

# **Annex 1.**



## **New gTLD Application Submitted to ICANN by: dot Sport Limited**

**String: sport**

**Originally Posted: 13 June 2012**

**Application ID: 1-1174-59954**

### **Applicant Information**

#### **1. Full legal name**

dot Sport Limited

#### **2. Address of the principal place of business**

Contact Information Redacted

#### **3. Phone number**

Contact Information Redacted

#### **4. Fax number**

Contact Information Redacted

## 5. If applicable, website or URL

### Primary Contact

#### 6(a). Name

Mr. Geir Andreas Rasmussen

#### 6(b). Title

Chief Executive Officer - Famous Four Media Limited

#### 6(c). Address

#### 6(d). Phone Number

Contact Information Redacted

#### 6(e). Fax Number

Contact Information Redacted

#### 6(f). Email Address

Contact Information Redacted

### Secondary Contact

#### 7(a). Name

Mr. Brian Winterfeldt

### **7(b). Title**

Partner - Steptoe & Johnson LLP

### **7(c). Address**

### **7(d). Phone Number**

Contact Information Redacted

### **7(e). Fax Number**

Contact Information Redacted

### **7(f). Email Address**

Contact Information Redacted

## **Proof of Legal Establishment**

### **8(a). Legal form of the Applicant**

Limited liability company

### **8(b). State the specific national or other jurisdiction that defines the type of entity identified in 8(a).**

Incorporated under the Gibraltar companies act 1930

### **8(c). Attach evidence of the applicant's establishment.**

Attachments are not displayed on this form.

**9(a). If applying company is publicly traded, provide the exchange and symbol.**

**9(b). If the applying entity is a subsidiary, provide the parent company.**

Domain Venture Partners PCC Limited

**9(c). If the applying entity is a joint venture, list all joint venture partners.**

## **Applicant Background**

**11(a). Name(s) and position(s) of all directors**

Domain Management Limited	Director
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**11(b). Name(s) and position(s) of all officers and partners**

Charles Ashley Richard Melvin	Chief Operating Officer
Iain Simon Roache	Chief Executive Officer
Timothy James Ireton	Chief Financial Officer

**11(c). Name(s) and position(s) of all shareholders holding at least 15% of shares**

Domain Venture Partners PCC Limited	Not Applicable
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**11(d). For an applying entity that does not have directors, officers, partners, or shareholders: Name(s) and position(s) of all individuals having legal or executive responsibility**

## **Applied-for gTLD string**

**13. Provide the applied-for gTLD string. If an IDN, provide the U-label.**

sport

**14(a). If an IDN, provide the A-label (beginning with "xn--").**

**14(b). If an IDN, provide the meaning or restatement of the string in English, that is, a description of the literal meaning of the string in the opinion of the applicant.**

**14(c). If an IDN, provide the language of the label (in English).**

**14(c). If an IDN, provide the language of the label (as referenced by ISO-639-1).**

**14(d). If an IDN, provide the script of the label (in English).**

**14(d). If an IDN, provide the script of the label (as referenced by ISO 15924).**

**14(e). If an IDN, list all code points contained in the U-label according to Unicode form.**

**15(a). If an IDN, Attach IDN Tables for the proposed registry.**

Attachments are not displayed on this form.

**15(b). Describe the process used for development of the IDN tables submitted, including consultations and sources used.**

**15(c). List any variant strings to the applied-for gTLD string according to the**

## relevant IDN tables.

### **16. Describe the applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string. If such issues are known, describe steps that will be taken to mitigate these issues in software and other applications.**

Q16

The Applicant has taken steps to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string (the "String"). The following has been undertaken:

a)The TLD label is valid as specified in relevant technical standards, including: Domain Names: Implementation and Specification (RFC 1035), and Clarifications to the DNS Specification (RFC 2181) and any updates thereto;

b)The TLD label, which is 5 characters long, is well short of the 63 character maximum length;

c) The TLD label is a valid host name, as specified IN: DOD Internet Host Table Specification (RFC 952), Requirements for Internet Hosts – Application and Support (RFC1123), and Application Techniques for Checking and Transformation of Names (RFC 3696), Internationalized Domain Names in Applications (IDNA) (RFCs 5890-5894), and any updates thereto;

d)The TLD label consists entirely of letters (a-z)

The Applicant has evaluated the risks of the TLD experiencing TLD Acceptance issues similar to problems reported in the "Evaluation of the New gTLDs: Policy and Legal Issues" (31/08/2004) which discussed acceptance issues associated with the year 2000 round of new gTLDs with more than three characters (i.e., .aero, .coop, .info, .museum, .name). At that time, only one gTLD, .arpa, which is not widely used outside of limited circles – had four letters. As a result, the new gTLDs had compatibility problems with the software used by Internet infrastructure operators and application providers. Some users have recently been reporting issues with the use of .xxx names in applications such as Twitter and Skype where domain names entered from that TLD are not instantly recognized with a hyperlink as more established gTLDs are.

The Applicant's registry backend services provider, ARI Registry Services tested the String for potential rendering or operational problems; none were found.

As the String is not an IDN it does not contain characters that require mixed right-to-left or left-to-right functions. The applicant has familiarized itself with the requirements and components of the IDNA protocol by reviewing the RFCs and background information found on the ICANN IDN Wiki.

The Applicant tested the String using the ICANN SWORD String Similarity Assessment Tool algorithm. The result of this test is 70. The Applicant considers this to be below the level where issues might occur. Should Registrants experience any acceptance issues the Applicant will have a dedicated Operational and Rendering Team ("ORT") on an on-going basis to assist with operational, rendering issues or any other problems that might arise. The ORT will be in place to assist Registrants with any additional problems that may arise out of new TLD that other applicants may be awarded during this process which could lead to unforeseen string confusion now and in the future.

-end-

## 17. (OPTIONAL) Provide a representation of the label according to the International Phonetic Alphabet (<http://www.langsci.ucl.ac.uk/ipa/>).

## Mission/Purpose

### 18(a). Describe the mission/purpose of your proposed gTLD.

Q18A

Mission and Purpose of .sport?

The Applicant's mission and purpose is to create an environment where individuals and companies can interact and express themselves in ways never before seen on the Internet, in a more targeted, secure and stable environment. Its aim is to become the premier online destination for such creators and their wide range of users. The Applicant will create an Internet space whose central function is to provide a platform for creating, producing and disseminating informative, creative and innovative content that is easily recognizable as pertaining to its stakeholder group. The Applicant is acutely aware of the importance of ICANN's mission in coordinating the global Internet's systems of unique identifiers and ensuring their secure and stable operation. The Applicant's core focus is to create a secure, sustainable, and specialized gTLD, thus supporting ICANN's primary goals for this program in promoting consumer trust, consumer choice, competition and innovation.

Why .sport?

Sport is a great leveller. Given the chance, anyone - from the poorest child to the world's richest man - can experience it. Sport can remove the social and ethnic divisions that still grip much of the world and with that comes equality, integrity and the opportunity of success. These, amongst other things are what we seek to emulate within .sport.

Since its inception the internet has revolutionized the way we communicate, empowered hundreds of millions with knowledge and created a platform where global commerce can thrive. However, access to the countless benefits and opportunities which the internet offers can often be hindered when navigating the ever-expanding sea of irrelevant and sometimes malicious content which also exists.

Thus, the aim of .sport is to create a blank canvas for the online sports sector set within a secure environment. The Applicant will achieve this by creating a consolidated, versatile and dedicated space for the sport sector. As the new space is dedicated to those within this affinity group the Applicant will ensure that consumer trust is promoted. Consequently consumer choice will be augmented as there will be a ready marketplace specifically for sports-related enterprises to provide their goods and services. All stakeholders within the sector will be able to sample reactions to new ideas, or gather thoughts on the improvements of established ones. This will drive innovation and competition within the sports sector as there will be new channels available not yet fulfilled by current market offerings. This new environment will cause registrants to seek new and varied ways to separate themselves from the competition.

How will .sport take shape?

The Applicant believes that the success of the gTLD will be determined largely by the sector's key global stakeholders. These stakeholders will be interested in registering a domain and additionally be motivated to protect their sector from detrimental practices. The Applicant believes that stakeholders should have the opportunity to influence the gTLD and the way it is governed. Accordingly, the Applicant is establishing a Governance Council ("GC"), consisting of key stakeholders that will serve as an advisory body.



#### Why Applicant?

The Applicant has substantial combined experience amongst its team in managing global businesses from a financial, legal and operational perspective and an exceptionally strong financial position. The Applicant's Team has previous experience with the entire gTLD life-cycle significantly lowering any launch and ongoing operational risks associated with this application. The Applicant has engaged a world-class Registry services provider to manage the technical infrastructure of the .sport gTLD. The Applicant is further advised by the leading sector experts in all other areas required to ensure a responsible and successful launch and ongoing management of the gTLD to the benefit of all stakeholders in the ICANN community.

#### Information for future studies and reviews

The Applicant recognizes the connection of the new gTLD application to the Affirmation of Commitments ("AoC"). To gauge the success of the new gTLD program, the Applicant recognizes that an AoC Review Team will be formed one year after the first delegation. To prepare for this, the ICANN Board resolved the creation of a Working Group to formulate definitions of competition, consumer trust and consumer choice and possible metrics for the future AoC team to consider in its gTLD review. The Applicant understands this effort has not been adopted by the ICANN Board, but many of the proposed metrics may be used to gauge the Applicant's gTLD effectiveness and the gTLD program. The Applicant intends to track costs and benefit metrics to inform future studies and reviews. Proposed definitions are:

- Consumer Trust is defined as the confidence registrants and users have in the consistency of name resolution and the degree of confidence among registrants and users that a TLD Registry operator is fulfilling its proposed purpose and is complying with ICANN policies and applicable national laws.
- Consumer Choice is defined as the range of options available to registrants and users for domain scripts and languages, and for TLDs that offer choices as to the proposed purpose and integrity of their domain name registrants.
- Competition is defined as the quantity, diversity, and the potential for market rivalry of TLDs, TLD Registry operators, and Registrars.

#### Promoting Competition

Given the proposed definition for competition, the Applicant will attain this by contributing to the quantity and diversity within the Registry Operator space. The Applicant is a new entrant enhancing competition among the providers. The Applicant will promote competition for Registrants by amongst other things:

- Building a healthy growth trend of domain registrations
- Measure migration of content from other TLDs
- Maintain competitive pricing of domains

#### Promoting consumer trust

.sport will be developed with consumer trust and satisfaction in mind. After 2 years of operations, the Applicant will conduct a survey to measure consumer trust and consumer satisfaction. This will be used to improve the service. The Applicant will among other things measure the following:

- Service Availability of Critical Registry Systems
- Abuse and Takedown incidents
- Rights protection incidents
- WHOIS data accuracy

#### Promoting consumer choice

The Applicant intends to promote consumer choice by achieving the following:

- Display of registration requirements and restrictions in the gTLD
- Highly available and geographically diverse Registrar channel
- Effective sunrise and trademark services

Domain names will be available globally, although the Applicant's initial marketing efforts will be predominately directed to potential Registrants represented by the six (6) official languages of the United Nations ("UN Languages"), Arabic, Chinese (Mandarin), English, French, Russian and Spanish.

After the initial 2 years it is the Applicant's aim that:

- Registrants globally should have access to Registrar services for the gTLD in at least the six UN Languages
- The gTLD is offered by Registrars covering at least 40 Countries and territories globally

Information on the effectiveness of safeguards

The Applicant takes rights protection and abuse prevention and mitigation very seriously and has developed policies accordingly. Amongst others, the Applicant will collect and evaluate data regarding:

- Effectiveness of the Sunrise process in limiting abusive registration practices
  - Effectiveness of the additional Abuse Prevention and Mitigation ("APM") and Rights Protection Mechanisms ("RPM") in limiting abusive registration practices
  - Effectiveness of the mandatory APMs and RPMs
- end-

## **18(b). How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?**

Q18b

How do you expect that your proposed gTLD will benefit Registrants, Internet users, and others?

The Applicant's primary intention is to provide a favorable ecosystem for the growth and evolution of the sector. The key to achieving this aim are significant provisions for brand integrity and protection of intellectual property. The Applicant intends to push the boundaries of what can be done through innovative design of the new top level domain, including technologies that capitalize on the sector's needs. A close relationship with the sector's stakeholders is essential to this purpose, and will enable .sport to grow in response to both Registrant and user needs. The gTLD also contains significant opportunities as a next generation organizational scheme for online content, including provisions for abuse prevention to defend users against malicious registrations. The gTLD has been meticulously designed by a team of industry leaders from an array of different fields. This has enabled the creation of an airtight financial strategy, an inspired technological development plan as well as a close and dynamic relationship with the sector community - all critical needs on the path to the enduring success of the gTLD.

18(b)(i) What is the goal of your proposed gTLD in terms of areas of specialty, service levels, or reputation?

Specialty

The Applicant's key specialty goal is to enable a secure and stable gTLD dedicated to providing global Internet users with a targeted space for subject matter of interest. This gTLD will serve as a home for both Registrants and end-users who feel an affinity with this sector and its associated content. Consequently they will prefer to register domain names, create and post content and seek information in a highly targeted manner.

Allowing users the ability to create a targeted, unique space within the new gTLD will enable them to customize their online offering and presence. The .sport gTLD will by itself clearly signal the nature and purpose of such websites to Internet users.

The applicant intends to actively promote gTLD specific vertical searching in the gTLD for the benefit of Registrants, end-users and other stakeholders. This specialization through Vertical Search will also benefit Internet users seeking authentic online information and products or services as they will no longer have to wade through content completely unrelated to their desired results.

As the gTLD is sector specific it will provide a better context for second level strings

allowing for a much higher number of relevant and more concise domains. This more targeted environment will simplify the user experience across multiple platforms specifically with smartphones and tablets where minimal input is favoured.

#### Service Levels

The goal of the gTLD Registry is to offer domain name registration services of the highest level, exceeding both ICANN requirements and current sector norms. To achieve these goals, the Applicant has contracted with well established, proven service providers offering the highest possible level of quality in Registry and Registrar services. The expertise of the service providers will ensure that the security and quality of the gTLD will be uncompromised.

The Applicant will further provide the highest level of service to trademark, legal rights owners and second-level domain owners. To achieve this goal the Applicant will be implementing a range of Abuse Prevention and Mitigation policies and procedures. The Applicant is also firmly committed to the protection of Intellectual Property rights and will implement all the mandatory Rights Protection Mechanisms (RPMs) contained in the Applicant Guidebook. Aswell as these The Applicant will further protect the rights of others through the implementation of additional RPMs. The RSP's experience will ensure that the gTLD provides this high level of service to trademark and other legal rights owners to combat abusive and malicious activity within the gTLD.

The Registry will respond to abuse or malicious conduct complaints on a 24/7/365 basis, respond to requests from governmental and quasi-governmental agencies and law enforcement in a timely manner, and promptly abide by decisions and judgments of UDRP and URS panels, in accordance with ICANN consensus policies.

The Applicant will also provide fast and responsive (24/7/365) customer support to both Registrars and end-users in a number of languages to assist with general enquiries as well as complaints of abusive or malicious conduct.

#### Service Levels related to Registry Backend Services

The Applicant will work with ARI Registry Services Inc. (hereinafter "RSP") whose extensive experience spans more than a decade. This will ensure delivery of the protected, trusted, and permanently-running Registry infrastructure necessary to reliably host and operate a gTLD. The Applicant will also work with its Registrars to ensure that consumers receive secure, fast, and reliable domain name registration services with a high-level of customer service.

The global DNS network that will be utilised for the resolution of domains in this gTLD has already been operating for over 10 years. It currently delivers DNS resolution for several TLD customers and provides low latency query responses with a 100% DNS uptime service level agreement.

The Applicant will further leverage the RSP's existing DNSSEC infrastructure, capabilities, and experience to provide a robust and standards compliant implementation that ensures DNSSEC services are always available as part of the DNS.

The Shared Registry System ("SRS") to be used for the Applicant's gTLD is a production-proven, standards-based, highly reliable and high-performance domain name registration and management system that has been designed to operate at the highest performance levels. The Applicant's RSP has been able to meet or exceed their SLA requirements nearly every month since it's inception. Their Registry has achieved a 99.997% success rate in meeting SLAs since 2004.

The Applicant's RSP has extensive experience providing ICANN and RFC-compliant WHOIS services for each of the gTLDs that it operates as a Registry Operator for both gTLDs and ccTLDs. The RSP's thick WHOIS solution is production proven, highly flexible, and

scalable with a track record of 100% availability over the past 10 years.

The Applicant will comply with all the data escrow requirements documented in the Registry Data Escrow ("RyDE") Specification of the Registry Agreement and has a contract in place with Iron Mountain Intellectual Property Management, Inc. ("IM") for RyDE Services. The Applicant and its RSP will in conjunction with Iron Mountain work to ensure that the escrow deposit process is compliant 100% of the time.

#### Reputation

The Applicant will ensure that the Registry enjoys an excellent reputation through its core focus on creating a secure, sustainable, and specialized gTLD, thus supporting ICANN's primary goals for the new gTLD program in promoting consumer trust, consumer choice, competition and innovation.

The Applicant will strive to become a reputable and successful new gTLD by providing secure, fast and reliable customer service throughout the registration life cycle of all domains in the gTLD.

The Applicant will endeavour to ensure that only non-fraudulent Registrants have domain names in the gTLD via a WHOIS that is searchable, thick and reliable and by being highly responsive to complaints from legal rights owners. The Applicant will further implement an industry leading range of Abuse Prevention and Mitigation policies and procedures as well as RPMs.

