagement is expected to be among ICANN and the requesting party, without reference to outside counsel.

The Cooperative Engagement Process is as follows:

1. In the event the requesting party elects to proceed to cooperative engagement prior to filing a request for independent review, the requesting party may invoke the cooperative engagement process by providing written notice to ICANN at [independentreview@icann.org], noting the invocation of the process, identifying the Board action(s) at issue, identifying the provisions of the ICANN Bylaws or Articles of Incorporation that are alleged to be violated, and designating a single point of contact for the resolution of the issue.
2. The requesting party must initiate cooperative engagement within fifteen (15) days of the posting of the minutes of the Board (and the accompanying Board Briefing Materials, if available) that the requesting party's contends demonstrates that the ICANN Board violated its Bylaws or Articles of Incorporation.
3. Within three (3) business days, ICANN shall designate a single executive to serve as the point of contact for the resolution of the issue, and provide notice of the designation to the requestor.
4. Within two (2) business days of ICANN providing notice of its designated representatives, the requestor and ICANN's representatives shall confer by telephone or in person to attempt to resolve the issue and determine if any issues remain for the independent review process, or whether the matter should be brought to the ICANN Board's attention.
5. If the representatives are not able to resolve the issue or agree on a narrowing of issues, or a reference to the ICANN Board, during the first conference, they shall further meet in person at a location mutually agreed to within 7 (seven) calendar days after such initial conference, at which the parties shall attempt to reach a definitive agreement on the resolution of the issue or on the narrowing of issues remaining for the independent review process, or whether the matter should be brought to the ICANN Board's attention.
6. The time schedule and process may be modified as agreed to by both ICANN and the requester, in writing.

If ICANN and the requestor have not agreed to a resolution of issues upon the conclusion of the cooperative engagement process, or if issues remain for a request

for independent review, the requestor's time to file a request for independent review designated in the Bylaws shall be extended for each day of the cooperative engagement process, but in no event, absent mutual written agreement by the parties, shall the extension be for more than fourteen (14) days.

Pursuant to the Bylaws, if the party requesting the independent review does not participate in good faith in the cooperative engagement process and ICANN is the prevailing party in the independent review proceedings, the IRP panel must award to ICANN all reasonable fees and costs incurred by ICANN in the proceeding, including legal fees. ICANN is expected to participate in the cooperative engagement process in good faith.