The Applicant will provide the financial and operational stability to protect Registrants and ensure the reputation of the Registry. The Applicant has estimated the maximum costs of the critical functions for a three year period by taking the largest single year cost estimate (year 5) and multiplying this by 3. If the calculation used a lower figure the costs estimate would not be at the potential highest amount during the 5 years and the COI instrument would be too small in order to fund the costs of the 5 critical functions for at least 3 years.

The Applicant has decided to commit to providing the highest level of protection to Registrants and Stakeholders by providing ICANN with a COI for the maximum amount as recommended by ICANN in its COI Guidance. This ensures the Registry is reputable, remains conservative and mirrors ICANN's core objectives. In a worst case scenario where the Applicant will not receive any revenue Registrants will be protected not only by the COI, but also by the fact that the Applicant has enough capital to operate for over 3 years.

Question 18(b)(ii) What do you anticipate your proposed gTLD will add to the current space, in terms of competition, differentiation, or innovation?

It is expected that .sport will provide significant competition for existing and forthcoming gTLDs. The .sport gTLD will provide a blank canvas of second level domains that will inevitably lead to increased consumer choice and significant innovation from the sector. It will allow Registrants to seek new and varied ways to separate themselves from the competition.

#### Competition

The Applicant will enhance competition by allowing new Registrants to create new online products and services serving the global marketplace and connecting geographically diverse Registrants and users with a common affinity for the specialized subject matter exemplified by the new gTLD. The new gTLD process and its resulting gTLDs are likely to incentivize top-level domains to improve the security and quality of their online products and services as well as introducing new ones. Thus, this gTLD will benefit consumers by increasing the likelihood of new innovative online products and services. The addition of a new gTLD such as .sport will also increase competition between existing registries.

The Applicant will promote competition to the benefit of the Registrants by amongst other things:

- Building a healthy growth trend of domain registrations to validate the specialty space
- Promote the migration of sector relevant content from other TLDs
- Maintaining competitive pricing of domains

#### Differentiation

Currently, there is no gTLD available on the Internet that signifies the specialized products, services, and subject matter encompassed by this gTLD. The gTLD string itself will give a clear indication to website visitors that the site has content relevant to the sector. This will result in the gTLD becoming globally recognizable and viewed as a trusted source of goods, services and information.

#### Innovation

The gTLD will demonstrate innovation through cutting edge RPMs.

Firstly the Applicant considers the Protection of Intergovernmental Organization ("IGO") names to be very important. The Applicant will use strings registered as second level domains in the .int gTLD as the basis for this protection. To register in the .int domain, the Registrants must be an IGO that meets the requirements found in RFC 1591. The Applicant will reserve these strings and only allow for their future release if an IGO on the "reserve list" wishes to make use of the protected string in the gTLD and provides the Applicant with sufficient documentation.

Finally if a Registrant during sunrise and landrush applies to register a domain name identical to a capital city name of a country or territory listed in the ISO 3166-1 standard it will receive a Capital City Claims ("CCC") notification stating this. Subsequently they will have to reply unconditionally agreeing to comply with requirements to protect the reputation of the capital city and any further terms.

These functions will enhance Internet stability, security and will demonstrate to Registrars, Registrants, and end-users of the Registry that abusive or malicious conduct will not be tolerated. They will further contribute significantly to the integrity of the gTLD enabling an environment where stakeholders can innovate with confidence.

Question 18(b)(iii) What goals does your proposed gTLD have in terms of user experience?

The Applicant's goals for the new gTLD are to provide a trusted, secure, and user friendly environment whereby domain names and content relating to its specific affinity group can flourish.

The Applicant believes that the success of the gTLD will be determined by the sector's key stakeholders globally. The Applicant believes that stakeholders should have the opportunity to influence the gTLD and the way it is governed. Accordingly, the Applicant is establishing a Governance Council ("GC"), to serve as an advisory body.

.sport will be developed with consumer trust, choice and satisfaction in mind and after the initial 2 years, the Applicant will conduct a survey to analyse the gTLD's success in these areas to help further improve the user experience.

To ensure a high level of service the Applicant will further measure:

- Service Availability Targets for the Critical Registry Functions
- The number of abuse incidents and takedowns
- ICANN Compliance
- Rights protection incidents (i.e. UDRP and URS)
- WHOIS data accuracy

The Applicant intends to promote consumer choice by providing the following:

- Highly available and geographically diverse Registrar distribution channel;
- Effective sunrise and trademark services.

Question 18(b)(iv) Provide a complete description of the applicant's intended registration policies in support of the goals listed above.

#### Registration Policies

The purpose and goal of the Applicant's policies are to ensure competition, fairness, trust and reliability for Registrars, Registrants, the user community, and other stake holders, while maintaining security and stability for the gTLD.

#### General Policy

Aside from certain start-up mechanisms, all domain names will generally be registered on a first-come, first-served basis. A Trademark Claims service will be offered for the first 90 days of general registration, with the intent of providing clear notice to potential Registrants of the existing rights of trademark owners with registered trademarks in the Trademark Clearinghouse.

#### Registration Policies

As per ICANN's requirements, the Applicant will be operating both a Sunrise and Landrush period ahead of general availability for the gTLD.

#### Governance Council

The Applicant is establishing a the GC, to be comprised of key sector stakeholders that will serve as an advisory body. Each GC will elect its own Board of Directors, which will be responsible for self-governance, the recommendation of sector-specific registration policies, the formulation of guidance on intellectual property and other best practices related to the gTLD.

The Applicant aims to develop an Abuse Prevention and Mitigation Working Group in conjunction with the GC. It will give the Applicant's team advice on abuse preventions and mitigation and how this may effect registration policies. The group will meet to regularly discuss the latest trends in domain name abuse and the most effective way to prevent and remedy them.

Question 18(b)(v) Will your proposed gTLD impose any measures for protecting the privacy or confidential information of Registrants or users? If so, please describe any such measures.

#### Data and Privacy Policies

The Applicant shall comply with all the Data, WHOIS, and Privacy requirements in the Applicant Guidebook required by ICANN. The Applicant will take all possible steps to maintain the security and privacy of information or data that it may collect in connection with the planned function and usage of names domains, and will remain in compliance with all confidentiality and security regulations in relevant jurisdictions. This data will be held by the Applicant in accordance with the Registry Agreement that the Applicant will execute with ICANN.

The Applicant has further ensured that its suppliers also understand that keeping information secure and private is of crucial importance and will take all available steps to maintain the security and privacy of information collected from the Applicants in the Sunrise, Landrush and General Availability Phases.

Question 18(b) Describe whether and in what ways outreach and communications will help to

achieve your projected benefits.

The Applicant plans on making the gTLD the premier gTLD where individuals and organizations can register, build and maintain websites relating to their specific interest area. Thus, communication with the public and development of an outreach campaign are important goals in connection with the gTLD.

During the gTLD evaluation process, the Applicant plans to conduct a two-to-three month communications campaign aimed at reaching sector stakeholders and informing them of the gTLD's mission and the opportunity to participate in the GC. The communication outreach will include email communications to hundreds of leading sector organizations. It will also be accompanied by the launch of a website for communicating information about the gTLD and allowing interested members of the related sector to express interest in serving on the GC. Other communications efforts, including but not limited to, press releases and social media campaigns may all be initiated to raise further awareness regarding the gTLD.

Shortly after completing the evaluation process and being awarded the gTLD, the Applicant will institute marketing and outreach efforts to inform the public about the new gTLD, its launch schedule, and its intended affinity group. The Applicant will use different outreach and communications methods and venues to get the new gTLD mission and message out to the public, including but not limited to the following: online and print press releases, communications with various media outlets, domain name sector groups, mobile apps and various social media platforms. The GC will be used as a further means of outreach and communication to the Internet community.  
-end-

## **18(c). What operating rules will you adopt to eliminate or minimize social costs?**

Q18C

What operating rules will you adopt to eliminate or minimize social costs (e.g., time or financial resource costs, as well as various types of consumer vulnerabilities)? What other steps will you take to minimize negative consequences/costs imposed upon consumers?

The Applicant fully appreciates the concerns of ICANN, the GAC and other consumer protection authorities about the need to operate new gTLDs in ways that minimize social costs, consumer vulnerabilities as well as other time and financial resource costs. To achieve these goals this gTLD will not only employ the ICANN mandated minimum protections, but will also deploy the following innovative protection measures that will put the gTLD at the forefront of addressing these critical issues:

### 1) Abuse Prevention and Mitigation Policies and Procedures

The Applicant's core mission and purpose is to create an environment where individuals and companies can interact and express themselves in ways never before seen on the Internet, in a more targeted, secure and stable environment. To achieve this goal the Applicant will be implementing a range of Abuse Prevention and Mitigation ("APM") policies and procedures.

These Policies and Procedures will include: 1) gTLD APM Plan, 2) Policies and Procedures to Minimize Abusive Registrations, 3) Abuse Point of Contact, 4) Policies for Handling Complaints Regarding the Abuse Policies, 5) Acceptable Use Policy ("AUP"), 6) Proposed Measures for Removal of Orphan Glue Records, 7) Resourcing plans for the initial implementation of, and ongoing maintenance of, the APM initiatives, 8) Registry semi-annual WHOIS verification, 9) Regular monitoring of WHOIS registration data for accuracy and completeness, 10) Registrar WHOIS self-certification, 11) WHOIS data reminder process, 12) Establishing policies and procedures to ensure Registrar compliance, which may include audits, financial incentives, penalties, or other means,

13) Registrar verification of WHOIS, 14) Abuse Response Process, 15) Policies and procedures that define malicious or abusive behaviour, 16) Service Level Requirements for resolution regarding APM issues, 17) Service Level Requirements for Law enforcement requests regarding APM issues, 18) Coordination of APM efforts with sector Groups and Law Enforcement, 19) Rapid takedown and suspension, 20) Controls to Ensure Proper Access to Domain Functions, 21) Enabling two-factor authentication from Registrants to process update, transfers, and deletion requests, 22) Enabling multiple, unique points of contact to request and/or approve update, transfer, and deletion requests, 23) Enabling the notification of multiple, unique points of contact when a domain has been updated, transferred, or deleted, 24) Additional Mechanism for Protection of Capital City Names, 25) Additional Mechanisms to Protect and Reserve IGO Names, 26) Governance Council Structure, 27) Efforts to increase Registrant Security Awareness, 28) Registrant Disqualification, 29) Restrictions on Proxy Registration Services, 30) Registry Lock. (Q28 for detail)

## 2) Rights Protection Mechanisms

The Applicant is firmly committed to the protection of Intellectual Property rights and to implementing all the mandatory Rights Protection Mechanisms ("RPMs") contained in the Applicant Guidebook and detailed in Specification 7 of the Registry Agreement. Use of domain names that infringe upon the legal rights of others in the gTLD will not be tolerated and preventing abusive registrations is a core objective of the Applicant. The nature of such uses creates security and stability issues for the Registry, Registrars, and Registrants, as well as for users of the Internet in general. The Applicant will minimize time or financial resources costs by preventing abusive registrations and reduce opportunities for behaviours such as phishing or pharming. This will be achieved by implementing comprehensive registration, anti-abuse, and rights protection guidelines as defined in its AUP, as well as innovative additional RPMs such as the Mechanism to Protect IGO Names by blocking second level labels currently present in the .int zone file and the Mechanism for Further Protection of Capital City Names, as described below. In order to identify and address the abusive use of registered names on an ongoing basis, the Applicant will also incorporate and abide by the following RPMs and all other RPMs as specified in Specification 7 of the Registry Agreement and as adopted by the ICANN Board of Directors as ICANN Consensus Policies.

These Rights Protection Mechanisms will among other things include: 1) Trademark Clearinghouse, 2) Applicant's Sunrise Period, 3) Trademark Claims Service, 4) Uniform Domain Name Dispute Resolution Policy, 5) Uniform Rapid Suspension System, 6) Trademark Post-Delegation Dispute Resolution Procedure, 7) Mechanism to protect IGO Names, 8) Mechanism for Further Protection of Capital City Names, 9) Efforts to promote WHOIS Accuracy, 10) Thick Searchable WHOIS, 11) Semi Annual Audits to Ensure Accurate WHOIS, 12) Policies Handling Complaints Regarding Abuse and Rights Issues, 13) Registry Acceptable Use Policy ("AUP"), 14) Monitoring for Malicious Activity. (Q29 for detail)

## 3) Governance Council Structure

The Applicant believes that sector stakeholders should be afforded the opportunity to influence the manner in which the gTLD is governed. Accordingly, the Applicant will establish a Governance Council (the "GC") comprised of key sector stakeholders that will serve as an advisory body tasked with defining best practice recommendations for the gTLD space. The Applicant believes that the success of the gTLD will be determined largely by the sector's key stakeholders. Not only will these stakeholders have the primary interest in registering domains in the gTLD, but they will also be motivated to protect the sector from practices that would negatively impact the sector overall. The GC exists to provide guidance on matters related to best practices, intellectual property, authentication, certification, and other matters of importance to the sector and it will elect its own Board of Directors, which will be responsible for self-governance, the recommendation of sector-specific policies, and other best practices related to the gTLD.

## 4) BITS and Coalition for Online Accountability ("COA") Recommendations

The Applicant will further structure its policies around the BITS and COA Recommendations



where relevant to this gTLD. The Applicant's goal is to provide a safe and secure experience for consumers. A domain within this gTLD that is owned, operated by or compromised by a malicious party could cause harm to consumers, to the gTLD's reputation and to the reputation of the Internet itself. As such, additional controls are in place relating to the validity of registrations, as well as measures to ensure the correct identity of both Registrants and Registrars relating to changes made within the SRS, and to protecting the integrity of the DNS service as a whole.

The Security Standards Working Group (SSWG) formed by BITS drafted a set of policy recommendations that should be applied to financial TLDs. The policy comprises of a set of 31 recommendations that should be adopted by ICANN in evaluating any applicant of a financial gTLD. The recommendations were posted by BITS in the form of a letter to ICANN at [<http://www.icann.org/en/correspondence/aba-bits-to-beckstrom-crocker-20dec11-en.pdf>].

The Coalition for Online Accountability have drafted a set of policy recommendations, also endorsed by many other international organizations representing the creative industries, that should be applied to entertainment gTLDs - especially those dependent on copyright protection. The policy comprises of a set of 7 recommendations that should be adopted by ICANN in evaluating any applicant for an entertainment-based gTLD. The recommendations were posted by COA in the form of a letter to ICANN at <http://bit.ly/HuHtmq>.

We welcome the recommendations from BITS and the COA and will strongly consider the recommendations relating to the implementation of this gTLD where considered relevant.

#### 5) Registry Operators Startup Plan

The Applicant proposes to implement the following start-up plan so that the new gTLD is introduced in an orderly, transparent and stable manner. This will safeguard competition, fairness, trust and reliability for Registrants, the User Community, ICANN Accredited Registrars, and other Stakeholders.

The Applicant's startup plan is designed to minimize social costs (e.g., time or financial resources costs, as well as various types of consumer vulnerabilities) by instilling a number of RPMs as well as APMs.

The plan consists of the following multi-phase process that will be executed by the Registry Operator. The timeline for the gTLDs start-up process and associated RPMs in the Applicants gTLD is as follows:

##### Phase 1 - Sunrise Process:

- Day 1: Sunrise round opens
- Day 60: Sunrise round Closes
- Day 61: Sunrise Allocation Including contention resolution mechanisms opens
- Day 71: Sunrise Allocation contention resolution mechanisms closes
- The following Rights Protection Mechanisms apply:
  - a. Trademark Clearinghouse ("TMCH")
  - b. Sunrise Eligibility Requirements ("SER")
  - c. Sunrise Dispute Resolution Policy ("SDRP")
  - d. Uniform Domain Name Dispute Resolution Policy ("UDRP")
  - e. Uniform Rapid Suspension System ("URS")
  - f. Mechanism for the Protection of IGO Names ("PIN")
  - g. Trademark Claims Service ("TCS") \*

##### Phase 2 - Landrush process:

- Day 72: Landrush opens
- Day 102: Landrush closes
- Day 103: Landrush contention resolution mechanisms opens
- Day 113: Landrush contention resolution mechanisms closes
- The following Rights Protection Mechanisms apply:

- a. UDRP
- b. URS
- c. PIN
- d. Mechanism for Further Protection of Capital City Names ("CCC")
- e. TCS \*

#### Phase 3 - General Availability/Registrations:

- Day 114: General availability begins
- The following Rights Protection Mechanisms apply:
  - a. UDRP
  - b. URS
  - c. PIN
  - d. Trademark Post-Delegation Dispute Resolution Procedure ("PDDRP")
  - e. TCS for the 90 days after day 114 \*

\* To ease the concerns of trademark owners and mitigate the impact of infringing registrations, the Applicant will be implementing the TCS in all three phases of launch. It is important to note that during the General Availability Phase, the TCS will be used for 90 days, 30 days longer than the ICANN mandated minimum.

18(C)(i) How will multiple applications for a particular domain name be resolved, for example, by auction or on a first-come/first-serve basis?

#### Sunrise and Landrush periods:

During the gTLDs launch period, multiple applications for a particular domain name will be resolved through a Contention Resolution Mechanism ("CRM") involving auctions. These CRMs will apply to the Sunrise and Landrush application phases. The CRMs will be conducted by Sedo GMBH, an experienced provider of domain auction services. The mechanisms offered will involve closed auctions where only specific bidders can participate.

During the Applicants Sunrise process, if there are two or more eligible applicants for one domain name string, then the contention will be resolved by auction. Auctions held during the Sunrise phase ("Sunrise Auctions") will be closed and the only bidders will be eligible applicants according to the gTLDs Sunrise eligibility requirements including the TMCH.

During the Applicants Landrush process, if there are two or more eligible applicants for one domain name string, then the contention will be resolved by auction. Auctions held during the Landrush phase ("Landrush Auctions") will be closed and the only bidders will be eligible applicants according to the gTLDs Landrush eligibility requirements.

#### General Availability:

After the two initial startup phases of the Registry the allocation of domain names will occur on a first-come first-serve basis, taking into account the registries APM and RPM mechanisms.

18(c)(ii) Explain any cost benefits for registrants you intend to implement (e.g., advantageous pricing, introductory discounts, bulk registration discounts).

#### Incentive, Marketing and Outreach Programs

The Applicant will implement a number of incentive, marketing assistance, awareness and PR programs to assist the Registrar channel in providing a sector leading experience to end-users and to provide cost benefits for registrants. The Applicant will work with the global Registrar channel to ensure that the new gTLD offer is clearly visible on

registrar sites resulting in an increase in the awareness and in the number of new gTLD registrations. Achieving this visibility requires (1) a clear business case and incentives for registrars to motivate them and (2) mechanisms and assets to make it easy for them to do so.

The Applicant will at the time of launch depending upon market conditions consider incentive programs that will deliver cost benefits to registrants through either the use of advantageous pricing, introductory discounts, bulk registration discounts or other similar methods. The Applicant is aware of Specification 9 - Registry Operator Code of Conduct, and will not directly or indirectly show any preference or provide any special consideration to any Registrar in its marketing efforts.

Example incentive mechanisms the Applicant will provide to the registrars may include:

#### Marketing Incentives

The Applicant intends to provide expertise, tools and creative assets to the registrars as part of general marketing and co-marketing programs. There is a significant cost saving if the expertise, tools and assets are developed centrally and the costs amortized across the registrar base. Significant cost savings can occur relating to Market Research, Social Customer Relationship Management ("SCRM"), Content Management Systems ("CMS"), Direct Marketing Tools, Marketing Collateral and Analytics Solutions.

The Applicant will employ some or all of the following marketing techniques jointly with registrars globally: (1) Direct Response Print, (2) General Web Marketing, (3) Email campaigns without Incentive, (4) Email with Incentive, (5) Email Marketing - Prospect List, (6) Email Marketing - Sponsored Newsletter, (7) Direct Marketing with Incentive, (8) Web Marketing with Incentive, (9) Viral Marketing (Social, Video, Micro-sites), (10) Develop User Interface Improvement best practices, (11) Develop Search Engine Optimization best practices, (12) Email Marketing - Registrar List

As an example of a marketing initiative, the Applicant will forward leads to the Registrars "buy" pages as an incentive via the means of Pay-Per-Click ("PPC") search marketing. The Applicant will run multiple PPC campaigns targeting gTLD Registrants and point these to landing pages on the Registrar's websites. Conversions are directly trackable from all PPC campaigns and keywords with a high Click-Through-Rate ("CTR") or conversions will also be leveraged for SEO best practice purposes.

#### PR and Awareness Incentives:

In addition to the core outreach to the Registrar Channel, the Applicant will engage in a wider outreach to build awareness of the new gTLD with customers, end-users and other stakeholders. The Applicant will engage with a number of high profile individuals associated with the gTLD and will seek to reach end consumers through webcasts, podcasts, traditional broadcast TV as well as radio.

#### Provision of customer retention toolkits to Registrars:

The Applicant will use propensity modelling to build retention marketing programs to minimize churn whilst building renewal sustainability. The Applicant will develop econometric models designed to measure the likelihood of a customer segment to purchase a product or offer bundle, at a certain point in the relationship lifecycle. They are used to predict the best time, and the best combination of products, to offer to customers who match a certain profile. They are especially effective where there are large numbers of customers and reliable data can be gathered. The Applicant expects that registration volume in the gTLD will provide sufficient data for this modelling.

#### Measure, benchmark and improve the customer experience:

The Applicant will engage in a program to develop best practice policies related to the customer experience at differing levels of the channel. This will include the entire ecosystem from Registry through Registrar to Resellers and finally end-users. One key metric might be, for example, to reduce the number of clicks to make a purchase

equivalent to the most customer friendly e-commerce sites in the world. The Applicant might, for example, provide website performance tracking tools to registrars, which would benchmark current performance and provide insights into customers' needs and behaviour at the point of purchase. The Applicant will engage in a Social Customer Relationship Management Program to monitor social media feedback to questions, concerns or other issues. The Applicant will further seek to measure marketing communication expenditure and activity.

Other initiatives that will be considered by the Applicant in its outreach efforts:

- (a) Customized Vertical Search App for major mobile platforms.
- (b) Designated Twitter channel for the stakeholder community.
- (c) Social Media outreach through Facebook and other social media solutions.

Translation into other languages:

At present, the Applicant plans to translate marketing collateral and other content that it considers to have geographically diverse appeal in to the 6 official UN languages, namely Arabic, Chinese (Mandarin), English, French, Russian and Spanish.

18(c)(iii) Note that the Registry Agreement requires that registrars be offered the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years. Additionally, the Registry Agreement requires advance written notice of price increases. Do you intend to make contractual commitments to registrants regarding the magnitude of price escalation? If so, please describe your plans.

The Applicant will follow the lifecycle and business rules found in the majority of gTLDs today. Our back-end operator has in excess of ten years of experience managing numerous gTLDs that utilize standard and unique business rules and lifecycles.

Initial registrations of registered names may be made in the registry in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, the registration term for registered names may not exceed ten (10) years. Further the renewal of registered names may be made in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, renewal of registered names may not extend their registration period beyond ten (10) years from the time of the renewal.

The Applicant plans to review domain name registration rates on an annual basis and will make a determination at that time regarding adjustments, depending upon market factors. Thus, at this time, the Applicant does not plan to make specific guarantees regarding pricing increases.

The Applicant will provide ICANN and each ICANN accredited registrar that has executed the registry-registrar agreement for the gTLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying or other programs which had the effect of reducing the price charged to registrars, unless such refunds, rebates, discounts, product tying or other programs are of a limited duration that is clearly and conspicuously disclosed to the registrar when offered) that complies with the requirements as outlined in the New gTLD Registry Agreement.

-end-

## Community-based Designation

### 19. Is the application for a community-based TLD?

No

**20(a). Provide the name and full description of the community that the applicant is committing to serve.**

**20(b). Explain the applicant's relationship to the community identified in 20(a).**

**20(c). Provide a description of the community-based purpose of the applied-for gTLD.**

**20(d). Explain the relationship between the applied-for gTLD string and the community identified in 20(a).**

**20(e). Provide a description of the applicant's intended registration policies in support of the community-based purpose of the applied-for gTLD.**

**20(f). Attach any written endorsements from institutions/groups representative of the community identified in 20(a).**

Attachments are not displayed on this form.

## **Geographic Names**

**21(a). Is the application for a geographic name?**

No

## **Protection of Geographic Names**

## 22. Describe proposed measures for protection of geographic names at the second and other levels in the applied-for gTLD.

Q22

Introduction

The Applicant is aware of the substantial amount of work and effort that has gone into developing policy to address the issue of the reservation and release of geographic names under new gTLDs, including the valuable input from ICANN's Governmental Advisory Committee ("GAC"), the Generic Names Supporting Organisation Reserved Names Working Group, Registry Operators and from elsewhere within the ICANN community.

The Applicant is aware of and understands the requirements set forth in the 11 January 2012 version of the New gTLD Applicant Guidebook (New gTLD Applicant Guidebook) and the GAC advice for protection of geographic names and will implement appropriate measures to ensure that it complies in all respects with ICANN policies and rules regarding both the reservation and release of geographic names at the second level (or other levels).

In addition to this, the Applicant proposes to implement an additional mechanism for the protection of capital city names at the second level that exceeds the requirements in the New gTLD Applicant Guidebook. See description of Capital City Claim service described below.

Reservation of Geographic Names

The initial GAC advice on the protection of geographic names is contained in the GAC document "Principles Regarding New gTLDs" which was presented by the GAC on 28 March 2007. Section 2.7(a) of this document states that new gTLD applicants should "adopt, before the new gTLD is introduced, appropriate procedures for blocking, at no cost and upon demand of governments, public authorities or IGOs, names with national or geographic significance at the second level of any new gTLD".

Specification 5 of the New gTLD Registry Agreement provides further clarity and details the Schedule of Reserved Names at the Second Level (or other levels) in gTLD Registries, whereby the Registry Operator undertakes to reserve certain domain names and prevent them from being registered, delegated or used.

Section 2 of Specification 5 of the New gTLD Registry Agreement requires that all two character labels are initially reserved. This is to avoid conflicts and confusion with existing ccTLD extensions.

Section 5 of Specification 5 of the New gTLD Registry Agreement is more comprehensive and states that:

"5. Country and territory names contained in the following internationally recognized lists shall be initially reserved at the second level and at all other levels within the TLD at which the Registry Operator provides for registrations:

5.1. the short form (in English) of all country and territory names contained on the ISO 3166-1 list, as updated from time to time, including the European Union, which is exceptionally reserved on the ISO 3166-1 list, and its scope extended in August 1999 to any application needing to represent the name European Union [http://www.iso.org/iso/support/country\\_codes/iso\\_3166\\_code\\_lists/iso-3166-1\\_decoding\\_table.htm#EU](http://www.iso.org/iso/support/country_codes/iso_3166_code_lists/iso-3166-1_decoding_table.htm#EU) ;

5.2. the United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World; and

5.3. the list of United Nations member states in 6 official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names".

In order to meet these requirements regarding country and territory names, the applicant will maintain and regularly update copies of the aforementioned internationally recognized lists. All labels appearing on those lists, and on any list promulgated or recognized by ICANN for reservation in the future, assuming the corresponding string is unregistered, The Applicant will afford the same protections to new states or cities as they are formed.

The Applicant will reserve all labels appearing on the above referenced lists from time to time, and prevent registration, delegation or use of such names in accordance with ICANN requirements and as described above. In order to ensure that this is implemented correctly, all such labels will be reserved in the name of the applicant in order to prevent their delegation and use.

#### Release of Reserved Geographic Names

Specification 5 of the New gTLD Registry Agreement also contains provisions for the release of country and territory names on the basis that agreement is reached with "the applicable government(s), provided, further, that Registry Operator may also propose release of these reservations, subject to review by ICANN's Governmental Advisory Committee and approval by ICANN".

As such the applicant's proposed policy for the release of such reserved terms is cognisant of the review and approval process from the GAC and ICANN.

Based upon a review of the available literature, documentation and guidance, the applicant proposes the following policy to ICANN and the GAC for the potential release of reserved terms under the TLD:

- i) Further to the successful evaluation and delegation of the TLD all of the aforementioned labels, as specified under Section 5 of Specification 5 of the New gTLD Registry Agreement will be reserved and thus unavailable for registration during each stage of the launch process including, but not limited to the Sunrise period, the Landrush period through to General registrations.
- ii) At any stage during the launch process through to General registrations and beyond, the aforementioned reserved names may only be assigned to the relevant Government or public authority. In such situation they would be assigned using the following process:
  - a) The corresponding Government or public authority submits a request to the GAC seeking the assignment of the reserved name to themselves and provides the details of the proposed registrant entity for the domain name registration.
  - b) The GAC will validate it and authenticate the request to establish that is a genuine bona fide request.
  - c) Once this has been established by the GAC, the request for delegation will be forwarded to the applicant to request the assignment of the domain name. Simultaneously the GAC will also notify ICANN of the GAC approval of the request for the assignment of the domain name.
  - d) The applicant will issue a unique authorisation code to the proposed registrant entity.
  - e) The proposed registrant entity will then be able to request the assignment of the domain name to themselves using the authorisation code with an ICANN accredited registrar for the applicant TLD.

In addition to the above, the applicant will also adhere to and implement ICANN policy with regards to the reservation and release of such terms as and when required.

#### Additional Mechanism for Further Protection of Capital City Names

In parallel with the Landrush Period defined in the answer to question 18, the applicant

will implement a Capital City Claim ("CCC") service whereby additional protection will be granted to the capital city names of a country or territory listed in the ISO 3166-1 standard. The CCC process is described below:

a) Any prospective domain name registrant applying to register a domain name identical to the capital city name of a country or territory listed in the ISO 3166-1 standard will automatically receive from the Applicant a CCC notification highlighting the fact that the applied-for domain name corresponds to a capital city name of a country or territory listed in the ISO 3166-1 standard.

b) A potential domain name registrant receiving a CCC notification will have to send a response to the Applicant whereby it will unconditionally comply with the requirements as to representations and warranties required by the Applicant.

c) Unconditional acceptance of the representations and warranties set out in the CCC notification will be a material requirement for a prospective registrant to be eligible to register the domain name in question should said prospective registrant be successful in the Landrush period.

d) Upon registration during the Landrush period of a domain name identical to a capital city name of a country or territory listed in the ISO 3166-1 standard, the Applicant will send a notification listing the names in writing to the GAC Chair.

(see Q28 for more detail)

-end-

## Registry Services

### 23. Provide name and full description of all the Registry Services to be provided.

Q23

We have engaged ARI Registry Services (ARI) to deliver services for this TLD. This response describes the registry services for our TLD, as provided by ARI.

#### 1 INTRODUCTION

ARI's Managed TLD Registry Service is a complete offering, providing all of the required registry services. What follows is a description of each of those services.

#### 2 REGISTRY SERVICES

The following sections describe the registry services provided. Each of these services has, where required, been designed to take into account the requirements of consensus policies as documented here:

[<http://www.icann.org/en/resources/Registrars/consensus-policies>]

At the time of delegation into the root this TLD will not be offering any unique Registry services.

##### 2.1 Receipt of Data from Registrars

The day-to-day functions of the registry, as perceived by Internet users, involves the receipt of data from Registrars and making the necessary changes to the SRS database. Functionality such as the creation, renewal and deletion of domains by Registrars, on behalf of registrants, is provided by two separate systems:

- An open protocol-based provisioning system commonly used by Registrars with automated domain management functionality within their own systems.



- A dedicated website providing the same functionality for user interaction. Registrants (or prospective registrants) who wish to manage their existing domains or credentials, register new domains or delete their domains will have their requests carried out by Registrars using one of the two systems described below. ARI operates Extensible Provisioning Protocol (EPP) server software and distributes applicable toolkits to facilitate the receipt of data from Registrars in a common format. EPP offers a common protocol for Registrars to interact with SRS data and is favoured for automating such interaction in the Registrar's systems. In addition to the EPP server, Registrars have the ability to use a web-based management interface (SRS Web Interface), which provides functions equivalent to the EPP server functionality.

#### 2.1.1 EPP

The EPP software allows Registrars to communicate with the SRS using a standard protocol. The EPP server software is compliant with all appropriate RFCs and will be updated to comply with any relevant new RFCs or other new standards, as and when they are finalised. All standard EPP operations on SRS objects are supported.

Specifically, the EPP service complies with the following standards:

- RFC 5730 Extensible Provisioning Protocol (EPP).
- RFC 5731 Extensible Provisioning Protocol (EPP) Domain Name Mapping.
- RFC 5732 Extensible Provisioning Protocol (EPP) Host Mapping.
- RFC 5733 Extensible Provisioning Protocol (EPP) Contact Mapping.
- RFC 5734 Extensible Provisioning Protocol (EPP) Transport over TCP.
- RFC 5910 Domain Name System (DNS) Security Extensions for the Extensible Provisioning Protocol (EPP).
- RFC 3915 Domain Registry Grace Period Mapping for the Extensible Provisioning Protocol (EPP).
- Extensions to ARI's EPP service comply with RFC 3735 Guidelines for Extending the Extensible Provisioning Protocol (EPP).

##### 2.1.1.1 Security for EPP Service

To avoid abuse and to mitigate potential fraudulent operations, the EPP server software uses a number of security mechanisms that restrict the source of incoming connections and prescribe the authentication and authorisation of the client. Connections are further managed by command rate limiting and are restricted to only a certain number for each Registrar, to help reduce unwanted fraudulent and other activities. Additionally, secure communication to the EPP interface is required, lowering the likelihood of the authentication mechanisms being compromised.

The EPP server has restrictions on the operations it is permitted to make to the data within the registry database. Except as allowed by the EPP protocol, the EPP server cannot update the credentials used by Registrars for access to the SRS. These credentials include those used by Registrars to login to ARI's SRS Web Interface and the EPP service. Secure communication to the EPP server is achieved via the encryption of EPP sessions. The registry system and associated toolkits support AES 128 and 256 via TLS. The Production and Operational Testing and Evaluation (OTE) EPP service is protected behind a secure firewall that only accepts connections from registered IP addresses. Registrars are required to supply host IP addresses that they intend to use to access the EPP service.

Certificates are used for encrypted communications with the registry. Registrars require a valid public/private key pair signed by the ARI CA to verify authenticity. These certificates are used to establish a TLS secure session between client and server. EPP contains credential elements in its specification which are used as an additional layer of authentication. In accordance with the EPP specification, the server does not allow client sessions to carry out any operations until credentials are verified. The EPP server software combines the authentication and authorisation elements described above to ensure the various credentials supplied are associated with the same identity. This verification requires that:

- The username must match the common name in the digital certificate.
- The certificate must be presented from a source IP listed against the Registrar whose common name appears in the certificate.
- The username and password must match the user name and password listed against the

Registrar's account with that source IP address.

To manage normal operations and prevent an accidental or intentional Denial of Service, the EPP server can be configured to rate limit activities by individual Registrars.

#### 2.1.1.2 Stability Considerations

The measures that restrict Registrars to a limit of connections and operations for security purposes also serve to keep the SRS and the EPP server within an acceptable performance and resource utilisation band. Therefore, scaling the service is an almost linear calculation based on well-defined parameters.

The EPP server offers consistent information between Registrars and the SRS Web Interface. The relevant pieces of this information are replicated to the DNS within seconds of alteration, thus ensuring that a strong consistency between the SRS and DNS is maintained at all times.

#### 2.1.2 SRS Web Interface

The registry SRS Web Interface offers Registrars an alternative SRS interaction mechanism to the EPP server. Available over HTTPS, this interface can be used to carry out all operations which would otherwise occur via EPP, as well as many others. Registrars can use the SRS Web Interface, the EPP server interface or both - with no loss of consistency within the SRS.

##### 2.1.2.1 Security and Consistency Considerations for SRS Web Interface

The SRS Web Interface contains measures to prevent abuse and to mitigate fraudulent operations. By restricting access, providing user level authentication and authorisation, and protecting the communications channel, the application limits both the opportunity and scope of security compromise.

Registrars are able to create individual users that are associated with their Registrar account. By allocating the specific operations each user can access, Registrars have full control over how their individual staff members interact with the SRS. Users can be audited to identify which operations were conducted and to which objects those operations were applied.

A secure connection is required before credentials are exchanged and once authenticated. On login, any existing user sessions are invalidated and a new session is generated, thereby mitigating session-fixation attacks and reducing possibilities that sessions could be compromised.

#### 2.1.3 Securing and Maintaining Consistency of Registry-Registrar Interaction Systems

ARI ensures all systems through which Registrars interact with the SRS remain consistent with each other and apply the same security rules. Additionally, ARI also ensures that operations on SRS objects are restricted to the appropriate entity. For example:

- In order to initiate a transfer a Registrar must provide the associated domain password (authinfo) which will only be known by the registrant and the current sponsoring Registrar.

- Only sponsoring Registrars are permitted to update registry objects.

All operations conducted by Registrars on SRS objects are auditable and are identifiable to the specific Registrar's user account, IP address and the time of the operation.

#### 2.2 Disseminate Status Information of TLD Zone Servers to Registrars

The status of TLD zone servers and their ability to reflect changes in the SRS is of great importance to Registrars and Internet users alike. ARI will ensure that any change from normal operations is communicated to the relevant stakeholders as soon as is appropriate. Such communication might be prior to the status change, during the status change and/or after the status change (and subsequent reversion to normal) - as appropriate to the party being informed and the circumstance of the status change. Normal operations are those when:

- DNS servers respond within SLAs for DNS resolution.

- Changes in the SRS are reflected in the zone file according to the DNS update time SLA.

The SLAs are those from Specification 10 of the Registry Agreement. A deviation from normal operations, whether it is registry wide or restricted to a single DNS node, will result in the appropriate status communication being sent.

### 2.2.1 Communication Policy

ARI maintains close communication with Registrars regarding the performance and consistency of the TLD zone servers.

A contact database containing relevant contact information for each Registrar is maintained. In many cases, this includes multiple forms of contact, including email, phone and physical mailing address. Additionally, up-to-date status information of the TLD zone servers is provided within the SRS Web Interface.

Communication using the Registrar contact information discussed above will occur prior to any maintenance that has the potential to effect the access to, consistency of, or reliability of the TLD zone servers. If such maintenance is required within a short time frame, immediate communication occurs using the above contact information. In either case, the nature of the maintenance and how it affects the consistency or accessibility of the TLD zone servers, and the estimated time for full restoration, are included within the communication.

That being said, the TLD zone server infrastructure has been designed in such a way that we expect no down time. Only individual sites will potentially require downtime for maintenance; however the DNS service itself will continue to operate with 100% availability.

### 2.2.2 Security and Stability Considerations

ARI restricts zone server status communication to Registrars, thereby limiting the scope for malicious abuse of any maintenance window. Additionally, ARI ensures Registrars have effective operational procedures to deal with any status change of the TLD nameservers and will seek to align its communication policy to those procedures.

### 2.3 Zone File Access Provider Integration

Individuals or organisations that wish to have a copy of the full zone file can do so using the Zone Data Access service. This process is still evolving; however the basic requirements are unlikely to change. All registries will publish the zone file in a common format accessible via secure FTP at an agreed URL.

ARI will fully comply with the processes and procedures dictated by the Centralised Zone Data Access Provider (CZDA Provider or what it evolves into) for adding and removing Zone File access consumers from its authentication systems. This includes:

- Zone file format and location.
- Availability of the zone file access host via FTP.
- Logging of requests to the service (including the IP address, time, user and activity log).
- Access frequency.

### 2.4 Zone File Update

To ensure changes within the SRS are reflected in the zone file rapidly and securely, ARI updates the zone file on the TLD zone servers using software compliant with RFC 2136 (Dynamic Updates in the Domain Name System (DNS UPDATE)) and RFC 2845 (Secret Key Transaction Authentication for DNS (TSIG)).

This updating process follows a staged but rapid propagation of zone update information from the SRS, outwards to the TLD zone servers - which are visible to the Internet. As changes to the SRS data occur, those changes are updated to isolated systems which act as the authoritative primary server for the zone, but remain inaccessible to systems outside ARI's network. The primary servers notify the designated secondary servers, which service queries for the TLD zone from the public. Upon notification, the secondary servers transfer the incremental changes to the zone and publicly present those changes.

The protocols for dynamic update are robust and mature, as is their implementation in DNS

software. The protocols' mechanisms for ensuring consistency within and between updates are fully implemented in ARI's TLD zone update procedures. These mechanisms ensure updates are quickly propagated while the data remains consistent within each incremental update, regardless of the speed or order of individual update transactions. ARI has used this method for updating zone files in all its TLDs including the .au ccTLD, pioneering this method during its inception in 2002. Mechanisms separate to RFC 2136-compliant transfer processes exist; to check and ensure domain information is consistent with the SRS on each TLD zone server within 10 minutes of a change.

## 2.5 Operation of Zone Servers

ARI maintains TLD zone servers which act as the authoritative servers to which the TLD is delegated.

### 2.5.1 Security and Operational Considerations of Zone Server Operations

The potential risks associated with operating TLD zone servers are recognised by ARI such that we will perform the steps required to protect the integrity and consistency of the information they provide, as well as to protect the availability and accessibility of those servers to hosts on the Internet. The TLD zone servers comply with all relevant RFCs for DNS and DNSSEC, as well as BCPs for the operation and hosting of DNS servers. The TLD zone servers will be updated to support any relevant new enhancements or improvements adopted by the IETF.

The DNS servers are geographically dispersed across multiple secure data centres in strategic locations around the world. By combining multi-homed servers and geographic diversity, ARI's zone servers remain impervious to site level, supplier level or geographic level operational disruption.

The TLD zone servers are protected from accessibility loss by malicious intent or misadventure, via the provision of significant over-capacity of resources and access paths. Multiple independent network paths are provided to each TLD zone server and the query servicing capacity of the network exceeds the extremely conservatively anticipated peak load requirements by at least 10 times, to prevent loss of service should query loads significantly increase.

As well as the authentication, authorisation and consistency checks carried out by the Registrar access systems and DNS update mechanisms, ARI reduces the scope for alteration of DNS data by following strict DNS operational practices:

- TLD zone servers are not shared with other services.
- The primary authoritative TLD zone server is inaccessible outside ARI's network.
- TLD zone servers only serve authoritative information.
- The TLD zone is signed with DNSSEC and a DNSSEC Practice/Policy Statement published.

## 2.6 Dissemination of Contact or Other Information

Registries are required to provide a mechanism to identify the relevant contact information for a domain. The traditional method of delivering this is via the WhoIs service, a plain text protocol commonly accessible on TCP port 43. ARI also provides the same functionality to users via a web-based WhoIs service. Functionality remains the same with the web-based service, which only requires a user to have an Internet browser. Using the WhoIs service, in either of its forms, allows a user to query for domain-related information. Users can query for domain details, contact details, nameserver details or Registrar details.

A WhoIs service, which complies with RFC 3912, is provided to disseminate contact and other information related to a domain within the TLD zone.

### 2.6.1 Security and Stability Considerations

ARI ensures the service is available and accurate for Internet users, while limiting the opportunity for its malicious use. Many reputation and anti-abuse services rely on the availability and accuracy of the WhoIs service, however the potential for abuse of the WhoIs service exists.

Therefore, certain restrictions are made to the access of WhoIs services, the nature of which depend on the delivery method - either web-based or the traditional text-based port

43 service. In all cases, there has been careful consideration given to the benefits of WhoIs to the Internet community, as well as the potential harm to registrants - as individuals and a group - with regard to WhoIs access restrictions.

The WhoIs service presents data from the registry database in real time. However this access is restricted to reading the appropriate data only. The WhoIs service does not have the ability to alter data or to access data not related to the WhoIs service. The access limitations placed on the WhoIs services prevent any deliberate or incidental denial of service that might impact other registry services.

Restrictions placed on accessing WhoIs services do not affect legitimate use. All restrictions are designed to target abusive volume users and to provide legitimate users with a fast and available service. ARI has the ability to 'whitelist' legitimate bulk users of WhoIs, to ensure they are not impacted by standard volume restrictions. The data presentation format is consistent with the canonical representation of equivalent fields, as defined in the EPP specifications and ICANN agreement.

#### 2.6.1.1 Port 43 WhoIs

A port 43-based WhoIs service complying with RFC 3912 is provided and will be updated to meet any other relevant standards or best practice guidelines related to the operation of a WhoIs service.

While the text-based service can support thousands of simultaneous queries, it has dynamic limits on queries per IP address to restrict data mining efforts. In the event of identified malicious use of the service, access from a single IP address or address ranges can be limited or blocked.

#### 2.6.1.2 Web-based WhoIs

ARI's web-based WhoIs service provides information consistent with that contained within the SRS.

The web-based WhoIs service contains an Image Verification Check (IVC) and query limits per IP address. These restrictions strike a balance between acceptable public usage and abusive use or data mining. The web-based WhoIs service can blacklist IP addresses or ranges to prevent abusive use of the service.

### 2.7 IDNs - Internationalised Domain Names

An Internationalised Domain Name (IDN) allows registrants to register domains in their native language and have it display correctly in IDN aware software. This includes allowing a language to be read in the manner that would be common for its readers. For example, an Arabic domain would be presented right to left for an Arabic IDN aware browser.

The inclusion of IDNs into the TLD zones is supported by ARI. All the registry services, such as the EPP service, SRS Web Interface and RDPS (web and port 43), support IDNs. However there are some stability and security considerations related to IDNs which fall outside the general considerations applicable individually to those services.

#### 2.7.1 Stability Considerations Specific to IDN

To avoid the intentional or accidental registration of visually similar chars, and to avoid identity confusion between domains, there are several restrictions on the registration of IDNs.

##### 2.7.1.1 Prevent Cross Language Registrations

Domains registered within a particular language are restricted to only the chars of that language. This avoids the use of visually similar chars within one language which mimic the appearance of a label within another language, regardless of whether that label is already within the DNS or not.

##### 2.7.1.2 Inter-language and Intra-language Variants to Prevent Similar Registrations

ARI restricts child domains to a specific language and prevents registrations in one

language being confused with a registration in another language, for example Cyrillic ? (U+0430) and Latin a (U+0061).

## 2.8 DNSSEC

DNSSEC provides a set of extensions to the DNS that allow an Internet user (normally the resolver acting on a user's behalf) to validate that the DNS responses they receive were not manipulated en-route.

This type of fraud, commonly called 'man in the middle', allows a malicious party to misdirect Internet users. DNSSEC allows a domain owner to sign their domain and to publish the signature, so that all DNS consumers who visit that domain can validate that the responses they receive are as the domain owner intended.

Registries, as the operators of the parent domain for registrants, must publish the DNSSEC material received from registrants, so that Internet users can trust the material they receive from the domain owner. This is commonly referred to as a 'chain of trust'. Internet users trust the root (operated by IANA), which publishes the registries' DNSSEC material, therefore registries inherit this trust. Domain owners within the TLD subsequently inherit trust from the parent domain when the registry publishes their DNSSEC material.

In accordance with new gTLD requirements, the TLD zone will be DNSSEC signed and the receipt of DNSSEC material from Registrars for child domains is supported in all provisioning systems.

### 2.8.1 Stability and Operational Considerations for DNSSEC

#### 2.8.1.1 DNSSEC Practice Statement

ARI's DNSSEC Practice Statement is included in our response to Question 43. The DPS following the guidelines set out in the draft IETF DNSOP DNSSEC DPS Framework document.

#### 2.8.1.2 Receipt of Public Keys from Registrars

The public key for a child domain is received by ARI from the Registrar via either the EPP or SRS Web Interface. ARI uses an SHA-256 digest to generate the DS Resource Record (RR) for inclusion into the zone file.

#### 2.8.1.3 Resolution Stability

DNSSEC is considered to have made the DNS more trustworthy; however some transitional considerations need to be taken into account. DNSSEC increases the size and complexity of DNS responses. ARI ensures the TLD zone servers are accessible and offer consistent responses over UDP and TCP.

The increased UDP and TCP traffic which results from DNSSEC is accounted for in both network path access and TLD zone server capacity. ARI will ensure that capacity planning appropriately accommodates the expected increase in traffic over time.

ARI complies with all relevant RFCs and best practice guides in operating a DNSSEC-signed TLD. This includes conforming to algorithm updates as appropriate. To ensure Key Signing Key Rollover procedures for child domains are predictable, DS records will be published as soon as they are received via either the EPP server or SRS Web Interface. This allows child domain operators to rollover their keys with the assurance that their timeframes for both old and new keys are reliable.

## 3 APPROACH TO SECURITY AND STABILITY

Stability and security of the Internet is an important consideration for the registry system. To ensure that the registry services are reliably secured and remain stable under all conditions, ARI takes a conservative approach with the operation and architecture of the registry system.

By architecting all registry services to use the least privileged access to systems and data, risk is significantly reduced for other systems and the registry services as a whole should any one service become compromised. By continuing that principal through to our procedures and processes, we ensure that only access that is necessary to perform

tasks is given. ARI has a comprehensive approach to security modelled of the ISO27001 series of standards and explored further in the relevant questions of this response. By ensuring all our services adhering to all relevant standards, ARI ensures that entities which interact with the registry services do so in a predictable and consistent manner. When variations or enhancements to services are made, they are also aligned with the appropriate interoperability

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## Demonstration of Technical & Operational Capability

### 24. Shared Registration System (SRS) Performance

Q24

We have engaged ARI Registry Services (ARI) to deliver services for this TLD. ARI provide registry services for a number of TLDs including the .au ccTLD. For more background information on ARI please see the attachment 'Q24 - ARI Background & Roles.pdf'. This response describes the SRS as implemented by ARI.

#### 1 INTRODUCTION

ARI has demonstrated delivery of an SRS with exceptional availability, performance and reliability. ARI are experienced running mission critical SRSs and have significant knowledge of the industry and building and supporting SRSs. ARI's SRS has successfully supported a large group of Registrars for ASCII and IDN based TLDs. The system is proven to sustain high levels of concurrency, transaction load, and system uptime. ARI's SRS meets the following requirements:

- Resilient to wide range of security & availability threats
- Consistently exceeds performance & availability SLAs
- Allows capacity increase with minimal impact to service
- Provides fair & equitable provisioning for all Registrars

#### 2 CAPACITY

ARI's SRS was built to sustain 20M domain names. Based on ARI's experience running a ccTLD registries and industry analysis, ARI were able to calculate the conservative characteristics of a registry this size. Through conservative statistical analysis of the .au registry and data presented in the May 2011 ICANN reports for the .com & .net, .org, .mobi, .info, .biz and .asia [<http://www.icann.org/en/resources/registries/reports>] we know there is:

- An average of 70 SRS TPS per domain, per month
- A ratio of 3 query to 2 transform txs

This indicates an expected monthly transaction volume of 1,400M txs (840M query and 560M transforms).

Through statistical analysis of the .au registry and backed up by the data published in the .net RFP responses [<http://archive.icann.org/en/tlds/net-rfp/net-rfp-public-comments.htm>] we also know:

- The peak daily TPS is 6% of monthly total
- The peak 5 min is 5% of the peak day

Thus we expect a peak EPP tx rate of 14,000 TPS (5,600 transform TPS and 8,400 query TPS)

Through conservative statistical analysis of the .au registry we know:

- The avg no. contacts/domain is 3.76
- The avg no. hosts/domain is 2.28

This translates into a requirement to store 75.2M contacts and 45.6M hosts. Finally through real world observations of the .au registry, which has a comprehensive web interface when compared to those offered by current gTLD registries, we know there is an avg of 0.5 HTTP requests/sec to the SRS web interface per Registrar. We also know that this behaviour is reasonably flat. To support an estimated 1000 Registrars, would require

500 requests/second.

For perspective on the conservativeness of this, the following was taken from data in the May 2011 ICANN reports referenced above:

- .info: ~7.8M names peaks at ~1,400 TPS (projected peak TPS of ~3,600 with 20M)
- .com: ~98M names peaks at ~41,000 TPS (projected peak TPS of ~8,300 TPS with 20M)
- .org: ~9.3M names, peaks at ~1,400 TPS (projected peak TPS of ~3,100 with 20M)

After performing this analysis the projected TPS for .com was still the largest value. ARI understand the limitations of this method but it serves as a best estimate of probable tx load. ARI has built overcapacity of resources to account for limitations of this method, however as numbers are more conservative than real world observations, we are confident this capacity is sufficient.

This TLD is projected to reach domain-count domains at its peak volume and will generate srs-tx-count EPP TPS. This will consume srs-percent % of the resources of the SRS infrastructure. As is evident ARI's SRS can easily accommodate this TLD's growth plans. See attachment 'Q24 - Registry Scale Estimates & Resource Allocation.xlsx' for more information.

ARI expects to provide Registry services to 100 TLDs and a total of 12M domains by end of 2014. With all the TLDs and domains combined, ARI's SRS infrastructure will be 60% utilized. The SRS infrastructure capacity can be easily scaled as described in Q32 ARI benchmarked their SRS infrastructure and used the results to calculate the required computing resources for each of the tiers within the architecture; allowing ARI to accurately estimate the required CPU, IOPS, storage and memory requirements for each server, and the network bandwidth & packet throughput requirements for the anticipated traffic. These capacity numbers were then doubled to account for unanticipated traffic spikes, errors in predictions, and headroom for growth. Despite doubling numbers, effective estimated capacity is still reported as 20M. The technical resource allocations are explored in Q32.

### 3 SRS ARCHITECTURE

ARI's SRS has the following major components:

- Network Infrastructure
- EPP Application Servers
- SRS Web Interface Application Servers
- SRS Database

Attachment 'Q24 - SRS.pdf' shows the SRS systems architecture and data flows. Detail on this architecture is in our response to Q32. ARI provides two distinct interfaces to the SRS: EPP and SRS Web. Registrar SRS traffic enters the ARI network via the redundant Internet link and passes (via the firewall) to the relevant application server for the requested service (EPP or SRS Web). ARI's EPP interface sustains high volume and throughput domain provisioning transactions for a large number of concurrent Registrar connections. ARI's SRS Web interface provides an alternative to EPP with a presentation centric interface and provides reporting and verification features additional to those provided by the EPP interface.

#### 3.1 EPP

ARI's EPP application server is based on EPP as defined in RFCs 5730 - 5734. Registrars send XML based transactions to a load balanced EPP interface which forwards to one of the EPP application servers. The EPP application server then processes the XML and converts the request into database calls that retrieve or modify registry objects in the SRS database. The EPP application server tier comprises of three independent servers with dedicated connections to the registry database. Failure of any one of these servers will cause Registrar connections to automatically re-establish with one of the remaining servers. Additional EPP application servers can be added easily without any downtime. All EPP servers accept EPP both IPv4 & IPv6.

#### 3.2 SRS Web

The SRS Web application server is a Java web application. Registrars connect via the load balancer to a secure HTTP listener running on the web servers. The SRS web application converts HTTPs requests into database calls which query or update objects in the SRS database. The SRS Web application server tier consists of two independent servers that connect to the database via JDBC. If one of these servers is unavailable the load balancer re-routes requests to the surviving server. Additional servers can be added



easily without any downtime. These servers accept both IPv4 & IPv6.

### 3.3 SRS Database

The SRS database provides persistent storage for domains and supporting objects. It offers a secure way of storing and retrieving objects provisioned within the SRS and is built on the Oracle 11g Enterprise Edition RDBMS. The SRS Database tier consists of four servers clustered using Oracle Real Application Clusters (RAC). In the event of failure of a database server, RAC will transparently transition its client connections to a surviving database host. Additional servers can be added easily without any downtime.

### 3.4 Number of Servers

**EPP Servers** - The EPP cluster consists of 3 servers that can more than handle the anticipated 20M domains. This TLD will utilize srs-percent % of this capacity at its peak volume. As the utilisation increases ARI will add additional servers ensuring the utilisation doesn't exceed 50% of total capacity. Adding a new server to the cluster can be done live without downtime.

**SRS Web Servers** - The SRS Web cluster consists of 2 servers that can more than handle the anticipated 20M domains. This TLD will utilize srs-percent % of this capacity at its peak volume. As the utilisation increases ARI will add additional servers ensuring the utilisation doesn't exceed 50% of total capacity. Adding a new server to the cluster can be done live without downtime.

**SRS DB Servers** - The SRS DB cluster consists of 4 servers that can more than handle the anticipated 20M domains. This TLD will utilize srs-percent % of this capacity at its peak volume. As the utilisation increases ARI will add additional servers ensuring the total utilisation doesn't exceed 50% of total capacity. Adding a new server to the cluster can be done live without downtime.

### 3.5 SRS Security

ARI adopts a multi-layered security solution to protect the SRS. An industry leading firewall is deployed behind the edge router and is configured to only allow traffic on the minimum required ports and protocols. Access to the ARI EPP service is restricted to a list of known Registrar IPs.

An Intrusion Detection device is in-line with the firewall to monitor and detect suspicious activity.

All servers are configured with restrictive host based firewalls, intrusion detection, and SELinux. Direct root access to these servers is disabled and all access is audited and logged centrally.

The SRS database is secured by removal of non-essential features and accounts, and ensuring all remaining accounts have strong passwords. All database accounts are assigned the minimum privileges required to execute their business function.

All operating system, database, and network device accounts are subject to strict password management controls such as validity & complexity requirements.

Registrar access to the SRS via EPP or the Web interface is authenticated and secured with multi-factor authentication (NIST Level 3) and digital assertion as follows:

- Registrar's source IP must be allowed by the front-end firewalls. This source IP is received from the Registrar via a secure communication channel from within the SRS Web interface

- Registrar must use a digital certificate provided by ARI

- Registrar must use authentication credentials that are provided by encrypted email

All communication between the Registrar and the SRS is encrypted using at least 128 bit encryption which been designated as 'Acceptable' till '2031 and beyond' by NIST Special Publication 800-57.

### 3.6 SRS High Availability

SRS availability is of paramount. Downtime is eliminated or minimised where possible. The infrastructure contains no single points of failure. N+1 redundancy is used as a minimum, which not only protects against unplanned downtime but also allows ARI to execute maintenance without impacting service.

Redundancy is provided in the network with hot standby devices & multiple links between devices. Failure of any networking component is transparent to Registrar connections.

N+N redundancy is provided in the EPP and SRS Web application server tiers by the deployment of multiple independent servers grouped together as part of a load-balancing

scheme. If a server fails the load balancer routes requests to the remaining servers. N+N redundancy is provided in the database tier by the use of Oracle Real Application Cluster technology. This delivers active/active clustering via shared storage. This insulates Registrars from database server failure. Complete SRS site failure is mitigated by the maintenance of a remote standby site - a duplicate of the primary site ready to be the primary if required. The standby site database is replicated using real time transaction replication from the main database using Oracle Data Guard physical standby. If required the Data Guard database can be activated quickly and service resumes at the standby site.

### 3.7 SRS Scalability

ARI's SRS scales efficiently. At the application server level, additional computing resource can be brought on-line rapidly by deploying a new server online. During benchmarking this has shown near linear. The database can be scaled horizontally by adding a new cluster node into the RAC cluster online. This can be achieved without disruption to connections. The SRS has demonstrated over 80% scaling at the database level, but due to the distributed locking nature of Oracle RAC, returns are expected to diminish as the number of servers approaches double digits. To combat this ARI ensures that when the cluster is 'scaled' more powerful server equipment is added rather than that equal to the current members. Capacity can be added to the SAN at any time without downtime increasing storage and IOPs.

### 3.8 SRS Inter-operability and Data Synchronisation

The SRS interfaces with a number of related registry systems as part of normal operations.

#### 3.8.1 DNS Update

Changes made in the SRS are propagated to the DNS via an ARI proprietary DNS Update process. This process runs on the 'hidden' primary master nameserver and waits on a queue. It is notified when the business logic inserts changes into the queue for processing. The DNS Update process reads these queue entries and converts them into DNS update (RFC2136) commands that are sent to the nameserver. The process of synchronising changes to SRS data to the DNS occurs in real-time.

#### 3.8.2 WhoIs

The provisioned data supporting the SRS satisfies WhoIs queries. Thus the WhoIs and SRS share data sets and the WhoIs is instantaneously updated. Under normal operating conditions the WhoIs service is provided by the infrastructure at the secondary site in order to segregate the load and protect SRS from WhoIs demand (and vice versa). WhoIs queries that hit the standby site will query data stored in the standby database - maintained in near real-time using Oracle Active Data Guard. If complete site failure occurs WhoIs and SRS can temporarily share the same operations centre at the same site (capacity numbers are calculated for this).

#### 3.8.3 Escrow

A daily Escrow extract process executes on the database server via a dedicated database account with restricted read-only access. The results are then transferred to the local Escrow Communications server by SSH.

## 4 OPERATIONAL PLAN

ARI follow defined policies/procedures that have developed over time by running critical registry systems. Some principals captured by these are:

- Conduct all changes & upgrades under strict and well-practised change control procedures
- test, test and test again
- Maintain Staging environments as close as possible to production infrastructure/ configuration
- Eliminate all single points of failure
- Conduct regular security reviews & audits
- Maintain team knowledge & experience via skills transfer/training
- Replace hardware when no longer supported by vendor
- Maintain spare hardware for all critical components
- Execute regular restore tests of all backups
- Conduct regular capacity planning exercises

- Monitor everything from multiple places but ensure monitoring is not 'chatty'
- Employ best of breed hardware & software products & frameworks (such as ITIL, ISO27001 and Prince2)
- Maintain two distinct OT&E environments to support pre-production testing for Registrars

#### 5 SLA, RELIABILITY & COMPLIANCE

ARI's SRS adheres to and goes beyond the scope of Specification 6 and Specification 10 of the Registry Agreement. ARI's EPP service is XML compliant and XML Namespace aware. It complies with the EPP protocol defined in RFC5730, and the object mappings for domain, hosts & contacts are compliant with RFC 5731, 5732 & 5733 respectively. The transport over TCP is compliant with RFC5734. The service also complies with official extensions to support DNSSEC, RFC5910, & Redemption Grace Period, RFC 3915.

ARI's SRS is sized to sustain a peak transaction rate of 14,000 TPS while meeting strict internal Operational Level Agreements (OLAs). The monthly-based OLAs below are more stringent than those in Specification 10 (Section 2).

EPP Service Availability: 100%

EPP Session Command Round Trip Time (RTT): =1000ms for 95% of commands

EPP Query Command Round Trip Time (RTT): =500ms for 95% of commands

EPP Transform Command Round Trip Time (RTT): =1000ms for 95% of commands

SRS Web Interface Service Availability: 99.9%

ARI measure the elapsed time of every query, transform and session EPP transaction, and calculate the percentage of commands that fall within OLA on a periodic basis. If percentage value falls below configured thresholds on-call personnel are alerted. SRS availability is measured by ARI's monitoring system which polls both the EPP and SRS Web services status. These checks are implemented as full end to end monitoring scripts that mimic user interaction, providing a true representation of availability. These 'scripts' are executed from external locations on the Internet.

#### 6 RESOURCES

This function will be performed by ARI. ARI staff are industry leading experts in domain name registries with the experience and knowledge to deliver outstanding SRS performance. The SRS is designed, built, operated and supported by the following ARI departments:

- Products and Consulting Team (7 staff)
- Production Support Group (27 staff)
- Development Team (11 staff)

A detailed list of the departments, roles and responsibilities in ARI is provided in attachment 'Q24 - ARI Background & Roles.pdf'. This attachment describes the functions of the teams and the number and nature of staff within.

The number of resources required to design, build, operate and support the SRS does not vary significantly with, and is not linearly proportional to, the number or size of TLDs that ARI provides registry services to.

ARI provides registry backend services to 5 TLDs and has a vast experience in estimating the number of resources required to support a SRS.

Based on past experience ARI estimates that the existing staff is adequate to support an SRS that supporting at least 50M domains. Since this TLD projects domain-count domains, resource-percent % of these resources are allocated to this TLD. See attachment 'Q24 - Registry Scale Estimates & Resource Allocation.xlsx' for more information.

ARI protects against loss of critical staff by employing multiple people in each role. Staff members have a primary role plus a secondary role for protection against personnel absence. Additionally ARI can scale resources as required, trained resources can be added to any of the teams with a 2 month lead time.

The Products and Consulting team is responsible for product management of the SRS solution including working with clients and the industry to identify new features or changes required. The team consists of:

- 1 Products and Consulting Manager
- 1 Product Manager
- 1 Technical Product Manager
- 4 Domain Name Industry Consultants

The Production Support Group (PSG) is responsible for the design, deployment and maintenance of the SRS infrastructure including capacity planning and monitoring as well as security aspects - ensuring the SRS services are available and performing at the appropriate level and operating correctly. The team consists of:

- Production Support Manager
- Service Desk:
  - 1 Level 1 Support Team Lead
  - 8 Customer Support Representatives (Level 1 support)
  - 1 Level 2 Support Team Lead
  - 4 Registry Specialists (Level 2 support)
- Operations (Level 3 support):
  - 1 Operations Team Lead
  - 2 Systems Administrators
  - 2 Database Administrators
  - 2 Network Engineers
- Implementation:
  - 1 Project Manager
  - 2 Systems Administrators
  - 1 Database Administrator
  - 1 Network Engineer

The development team is responsible for implementing changes and new features into the SRS as well as bug fixing and complex issue diagnosis. The team consists of:

- 1 Development Manager
- 2 Business Analysts
- 6 Developers
- 2 Quality Analysts

These resources sufficiently accommodate the needs of this TLD, and are included in ARI's fees as described in our Financial responses.

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## 25. Extensible Provisioning Protocol (EPP)

Q25

We have engaged ARI Registry Services (ARI) to deliver services for this TLD. ARI provide registry services for a number of TLDs including the .au ccTLD. For more background information on ARI please see the attachment 'Q25 - ARI Background & Roles.pdf'. This response describes the Extensible Provisioning Protocol (EPP) interface as implemented by ARI.

### 1 INTRODUCTION

ARI's EPP service is XML compliant and XML Namespace aware. The service complies with the EPP protocol defined in RFC5730, and the object mappings for domain, hosts and contacts are compliant with RFC5731-3 respectively. The transport over TCP is implemented in compliance with RFC5734. The service also complies with the official extensions to support DNSSEC, RFC5910 and Redemption Grace Period, RFC3915. ARI implemented EPP draft version 0.6 in 2002, then migrated to EPP RFC 1.0 on its publishing in 2004. The system has operated live since 2002 in the .au ccTLD.

Descriptions in this response follow the terminology used in the EPP RFCs. When referring to the software involved in the process, ARI's EPP interface is called the server, and the software used by Registrars is called the client.

### 2 TRANSPORT LAYER

The ARI EPP service implements the RFC5734 - EPP Transport over TCP. Connections are allowed using TLSv1 encryption, optionally supporting SSLv2 Hello for compatibility with legacy clients. AES cipher suites for TLS as described in RFC3268 are the only ones allowed.

#### 2.1 Authentication

Registrar access to the EPP interface is authenticated and secured with multi-factor authentication (NIST Level 3) and digital assertion as follows. Registrars must:

- present a certificate, during TLS negotiation, signed by the ARI Certificate Authority

(CA). The server returns a certificate also signed by the ARI CA. Not presenting a valid certificate results in session termination. ARI requires that the Common Name in the subject field of the certificate identifies the Registrar.

- originate connections from an IP address that is known to be assigned to the Registrar with that Common Name.
  - Registrar must use authentication credentials provided to the Registrar via encrypted email
  - Registrars aren't able to exceed a fixed number of concurrent connections. The connection limit is prearranged and designed to prevent abuse of Registrars' systems from affecting the Registry. The limit is set to reasonable levels for each Registrar, but can be increased to ensure legitimate traffic is unaffected. If any of the above conditions aren't met the connection is terminated.
- All communication between the Registrars and the EPP service is encrypted using at least 128 bit encryption which been designated as 'Acceptable' till '2031 and beyond' by NIST Special Publication 800-57.

### 2.3 Connection Close

The server may close the connection as a result of a logout, an error where the state of the connection is indeterminate, or after a timeout. Timeout occurs where no complete EPP message is received on the connection for 10 minutes.

## 3 EPP PROTOCOL

This section describes the interface relating to the EPP protocol described in RFC5730. This includes session management, poll message functionality and object mappings for domains, hosts and contacts.

### 3.1 Session Management

Session management refers to login and logout commands, used to authenticate and end a session with the SRS. The Login command is used to establish a session between the client and the server. This command succeeds when:

- The username supplied matches the Common Name in the digital certificate used in establishing the TLS session.
- The provided password is valid for the user.
- The user's access to the system isn't suspended.

The Logout command is used to end an active session. On processing a logout the server closes the underlying connection. The Hello command can be used as a session keep-alive mechanism.

### 3.2 Service Messages

Offline notifications pertaining to certain events are stored in a queue. The client is responsible for polling this queue for new messages and to acknowledge read messages. Messages include notification about server modification of sponsored objects, transfer operations, and balance thresholds.

## 4 EPP OBJECT MAPPINGS

This section covers the interface for the 3 core EPP objects; domain, host and contact objects, as per RFC5731, 5732, & 5733 respectively.

The EPP domain, contact and host object mapping describes an interface for the check, info, create, delete, renew (domain only), transfer (domain & contact only) and update commands. For domain objects the server doesn't support the use of host attributes as described by RFC5731, but rather uses host objects as described by RFC5731 and RFC5732. Details of each command are:

- check command: checks availability of 1 or more domain, contact or host objects in the SRS. Domain names will be shown as unavailable if in use, invalid or reserved, other objects will be unavailable if in use or invalid.
- info command: retrieves the information of an object provisioned in the SRS. Full information is returned to the sponsoring client or any client that provides authorisation information for the object. Non-sponsoring clients are returned partial information (no more than is available in the WhoIs).

- create command: provisions objects in the SRS. To ascertain whether an object is available for provisioning, the same rules for the check command apply.
- delete command: begins the process of removing an object from the SRS. Domain names transition into the redemption period and any applicable grace periods are applied. Domain names within the Add Grace Period are purged immediately. All other objects are purged immediately if they are not linked.
- renew command (domain only): extends the registration period of a domain name. The renewal period must be between 1 to 10 years inclusive and the current remaining registration period, plus the amount requested in the renewal mustn't exceed 10 years.
- transfer command (domain and contact only): provides several operations for the management of the transfer of object sponsorship between clients. Clients that provide correct authorisation information for the object can request transfers. Domain names may be rejected from transfer within 60 days of creation or last transfer. The requesting client may cancel the transfer, or the sponsoring client may reject or approve the transfer. Both the gaining and losing clients may query the status of the current pending or last completed transfer.
- update command: updates authorisation information, delegation information (domains), and registration data pertaining to an object.

## 5 NON-PROPRIETARY EPP MAPPINGS

ARI's EPP service implements 2 non-proprietary EPP mappings, to support the required domain name lifecycle and to provide & manage DNSSEC information. The relevant schema documents aren't provided as they are published as RFCs in the RFC repository.

### 5.1 Grace Period Mapping

The Domain Registry Grace Period Mapping for the Extensible Provisioning Protocol (as per RFC 3915) is used to support the domain name lifecycle as per existing TLDs. The update command is extended by the restore command to facilitate the restoration of previously deleted domains in the redemption period. This command defines 2 operations, request & report, described here:

- Request operation: requests the restoration of a domain.
- Report operation: completes the restoration by specifying the information supporting the restoration of the domain. The restore report must include a copy of the WhoIs information at both the time the domain was deleted & restored, including the restore reason.

### 5.2 DNSSEC Mapping

The Domain Name System (DNS) Security Extensions Mapping for EPP, as per RFC5910, is used to support the provisioning of DNS Security Extensions. ARI requires clients use the Key Data interface. Clients may associate a maximum of 4 keys per domain. The registry system generates the corresponding DS data using the SHA-256 digest algorithm for the domain and any active variant domains.

ARI is aware of issues DNSSEC causes when transferring DNS providers - a transfer of Registrar usually means a change in DNS provider. DNSSEC key data won't be removed from the SRS or the DNS if a transfer occurs. It is the responsibility of and requires the cooperation of the registrant, Registrars, and DNS providers, to provide a seamless transition. ARI observes progress with this issue and implements industry agreed solutions as available. DNSSEC information is included in info responses when the secDNS namespace in login.

## 6 PROPRIETARY MAPPING

The registry system supports 3 additional EPP extensions where no published standard for the required functionality exists. Developed to conform to the requirements specified in RFC3735, these extensions include the provisioning of Internationalised Domain Names and domain name variants, and the association of arbitrary data with a domain name. These 3 extensions are introduced below, and further described in the attached schema documentation.

### 6.1 Internationalised Domain Names

ARI has developed an extension to facilitate the registration and management of

Internationalised Domain Names as per RFCs 5890-5893 (collectively known as the IDNA 2008 protocol). This extension extends the domain create command and the info response. The create command is extended to capture the language table identifier that identifies the corresponding IDN language table for the domain name. Additionally the extension requires the Unicode form to avoid an inconsistency with DNS-form, as per RFC 5891. The domain info command is extended to identify the language tag and Unicode form provided in the initial create command. This information is disclosed to all querying clients that provided the extension namespace at login. This extension is documented in the attachment 'Q25 - idnadomain-1.0.pdf'.

## 6.2 Variant

ARI has developed an extension to facilitate the management of Domain Name variants. This extension extends the domain update command and the domain create and info responses. The domain update command is extended to allow the addition (activation) and removal (de-activation) of domain name variants subject to registry operator policy. The domain create and info responses are extended to return the list of activated domain name variants. This information is disclosed to all querying clients that provided the extension namespace at login. The extension is documented in the attachment 'Q25 - variant-1.1.pdf'.

## 6.3 Key-Value

ARI has developed an extension to facilitate the transport of arbitrary data between clients and the SRS without the need for developing EPP Extensions for each specific use-case. This extension extends the domain create and domain update transform commands and the domain info query command. This extension is documented in the attachment 'Q25 - kv-1.0.pdf'.

## 7 ADDITIONAL SECURITY

The registry system provides additional mechanisms to support a robust interface. The use of command rate limiting enables the registry to respond to and withstand erroneous volumes of commands, while a user permission model provides fine-grained access to the EPP interface. These 2 mechanisms are described below.

### 7.1 Rate Limiting

The registry system supports command and global rate limits using a token-bucket algorithm. Limits apply to each connection to ensure fair and equitable use by all. Clients that exceed limits receive a command failed response message indicating breach of the limit.

### 7.2 User Permission Model

The registry system supports a fine-grained permission model controlling access to each specific command. By default, clients receive access to all functionality; however it is possible to remove access to a specific command in response to abuse or threat to stability of the system. Clients that attempt a command they have lost permission to execute, receive an EPP command failed response indicating loss of authorisation.

## 8 COMPLIANCE

Compliance with EPP RFCs is achieved through design and quality assurance (QA). The EPP interface was designed to validate all incoming messages against the respective XML Schema syntax. The XML Schema is copied directly from the relevant RFCs to avoid any ambiguity on version used. Inbound messages that are either malformed XML or invalid are rejected with a 2400 response. Outbound messages are validated against the XML Schema, and if an invalid response is generated, it is replaced with a known valid pre-composed 2400 response, and logged for later debugging.

A QA process provides confidence that changes don't result in regressions in the interface. Automated build processes execute test suites that ensure every facet of the EPP service (including malformed input, commands sequencing and synchronisation, and boundary values) is covered and compliant with RFCs and the EPP service specification. These tests are executed prior to committing code and automatically nightly. The final deliverable is packaged and tested again to ensure no defects were introduced in the

packaging process.

New versions of the EPP Service follow a deployment schedule. The new version is deployed into an OT&E environment for Registrar integration testing. Registrars are encouraged during this stage to test their systems operate correctly. After a fixed time in OT&E without issue, new versions are scheduled for production deployment. This ensures incompatibilities with RFCs that made it through QA processes are detected in test environments prior reaching production.

ARI surveys Registrars for information about the EPP client toolkit. These surveys indicated that while many Registrars use ARI toolkits, several Registrars use either their own or that from another registry. The ability for Registrars to integrate with the ARI EPP service without using the supplied toolkit indicates the service is compliant with RFCs.

ARI is committed to providing an EPP service that integrates with third party toolkits and as such tests are conducted using said toolkits. Any issues identified during testing fall into the following categories:

- Third-party toolkit not compliant with EPP
- EPP service not compliant with EPP
- Both third-party toolkit and EPP service are compliant, however another operational issue causes an issue

Defects are raised and change management processes are followed. Change requests may also be raised to promote integration of third-party toolkits and to meet common practice.

## 9 CAPACITY

This TLD is projected to reach domain-count domains at its peak volume and will generate srs-tx-count EPP TPS. This will consume srs-percent % of the EPP resources. ARI's SRS can easily accommodate this TLD. This was described in considerable detail in the capacity section of question 24.

## 10 RESOURCES

This function will be performed by ARI. ARI provides a technical support team to support Registrars and also provides Registrars with a tool kit (in Java and C++) implementing the EPP protocol. Normal operations for all registry services are managed by ARI's Production Support Group (PSG), who ensure the EPP server is available and performing appropriately.

Faults relating to connections with or functionality of the EPP server are managed by PSG. ARI monitors EPP availability and functionality as part of its monitoring practices, and ensures PSG staff are available to receive fault reports from Registrars any time. PSG has the appropriate network, Unix and application (EPP and load balancing) knowledge to ensure the EPP service remains accessible and performs as required. These ARI departments support EPP:

- Products and Consulting Team (7 staff)
- Production Support Group (27 staff)
- Development Team (11 staff)

A detailed list of the departments, roles and responsibilities in ARI is provided as attachment 'Q25 - ARI Background & Roles.pdf'. This attachment describes the functions of the above teams and the exact number and nature of staff within.

The number of resources required to design, build, operate and support the SRS does not vary significantly with, and is not linearly proportional to, the number or size of TLDs that ARI provides registry services to.

ARI provides registry backend services to 5 TLDs and has a wealth of experience in estimating the number of resources required to support a registry system.

Based on past experience ARI estimates that existing staff are adequate to support a registry system that supports in excess of 50M domains. Since this TLD projects domain-count domains, resource-percent % of these resources are allocated to this TLD. See attachment 'Q25 - Registry Scale Estimates & Resource Allocation.xlsx' for more information.

ARI protects against loss of critical staff by employing multiple people in each role. Staff members have a primary role plus a secondary role for protection against personnel absence. Additionally ARI can scale resources as required, trained resources can be added to any of the above teams with a 2-month lead time.



### 10.1 Team Details

The products and consulting team is responsible for product management of the EPP solution, and works with clients and industry to identify required system features or changes. The team consists of:

- 1 Products and Consulting Manager
- 1 Product Manager
- 1 Technical Product Manager
- 4 Domain Name Industry Consultants

The Production Support Group (PSG) is responsible for the design, deployment and maintenance of the EPP infrastructure including capacity planning, monitoring, and security. This team ensures the EPP services are available and performing appropriately. The team consists of:

- Production Support Manager
- Service Desk:
  - 1 Level 1 Support Team Lead
  - 8 Customer Support Representatives (Level 1 support)
  - 1 Level 2 Support Team Lead
  - 4 Registry Specialists (Level 2 support)
- Operations (Level 3 support):
  - 1 Operations Team Lead
  - 2 Systems Administrators
  - 2 Database Administrators
  - 2 Network Engineers
- Implementation:
  - 1 Project Manager
  - 2 Systems Administrators
  - 1 Database Administrator
  - 1 Network Engineer

The development team is responsible for EPP changes and features, bug fixes and issue diagnosis. The team consists of:

- 1 Development Manager
- 2 Business Analysts
- 6 Developers
- 2 Quality Analysts

These resources sufficiently accommodate the needs of this TLD, and are included in ARI's fees as described in our financial responses.

-end-

## 26. Whois

### Q26

We have engaged ARI Registry Services (ARI) to deliver services for this TLD. ARI provide registry services for a number of TLDs including the .au ccTLD. For more background information on ARI please see the attachment 'Q26 - ARI Background & Roles.pdf'. This response describes the WhoIs interface as implemented by ARI.

#### 1 INTRODUCTION

ARI's WhoIs service is for all domain names, contacts, nameservers and Registrars provisioned in the registry database. This response describes the port 43 and web interfaces of WhoIs, security controls to mitigate abuse, compliance with bulk access requirements for registration data, and the architecture delivering the service.

#### 2 PORT 43 WHOIS SERVICE

WhoIs is on TCP port 43 in accordance with RFC3912. Requests are made in semi-free text format and ended by CR & LF. The server responds with a semi-free text format, terminating the response by connection close.

To support IDNs and Localised data we assume the query is encoded in UTF-8 and sends responses encoded in UTF-8. UTF-8 is backwards compatible with the ASCII charset and its use is consistent with the IETF policy on charsets as defined in BCP 18 [<http://tools.ietf.org/html/bcp18>].

## 2.1 Query Format

By default WhoIs searches domains. To facilitate the queries of other objects keywords must be used. Supported keywords are:

- Domain
- Host/Nameserver
- Contact
- Registrar

Keywords are case-insensitive. The rest of the input is the search string. Wildcard chars may be used in search strings to match zero or more chars (%), or match exactly one char(\_). Wildcard chars must not be in the first 5 chars.

## 2.2 Response Format

The response follows a semi-structured format of object-specific data, followed by query-related meta-information, then a disclaimer.

The object-specific data is represented by key/value pairs, beginning with the key, followed by a colon and a space then the value terminated by an ASCII CR & LF. Where no object is found 'No Data Found' is returned.

The meta-information is used to identify data freshness and indicate when limits have been exceeded. It appears on one line within ' ' and ' ' chars.

The legal disclaimer is presented without leading comment marks wrapped at 72 chars. This format is consistent with that in the registry agreement.

## 2.3 Domain Data

Domain data is returned in response to a query with the keyword omitted, or with the 'domain' keyword. Domain queries return information on domains that are provisioned in the registry database.

The IDN domains may be specified in either the ASCII-compatible encoded form or the Unicode form. Clients are expected to perform any mappings, in conformance with relevant guidelines such as those specified in RFC5894 and UTS46.

Variant domains may be specified in the search string and WhoIs will match (using case-insensitive comparison) and return information for the primary registered domain. For queries containing wildcard chars, if only one domain name is matched its details are returned, if more than one domain name is matched then the first 50 matched domain names are listed.

### 2.3.1 Internationalised Domain Names

The WhoIs response format, prescribed in Specification 4, does not provide a mechanism to identify active variant domain names. ARI will include active variant domain names in WhoIs responses until a common approach for handling and display of variant names is determined.

### 2.3.2 Reserved Domain Names

Domain names reserved from allocation will have a specific response that indicates the domain is not registered but also not available.

## 2.4 Nameserver Data

Nameserver data is returned in response to a query where the 'nameserver' or 'host' keywords have been used. Nameserver queries return information on hosts that are provisioned in the registry.

The search string for a nameserver query can be either a hostname or IP. Queries using the hostname produce one result unless wildcards are used. Queries using the IP produce one or more results depending on the number of hostnames that match that address. Queries for the hostname are matched case-insensitively.

The quad-dotted notation is expected for IPv4 and the RFC3513 - IPv6 Addressing Architecture format for IPv6. Wildcards cannot be used for IP queries.

## 2.5 Contact Data

Contact data is returned in response to a query where the 'contact' keyword was used. Contact queries return information on contacts that are provisioned in the registry. The search string for a contact query is the contact identifier. Contact identifiers are matched using a case-insensitive comparison. Wildcards cannot be used.

## 2.6 Registrar Data

Registrar data is returned in response to a query where the 'Registrar' keyword was used. Registrar queries return information on Registrar objects that are provisioned in the registry.

The search string for a Registrar query can be name or IANA ID. Queries using the name or the IANA ID produce only one result. Queries for the name are matched using a case-insensitive comparison. Wildcards cannot be used.

## 2.7 Non-standard Data

The SRS supports domain-related data beyond that above. It may include information used to claim eligibility to participate in the sunrise process, or other arbitrary data collected using the Key-Value Mapping to the EPP. This information will be included in the WhoIs response after the last object-specific data field and before the meta-information.

## 3 WEB-BASED WHOIS SERVICE

WhoIs is also available via port 80 using HTTP, known as Web-based WhoIs. This interface provides identical query capabilities to the port 43 interface via an HTML form.

## 4 SECURITY CONTROLS

WhoIs has an in-built mechanism to blacklist malicious users for a specified duration. Blacklisted users are blocked by source IP address and receive a specific blacklisted notification instead of the normal WhoIs response.

Users may be blacklisted if ARI's monitoring system determines excessive use. A whitelist is used to facilitate legitimate use by law enforcement agencies and other reputable entities.

## 5 BULK ACCESS

The registry system complies with the requirements for the Periodic Access to Thin Registration Data and Exceptional Access to Thick Registration Data as described in Specification 4.

### 5.1 Periodic Access to Thin Registration Data

ARI shall provide ICANN with Periodic Access to Thin Registration Data. The data will contain the following elements as specified by ICANN. The format of the data will be consistent with the format specified for Data Escrow. The Escrow Format prescribes an XML document encoded in UTF-8. The generated data will be verified to ensure that it is well formed and valid.

The data will be generated every Monday for transactions committed up to and on Sunday unless otherwise directed by ICANN. The generated file will be made available to ICANN using SFTP. Credentials, encryption material, and other parameters will be negotiated between ARI and ICANN using an out-of-band mechanism.

### 5.2 Exceptional Access to Thick Registration Data

If requested by ICANN, ARI shall provide exceptional access to thick registration data for a specified Registrar. The data will contain full information for the following objects:

- Domain names sponsored by the Registrar
- Hosts sponsored by the Registrar
- Contacts sponsored by the Registrar
- Contacts linked from domain names sponsored by the Registrar

As above the format of the data will be consistent with the format specified for Data Escrow. And will be made available to ICANN using SFTP.

## 6 CAPACITY

ARI's WhoIs infrastructure is built to sustain 20M domain names. Based on ARI's experience running a high volume ccTLD registry (.au) and industry analysis, ARI were able to calculate the conservative characteristics of a registry of this size. Through conservative statistical analysis of the .au registry and data presented in the May 2011 ICANN reports for the .com & .net, .org, .mobi, .info, .biz and .asia [<http://www.icann.org/en/resources/registries/reports>] we know there is:

- An average of 30 SRS txs per domain, per month.

Which indicates an expected monthly transaction volume of 600M txs?

Through statistical analysis of the .au registry and backed up by the data published in the .net RFP responses [<http://archive.icann.org/en/tlds/net-rfp/net-rfp-public-comments.htm>] we also know:

- The peak daily transactions is 6% of the monthly total

- The peak 5 min is 5% of the peak day

Thus we expect a peak WhoIs tx rate of WhoIs 6,000 TPS.

For perspective on the conservativeness of this, the following numbers were taken from data in the May 2011 ICANN reports referenced above:

- .info ~7.8M domain names, peaks at ~1,300 TPS (projected peak TPS of ~3,400 with 20M names).

- .mobi ~1M domain names, peaks at ~150 TPS (projected peak TPS of ~3,000 TPS with 20M names).

- .org ~9.3M domain names, peaks at ~1,300 TPS (projected peak TPS of ~2,800 with 20M names).

ARI understand the limitations of these calculations but they serve as a best estimate of probable transaction load. ARI has built overcapacity of resources to account for limitations of this method, however as conservative numbers were used and these are greater than real world observations, we are confident these capacity numbers are sufficient.

ARI benchmarked their WhoIs infrastructure and used the results to calculate the required computing resources for each of the tiers within the WhoIs architecture - allowing ARI to accurately estimate the required CPU, IOPS, storage and memory requirements for each server within the architecture, as well as the network bandwidth and packet throughput requirements for the anticipated WhoIs traffic. These capacity numbers were then doubled to account for unanticipated traffic spikes, errors in predictions and head room for growth. The technical resource allocations are explored in question 32.

This TLD is projected to reach domain-count domains at its peak volume and will generate whois-tx-count WhoIs transactions per second. This will consume whois-percent % of the resources of the WhoIs infrastructure. As is evident ARI's WhoIs can easily accommodate this TLD's growth plans. See attachment 'Q26 - Registry Scale Estimates & Resource Allocation.xlsx' for more information.

ARI expects to provide Registry services to 100 TLDs and a total of 12M domains by end of 2014. With all the TLDs and domains combined, ARI's WhoIs infrastructure will be only 60% utilized. The WhoIs infrastructure capacity can also be easily scaled as described in question 32

## 7 ARCHITECTURE

WhoIs uses a database separate from the SRS database as it operates from the secondary site such that network and database resources are decoupled from the operation of the SRS. Oracle Data Guard ensures the two databases are synchronised in real-time. The WhoIs service is operated live from the SRS 'failover' site, with the SRS 'primary' site serving as the 'failover' site for the WhoIs service. Both sites have enough capacity to run both services simultaneously, however by separating them, in normal operating modes headroom above the already over provisioned capacity is available. The architecture and data flow diagrams are described below and shown in the attachment 'Q26 - WhoIs.pdf'. Traffic enters the network from the Internet through border routers and then firewalls. All traffic destined for this service except for TCP ports 43, 80 & 443 is blocked. Load balancers forward the request to one of the application servers running ARI built WhoIs software. Each server is connected to the database cluster through another firewall further restricting access to the. Each server uses a restricted Oracle user that has read only access to the registry data and can only access the data that is relevant to

the WhoIs queries. This ensures that in the unlikely event of an application server compromise the effects are limited.

All components are configured and provisioned to provide N+1 redundancy. Multiple Internet providers with separate upstream bandwidth suppliers are used. At least one additional component of all hardware exists, enabling maintenance without downtime. This configuration provides a service exceeding the availability requirements in Specification 10.

The use of load balancing allows addition of application servers with no downtime. From a database perspective, the ability to scale is enabled by utilising Oracle RAC database clustering. The entire service, including routers, firewalls and application is IPv6 compatible and WhoIs is offered on both IPv4 and IPv6. Detail about this architecture is available in our response to Question 32.

#### 7.1 Synchronisation

The WhoIs database is synchronised with the SRS database using Oracle Data Guard. Committed transactions in the SRS database are reflected in the WhoIs database in real-time. Should synchronisation break, WhoIs continues to operate with the latest available data until the issue is reconciled. The channel between the two sites consists of two independent dedicated point to point links as well as the Internet. Replication traffic flows via the dedicated links or if both links fail replication traffic flows over Internet tunnels.

#### 7.2. Interconnectivity with Other Services

The WhoIs service is not directly interconnected with other registry services or systems. The software has been developed to provide the WhoIs service exclusively and retrieve response information from a database physically separate to the SRS transactional database. This database is updated as described in 'Synchronisation' above. Although for smaller system the WhoIs and SRS can be configured to use the same data store. The WhoIs servers log every request to a central repository that is logically separate from the WhoIs database. This repository is used for query counts, detection of data mining and statistical analysis on query trends.

#### 7.3 IT and Infrastructure Resources

The WhoIs service is provided utilizing Cisco networking equipment, IBM servers & SAN. They are described in the attachment 'Q26 - WhoIs.pdf'. For more information on the architecture including server specifications and database capabilities please see Questions 32 & 33.

### 8 COMPLIANCE

Compliance with WhoIs RFCs is achieved through design and QA. The WhoIs interface was designed to conform to the RFCs as documented and independent test cases have been developed.

QA processes provide confidence that any changes to the service don't result in regression of the WhoIs. Automated build processes execute test suites that ensure every facet of the WhoIs service (including malformed input, commands sequencing and synchronisation, and boundary values) is covered and compliant with RFCs. These tests are executed prior to the committing of code and nightly. The final deliverable is packaged and tested again to ensure no defects were introduced in the packaging of the software. New versions of the WhoIs follow a deployment schedule. The new version is deployed into an OT&E environment for Registrar integration testing. Registrars who rely on WhoIs functionality are encouraged during this stage to test their systems operate without change. After a fixed time in OT&E without issue, new versions are scheduled for production deployment. This ensures incompatibilities with RFCs that made it through QA processes are detected in test environments prior to reaching production.

ARI is committed to providing a WhoIs service that integrates with third party tools and as such tests are conducted using these tools such as jWhoIs, a popular UNIX command line WhoIs client. Any issues identified during integration fall into 1 of the following categories:

- Third-party tool not compliant with the WhoIs specification
- WhoIs service not compliant
- Both third-party tool and WhoIs service are compliant, however another operational

issue causes a problem

Defects are raised and follow the change management. Change requests may also be raised to promote integration of third-party tools and to meet common practice.

## 9 RESOURCES

This function will be performed by ARI. The WhoIs system is supported by a number of ARI departments:

- Products and Consulting Team (7 staff)
- Production Support Group (27 staff)
- Development Team (11 staff)
- Legal, Abuse and Compliance Team (6 staff)

A detailed list of the departments, roles and responsibilities in ARI is provided as attachment 'Q26 - ARI Background & Roles.pdf'. This attachment describes the functions of the above teams and the exact number and nature of staff within.

The number of resources required to design, build, operate and support the SRS does not vary significantly with, and is not linearly proportional to, the number or size of TLDs that ARI provides registry services to.

ARI provides registry backend services to 5 TLDs and has a wealth of experience in estimating the number of resources required to support a registry system.

Based on past experience ARI estimates that the existing staff is adequate to support a registry system that supports in excess of 50M domains. Since this TLD projects domain-count domains, resource-percent % of these resources are allocated to this TLD. See attachment 'Q26 - Registry Scale Estimates & Resource Allocation.xlsx' for more information.

ARI protects against loss of critical staff by employing multiple people in each role. Staff members have a primary role plus a secondary role for protection against personnel absence. Additionally ARI can scale resources as required. Additional trained resources can be added to any of the above teams with a 2 month lead time.

The products and consulting team is responsible for product management of the WhoIs solution including working with clients and the industry to identify new features or changes required to the system. The team consists of:

- 1 Products and Consulting Manager
- 1 Product Manager
- 1 Technical Product Manager
- 4 Domain Name Industry Consultants

ARI employ a development team responsible for the maintenance and continual improvement of the WhoIs software. The team consists of:

- 1 Development Manager
- 2 Business Analysts
- 6 Developers
- 2 Quality Analysts

ARI's Production Support Team ensures the successful operation of the WhoIs system. The team comprises Database Administrators, Systems Administrators and Network Administrators. This team routinely checks and monitors bandwidth, disk and CPU usages to plan and respond to expected increases in the volume of queries, and perform maintenance of the system including security patches and failover and recovery testing. The team consists of:

- Production Support Manager
- Service Desk:
  - 1 Level 1 Support Team Lead
  - 8 Customer Support Representatives (Level 1 support)
  - 1 Level 2 Support Team Lead
  - 4 Registry Specialists (Level 2 support)
- Operations (Level 3 support)
  - 1 Operations Team Lead
  - 2 Systems Administrators
  - 2 Database Administrators
  - 2 Network Engineers
- Implementation
  - 1 Project Manager
  - 2 Systems Administrators

- 1 Database Administrators
- 1 Network Engineers

ARI's registry provides abuse monitoring detection mechanisms to block data mining. ARI support staff may be contacted to remove blacklisted users during which they may be referred to the Legal, Abuse and Compliance Team for evaluation of their activities. Additionally the support team in conjunction with the Legal, Abuse and Compliance team administer requests for listing on the whitelist. The team consists of:

- 1 Legal Manager
- 1 Legal Counsel
- 4 Policy Compliance Officers

These resources sufficiently accommodate the needs of this TLD, and are included in ARI's fees as described in our Financial responses.

-end-

## 27. Registration Life Cycle

Q27

We have engaged ARI Registry Services (ARI) to deliver services for this TLD. ARI provide registry services for a number of TLDs including the .au ccTLD. For more background information on ARI please see the attachment 'Q27 - ARI Background & Roles.pdf'. This response describes the Registration Lifecycle as implemented by ARI.

### 1 INTRODUCTION

The lifecycle described matches current gTLD registries. All states, grace periods and transitions are supported by the EPP protocol as described in RFC5730 - 5734 & the Grace Period Mapping published in RFC3915. An overview is in attachment 'Q27 - Registration Lifecycle.pdf'.

### 2 REGISTRATION PERIODS

The registry supports registration up to 10 years and renewals for 1 to 10 years. The total current validity period can't exceed 10 years. Transfers under part A of the ICANN Policy on Transfer of Registrations between Registrars (Adopted 7 November 2008) extend registration by 1 year. The period truncates to 10 years if required.

### 3 STATES

The states that a domain can exist in are: Registered, Pending Transfer, Redemption, Pending Restore & Pending Delete.

All domain name statuses (RFC3915, 5730-5734 and 5910) are covered below

#### 3.1 Registered

EPP Status: ok

In DNS: Yes

Allowed Operations: Update, Renew, Transfer (request) & Delete

The default state of a domain - no pending operations. The sponsoring Registrar may update the domain.

#### 3.2 Pending Transfer

EPP Status: pendingTransfer

In DNS: Yes

Allowed Operations: Transfer (cancel, reject, approve)

Another Registrar has requested transfer of the domain and it is not yet completed All transform operations, other than those to cancel, reject, or approve the transfer are rejected.

#### 3.3 Redemption

EPP Status: pendingDelete  
RGP Status: redemptionPeriod  
In DNS: No  
Allowed Operations: Restore (request)  
Domain has been deleted. The sponsor may request restoration of the domain. The domain continues to be withheld from the DNS unless it is restored. No transform operations other than restore are allowed.

#### 3.4 Pending Restore

EPP Status: pendingDelete  
RGP Status: pendingRestore  
In DNS: Yes  
Allowed Operations: Restore (report)  
A restore request is pending. The sponsor must submit a restore report. The domain is provisioned the DNS. No transform operations other than the restore report are allowed.

#### 3.5 Pending Delete

EPP Status: pendingDelete  
RGP Status: pendingDelete  
In DNS: No  
Allowed Operations: None  
The Redemption Grace Period has lapsed and the domain is pending purge from the registry. This state prohibits the sponsor from updating, restoring or modifying the domain. This status applies for 5 days. At the end of this period the domain is purged from the database and made available for registration.

### 4 GRACE PERIODS

The registry system supports 4 grace periods: add, renew, auto-renew, and transfer, described below with consideration for overlap of grace periods. States described here are additional to those above.

#### 4.1 Add Grace Period

Length: 5 days  
RGP Status: addPeriod  
Allows for the no-cost cancellation of a domain registrations resulting from typing mistakes and other errors by Registrars and registrants - beginning on the creation of a domain and lasting for 5 days. When the following operations are performed during this period these rules apply:

- Delete: the sponsoring Registrar, who must have created the domain, may delete the domain and receive a refund. The domain is deleted with immediate effect. The refund is subject to the Add Grace Period Limits consensus policy. Excess deletions over 50 or 10% of creates (whichever is greater), are not subject to a refund, except in extraordinary circumstances.
- Renew: the sponsor may renew the domain but does not receive any refund for the initial registration fee. The Registrar is charged for the renewal operation. The total period for the domain is the sum of the initial period in the create and any renewal term, limited to a 10 year maximum.
- Transfer: Under ICANN policy a transfer can't occur during the Add Grace Period or at any other time in the first 60 days after the initial registration. The registry system enforces this, rejecting such requests.
- Bulk Transfers: Under Part B of the ICANN Policy on Transfer of Registrations between Registrars, a bulk transfer can occur during the Add Grace Period. Any bulk transfer causes the Add Grace Period to not apply.

The Add Grace Period does not have any impact on other commands.

#### 4.2 Renew Grace Period

Length: 5 days  
RGP Status: renewPeriod  
Allows the sponsoring Registrar to undo a renewal via the deletion of a domain - beginning on the receipt of a renewal command and lasting for 5 days. If any of the following operations are performed during this period these rules apply:



- Delete: the sponsoring Registrar, who must have initiated the renewal, may delete the domain and receive a renewal fee refund. The extension to the registration period caused by the preceding renew is reversed and unless the domain is also in the Add Grace Period, the domain enters the Redemption state. If also in the Add Grace Period it is deleted with immediate effect and availability for registration.
  - Renew: the sponsoring Registrar, who must have performed the initial renew, can subsequently renew the domain again, causing a second independent Renewal Grace Period to start. The Registrar is charged for the operation and the total registration period for the domain is extended by the renewal term, limited to the 10 year maximum.
  - Transfer: an approved transfer command ends the current Renew Grace Period without a refund and begins a Transfer Grace Period.
  - Bulk Transfers: bulk transfers cause the Renew Grace Period to end without a refund, consequently registration periods are not changed.
- The Renew Grace Period has no impact on other commands.

#### 4.3 Auto-Renew Grace Period

Length: 45 days

RGP Status: autoRenewPeriod

Auto-Renew Grace Period allows for domains to remain in the DNS past registration expiration while giving adequate time for the sponsoring Registrar to obtain intention of renewal from the registrant.

This period begins on the expiration of the domain and lasts for 45 days. If any of the following are performed during this period these rules apply:

- Delete: the sponsoring Registrar, who must be the sponsor when the Auto-Renew Grace Period commenced, may delete the domain and receive an auto-renew fee refund. The registration period auto-renew extension is reversed and the domain enters the Redemption state.
  - Renew: the sponsoring Registrar, who must be the sponsor when the auto-renew occurred, can renew the domain again causing an independent Renewal Grace Period to begin. The Registrar is charged and the registration period is extended by the renewal term, limited to the 10 year maximum.
  - Transfer: an approved transfer command ends the current Auto-Renew Grace Period with a refund to the losing Registrar and begins a Transfer Grace Period. The registration period auto-renew extension is reversed and the registration is extended by the period specified in the transfer.
  - Bulk Transfers: bulk transfers cause the Auto-Renew Grace Period to end without a refund consequently registration periods are not changed.
- The Auto-Renew Grace Period does not have any impact on other commands.

#### 4.4 Transfer Grace Period

Length: 5 days

RGP Status: transferPeriod

Transfer Grace Period allows the sponsoring Registrar to undo the registration period extension (due to a transfer command), via the deletion of a domain. This period begins on a transfer completion and lasts for 5 calendar days. If the following are performed during the period these rules apply:

- Delete: the sponsoring Registrar, who must have initiated the transfer, may delete the domain and receive a transfer fee refund. The extension to the registration period of the preceding transfer is reversed and the Redemption state is entered.
  - Renew: the sponsoring Registrar can renew the domain thus causing an independent Renewal Grace Period to begin. The Registrar is charged and the registration period for the domain is extended by the renewal term, limited to the 10 year maximum.
  - Transfer: under Part A of the ICANN Policy on Transfer of Registrations between Registrars a transfer may not occur during the 60 day period after transfer (except in special circumstances). The registry system enforces this - effects of transfer do not require consideration. Should a special situation require transfer back to the losing Registrar, this is dealt with by taking into account the specific situation. The registry system does not allow this without intervention by registry staff.
  - Bulk Transfers: bulk transfers cause the Transfer Grace Period to end without a refund; consequently registration periods are not changed.
- The Transfer Grace Period does not have any impact on other commands.

#### 4.5 Redemption Grace Period

Length: 30 days

RGP Status: as described in Redemption state

Redemption Grace Period refers to the period of time the domain spends in the Redemption state, starting after a domain is deleted. The Redemption state description provides information on operations during this period.

#### 4.6 Overlap of Grace Periods

The 4 possible overlapping grace periods are:

- Add Grace Period with 1 or more Renew Grace Periods.
- Renew Grace Period with 1 or more other Renew Grace Periods.
- Transfer Grace Period with 1 or more Renew Grace Periods.
- Auto-Renew Grace Period with 1 or more Renew Grace Periods.

These are treated independently with respect to timelines however action that is taken has the combined effects of all grace periods still current.

##### 4.6.1 Transfer Clarification

If several billable operations, including a transfer, are performed on a domain and it is deleted in the operations' grace periods, only those operations performed after/including the latest transfer are eligible for refund.

### 5 TRANSITIONS

#### 5.1 Available Registered

Triggered by the receipt of a create command to register the domain. The sponsoring Registrar is charged for the creation amount. This transition begins the Add Grace Period.

#### 5.2 Registered Pending Transfer

Triggered by the receipt of a request transfer command. The transfer must result in domain registration extension - the gaining Registrar is charged for the transfer. Requests to transfer the domain within 60 days of creation or a previous transfer are rejected. As per '4.4 Transfer Grace Period', exceptions specified in ICANN's Transfer Policy apply - dealt with individually.

#### 5.3 Pending Transfer Registered

Triggered by 1 of 4 operations:

- Operation 1 (Cancel): during the Pending Transfer period the gaining Registrar may cancel the transfer by issuing a cancel transfer command. The gaining Registrar is refunded the transfer fee, the registration period remains unchanged and all existing grace periods at the time of transfer request remain in effect.
- Operation 2 (Reject): during the Pending Transfer period the losing Registrar may reject the transfer by issuing a reject transfer command. The gaining Registrar is refunded the transfer. The registration period remains unchanged and all grace periods existing at the time of transfer request remain in effect if not elapsed.
- Operation 3 (Approve): During the Pending Transfer period the losing Registrar may approve the transfer by issuing an approve transfer command. If the transfer was requested during the Auto-Renew Grace Period, the extension to the registration period is reversed and the losing Registrar is refunded the auto-renew. The registration period is extended by the amount specified in the transfer request. This begins the Transfer Grace Period.
- Operation 4 (Auto-Approve): If after 5 days, no action has been taken, the system approves the transfer. If the transfer was requested during the Auto-Renew Grace Period the extension to the registration period is reversed and the losing Registrar is refunded the auto-renew. The registration period is extended by the amount specified in the transfer request. This begins the Transfer Grace Period.

#### 5.4 Registered Deleted

On receipt of a delete command if the domain is in the Add Grace Period, it is purged from the Database and immediately available for registration. Renew Grace Period may also be in effect.

#### 5.5 Registered Redemption

On receipt of a delete command if the domain is not in the Add Grace Period, it transitions to the Redemption Period state and all grace periods in effect are considered.

#### 5.6 Redemption Pending Restore

On receipt of a restore command if the Redemption Period has not lapsed, the domain transitions to the Pending Restore state. The domain is provisioned in the DNS. The sponsoring Registrar is charged a fee for the restore request.

#### 5.7 Pending Restore Registered

During the Pending Restore period the sponsoring Registrar may complete the restore via a restore report containing the WhoIs information - submitted prior to the deletion, the WhoIs information at the time of the report, and the reason for the restoration.

#### 5.8 Pending Restore Redemption

Seven calendar days after the transition to the Pending Restore state, if no restore report is received the domain transitions to the Redemption state, which begins a new redemption period. The domain is removed from the DNS. The restore has no refund.

#### 5.9 Redemption Pending Delete

Thirty calendar days after the transition to the Redemption state, if no restore request is received the domain transitions to the Pending Delete state.

#### 5.10 Pending Delete Deleted

Five calendar days after the transition to the Pending Delete state, the domain is removed from the Database and is immediately available for registration.

## 6 LOCKS

Locks may be applied to the domain to prevent specific operations occurring. The sponsoring Registrar may set the locks prefixed with 'client' while locks prefixed with 'server' are added and removed by the registry operator. Locks are added and removed independently but they can be combined to facilitate the enforcement of higher processes, such as 'Registrar Lock', and outcomes required as part of UDRP. All locks are compatible with EPP RFCs. The available locks are:

- clientDeleteProhibited, serverDeleteProhibited - Requests to delete the object are rejected
- clientHold, serverHold - DNS information is not published
- clientRenewProhibited, serverRenewProhibited - Requests to renew the object are rejected. Auto-renew is allowed
- clientTransferProhibited, serverTransferProhibited - Requests to transfer the object are rejected
- clientUpdateProhibited, serverUpdateProhibited - Requests to update the object are rejected, unless the update removes this status

## 7 SPECIAL CONSIDERATIONS

### 7.1 ICANN-Approved Bulk Transfers

ICANN-Approved Bulk Transfers do not follow the typical transfer lifecycle. Existing grace periods are invalidated and no refunds are credited to the losing Registrar. The prohibition of transfer period on domains created or transferred within 60 days does not apply.

### 7.2 Uniform Rapid Suspension

In the Uniform Rapid Suspension (URS) process, as described in the 'gTLD Applicant Guidebook' 11th January 2012, the following modification to the above processes is required.

Remedy allows for the addition of a year to the registration period, limited to the 10 year maximum. During this time no transform operations may be performed other than to restore the domain as allowed by Appeal. At the expiration of the registration period the domain is not automatically renewed, but proceeds to the Redemption state as per the lifecycle described above, and it is not eligible for restoration.

## 8 UPDATE/DNS

The update command does not impact the state of the domain through the Registration Lifecycle, however the command can be used to add and remove delegation information, which changes the DNS state of the domain.

A domain is required to have 2 or more nameservers published in the DNS. An update that results in a domain having less than 2 nameservers removes the domain from the DNS. An exception is when 1 nameserver remains assigned to a domain due to deletion of its other nameservers due to purge of their parent domain. The next update that modifies delegation information ends the exception and from then on the domain requires 2 nameservers be in the DNS.

## 9 RESOURCES

This function will be performed by ARI. ARI's registry performs all time-based transitions automatically and enforces all other business rules - without requiring human resources for normal operation. If changes to the automatic behaviours or restrictions enforced by the policy system are required, ARI has a development team for this. Domain Name Lifecycle aspects requiring human resources to manage are included in the ARI outsourcing include:

- Processing Add Grace Period exemptions as requested by Registrars.
- Processing restore reports provided by Registrars.
- Meeting the registry operator's obligations under ICANN's Transfer Dispute Policy.
- Performing exception processing in the case of approved transfers during the 60 day transfer prohibition window.

The Registration Lifecycle is designed, built, operated and supported by these ARI departments:

- Products and Consulting Team (7 staff)
- Legal, Abuse and Compliance Team (6 staff)
- Development Team (11 staff)

A detailed list of the departments, roles and responsibilities in ARI is provided as attachment 'Q27 - ARI Background & Roles.pdf'. This attachment describes the functions of the above teams and the exact number and nature of staff within.

The number of resources required to design, build, operate and support the SRS does not vary significantly with, and is not linearly proportional to, the number or size of TLDs that ARI provides registry services to.

ARI provides registry backend services to 5 TLDs and has a wealth of experience in estimating the number of resources required to support a registry system.

Based on past experience ARI estimates that the existing staff is adequate to support a registry system that supports in excess of 50M domains. Since this TLD projects domain-count domains, resource-percent % of these resources are allocated to this TLD. See attachment 'Q27 - Registry Scale Estimates & Resource Allocation.xlsx' for more information.

ARI protects against loss of critical staff by employing multiple people in each role. Staff members have a primary role plus a secondary role for protection against personnel absence. Additionally ARI can scale resources as required. Additional trained resources can be added to any of the above teams with a 2 month lead time.

The Products and Consulting team is responsible for product management of the Registration Lifecycle, including working with clients and the industry to identify new features or changes required to the system. The team consists of:

- 1 Products and Consulting Manager
- 1 Product Manager
- 1 Technical Product Manager
- 4 Domain Name Industry Consultants

Most manual tasks fall to the Legal, Abuse and Compliance team, with staff experienced in development of policy for policy rich TLD environments. They have the required legal and industry background to perform this function. The team consists of:

- 1 Legal Manager
- 1 Legal Counsel
- 4 Policy Compliance Officers

The automated aspects of the Registration lifecycle are supported by ARI's Domain Name Registry software. ARI has a development team for maintenance and improvement of the

software. The team consist of:

- 1 Development Manager
- 2 Business Analysts
- 6 Developers
- 2 Quality Analysts

Information on these roles is in Resources in our response to Question 31. These resources sufficiently accommodate the needs of this TLD, and are included in ARI's fees as described in our Financial responses.

## 28. Abuse Prevention and Mitigation

Q28

The Applicant's core mission and purpose is to create an environment where individuals and companies can interact and express themselves in ways never before seen on the Internet, in a more targeted, secure and stable environment. To achieve this goal the Applicant will be implementing a range of Abuse Prevention and Mitigation policies and procedures. The following is an overview of initiatives undertaken by the Applicant:

1. gTLD Abuse Prevention and Mitigation Implementation Plan
2. Policies and Procedures to Minimize Abusive Registrations
  - 2.1. Implementation plan for Abuse Point of Contact
  - 2.2. Policies for Handling Complaints Regarding the Abuse Policies
  - 2.3. Proposed Measures for Removal of Orphan Glue Records
  - 2.4. Resourcing plans for the initial implementation of, and ongoing maintenance of, the Abuse Prevention and Mitigation initiatives
3. Measures to promote WHOIS accuracy both directly by the Registry and by Registrars via requirements in the Registry-Registrar Agreement ("RRA"):
  - 3.1. Regular monitoring of registration data for accuracy and completeness
  - 3.2. Registrar WHOIS policy self-certification and authentication
  - 3.3. WHOIS data reminder process
  - 3.4. Establishing policies and procedures to ensure Registrar compliance with WHOIS policies, which may include audits, financial incentives, penalties, or other means
  - 3.5. Registry semi-annual WHOIS verification
  - 3.6. Registrar semi-annual verification of WHOIS
4. Policies and procedures that define malicious or abusive behaviour
  - 4.1. Service Level Requirements for resolution
  - 4.2. Service Level Requirements for Law enforcement requests
  - 4.3. Coordination with sector Groups and Law Enforcement
  - 4.4. Rapid takedown and suspension
5. Controls to Ensure Proper Access to Domain Functions:
  - 5.1. Enabling two-factor authentication from Registrants to process update, transfer, and deletion requests;
  - 5.2. Enabling multiple, unique points of contact to request and/or approve update, transfer, and deletion requests;
  - 5.3. Enabling the notification of multiple, unique points of contact when a domain has been updated, transferred, or deleted
6. Additional Abuse Prevention and Mitigation initiatives
  - 6.1. Additional Mechanism for Protection of Capital City Names
  - 6.2. Additional Mechanisms to Protect and Reserve IGO Names
  - 6.3. Governance Council
7. Resource Planning
  - 7.1. Resource Planning Specific to Backend Registry Activities
  - 7.2. Administrative Services Provider - Famous Four Media Limited
8. ICANN Prescribed Measures
9. Increasing Registrant Security Awareness
10. Registrant Disqualification
11. Restrictions on Proxy Registration Services
12. Registry Lock
13. Scope/Scale Consistency

- 13.1 Scope/Scale Consistency Specific to Backend Registry Activities
14. Acceptable Use Policy ("AUP")
15. Abuse Response Process

#### 1 gTLD Abuse Prevention and Mitigation Implementation Plan

The Applicant will be implementing a thorough and extensive Abuse Prevention and Mitigation plan, designed to minimise abusive registrations and other detrimental activities that may negatively impact internet users. This plan includes the establishment of a single abuse point of contact, responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the gTLD through all Registrars of record, including those involving a reseller. Details of this point of contact will be clearly published on the Applicant's website.

Strong abuse prevention for a new gTLD is an important benefit to the internet community. The Applicant and its backend services provider agree that a Registry must not only aim for the highest standards of technical and operational competence, but also needs to act as a steward of the space on behalf of the Internet community and ICANN in promoting the Registry's stakeholders' interest. The Applicant's Backend Services Provider brings extensive experience establishing and implementing registration policies. This experience will be leveraged to help the Applicant combat abusive and malicious domain activity within the new gTLD space.

One of the key functions of a responsible domain name Registry includes working towards the eradication of domain name abuse including, but not limited to, those resulting from:

- Illegal or fraudulent actions
- Spam
- Phishing
- Pharming
- Distribution of malware
- Fast flux hosting
- Botnets
- Illegal distribution of copyrighted material
- Distribution of child pornography
- Online sale or distribution of illegal pharmaceuticals.

Further explanation of behaviour considered to be abusive can be found in the Acceptable Use Policy ("AUP") below. Any second-level domain found to be facilitating such behaviours, either upon registration or subsequently, will be subject to rapid compliance action as per the policies outlined below.

The Applicant believes that the success of the gTLD will be determined largely by the sector's broad-spectrum of key stakeholders, who operate globally. The Applicant believes that these stakeholders will be motivated to protect the sector from detrimental practices. The Applicant further believes that sector stakeholders should be afforded the opportunity to influence the manner in which the gTLD is governed, including its abuse prevention policies where appropriate. Accordingly, the Applicant is establishing a Governance Council, to be comprised of key sector stakeholders that will serve as an advisory body. The Governance Council will elect its own Board of Directors, which will be responsible for self-governance, the recommendation of sector-specific policies, and the formulation of guidance on other best practices related to the gTLD. The Applicant aims to develop an Abuse Prevention and Mitigation Working Group in conjunction with the GC. It will give the Applicant's team advice on abuse preventions and mitigation and how this may effect registration policies. The group will meet to regularly discuss the latest trends in domain name abuse and the most effective way to prevent and remedy them. Registrants, Registrars and the Registry will all be involved in this working group. This will likely prove important as the battle with abusive behaviour online must continuously evolve given that abusive behaviour itself mutates and changes. The Governance Council will offer significantly greater opportunities to identify emerging threats and rapidly establish procedures to deal with them than might have been possible simply with a Registry perspective.

## 2 Policies and Procedures to Minimize Abusive Registrations

Regardless of how well intentioned its user-base is, a Registry must have the policies, resources, personnel, and expertise in place to combat abusive DNS practices. The Applicant's Registry Backend Services Provider is at the forefront of the prevention of such abusive practices. We also believe that a strong program is essential given that Registrants have a reasonable expectation that they are in control of the data associated with their domains, especially its presence in the DNS zone. Because domain names are sometimes used as a mechanism to enable various illegitimate activities on the Internet, often the best preventative measure to thwart these attacks is to remove the names completely from the DNS before they can impart harm, not only to the domain name Registrant, but also to millions of unsuspecting Internet users. Removing the domain name from the zone has the effect of shutting down all activity associated with the domain name, including the use of all websites and e-mail. The use of this technique should not be entered into lightly. The Applicant has an extensive, defined, and documented process for taking the necessary action of removing a domain from the zone when its presence in the zone poses a threat to the security and stability of the infrastructure of the Internet or the Registry.

### Coalition for Online Accountability ("COA") Recommendations

The Applicant will further structure its policies around the COA Recommendations where relevant to this gTLD. The Applicant's goal is to provide a safe and secure browsing experience for consumers of this gTLD. A domain within this gTLD that is owned, operated by or compromised by a malicious party could cause harm to consumers, to the gTLD's reputation and to the reputation of the Internet itself. As such, additional controls are in place relating to the validity of registrations, as well as additional measures to ensure the correct identity of both Registrants and Registrars relating to changes made within the SRS, and to protecting the integrity of the DNS service as a whole. The Coalition for Online Accountability have drafted a set of policy recommendations, also endorsed by many other international organizations representing the creative industries, that should be applied to entertainment gTLDs - especially those dependent on copyright protection. The policy is comprised of a set of 7 recommendations that should be adopted by ICANN in evaluating any applicant for an entertainment-based gTLD. The recommendations were posted by COA in the form of a letter to ICANN at <http://bit.ly/HuHtmq>. We welcome the recommendations from the COA and will strongly consider the recommendations relating to the implementation of this gTLD where considered relevant.

### BITS Recommendations

The Applicant will further structure its policies around the BITS Recommendations where relevant to this gTLD. The Applicant's goal is to provide a safe and secure browsing experience for consumers of this gTLD. A domain within this gTLD that is owned, operated by or compromised by a malicious party could cause harm to consumers, to the gTLD's reputation and to the reputation of the Internet itself. As such, additional controls are in place relating to the validity of registrations, as well as additional measures to ensure the correct identity of both Registrants and Registrars relating to changes made within the SRS, and to protecting the integrity of the DNS service as a whole. The Security Standards Working Group (SSWG) formed by BITS drafted a set of policy recommendations that should be applied to financial gTLDs. The policy is comprised of a set of 31 recommendations that should be adopted by ICANN in evaluating any applicant of a financial gTLD. The recommendations were posted by BITS in the form of a letter to ICANN at [<http://www.icann.org/en/correspondence/aba-bits-to-beckstrom-crocker-20dec11-en.pdf>]. We welcome the recommendations from SSWG and will strongly consider the recommendations relating to the implementation of this gTLD where considered relevant.

### 2.1 Implementation plan for Abuse Point of Contact

As required by the Registry Agreement, The Applicant will establish and publish on its website a single abuse point of contact responsible for addressing inquiries from law enforcement and the public related to malicious and abusive matters requiring expedited attention. The Applicant will provide a timely response to abuse complaints concerning all names registered in the gTLD by registrars and their resellers. The Applicant will

also provide such information to ICANN prior to the delegation of any domain names in the gTLD. This information shall consist of, at a minimum, a valid name, e-mail address dedicated solely to the handling of malicious conduct complaints and a telephone number and mailing address for the primary contact. The Applicant will ensure that this information will be kept accurate and up to date and will be provided to ICANN if and when changes are made. In addition, with respect to inquiries from ICANN-Accredited Registrars, the Applicant's Registry Backend Services Provider shall have an additional point of contact, as it does today, handling requests by Registrars related to abusive domain name practices.

## 2.2 Policies for Handling Complaints Regarding the Abuse Policies

In order to operate under the new gTLD, Registrants must accept the Acceptable Use Policy. The new gTLD Registry's Acceptable Use Policy clearly delineates the types of activities that constitute "abuse" and the repercussions associated with an abusive domain name registration. In addition, the policy will be incorporated into the applicable Registry-Registrar Agreement ("RRA") and reserve the right for the Registry to take the appropriate actions based on the type of abuse. This will include locking down the domain name preventing any changes to the contact and name server information associated with the domain name, placing the domain name "on hold" rendering the domain name non-resolvable, transferring the domain name to another Registrar, and/or in cases in which the domain name is associated with an existing law enforcement investigation, substituting name servers to collect information about the DNS queries to assist the investigation. When appropriate, the Applicant will also share information with law enforcement. Each ICANN and gTLD accredited Registrar must agree to pass the Acceptable Use Policy on to its Resellers (if applicable) and ultimately to the gTLD Registrants. The Registry's initial Acceptable Use Policy that the Applicant will use in connection with the gTLD is outlined in a section below.

## 2.3 Proposed Measures for Removal of Orphan Glue Records

As the Security and Stability Advisory Committee of ICANN ("SSAC") rightly acknowledges, although orphaned glue records may be used for abusive or malicious purposes, the "dominant use of orphaned glue supports the correct and ordinary operation of the DNS." See <http://www.icann.org/en/committees/security/sac048.pdf>.

While orphan glue records often support the correct and ordinary operation of the DNS, we understand that such glue records can be used maliciously to point to name servers that host domains used in illegal phishing, botnets, malware, and other abusive behaviours. Problems occur when the parent domain of the glue record is deleted but its children glue records still remain in DNS.

Thus, the Registry Operator will remove orphan glue records (as defined at the above link) when provided with evidence in written form that such records are present in connection with malicious conduct. Registrars are required to delete/move all dependent DNS records before they are allowed to delete the parent domain.

To prevent orphan glue records, the Registry Backend Services Provider performs the following checks before removing a domain or name server:

Checks during domain delete:

- Parent domain delete is not allowed if any other domain in the zone refers to the child name server.
- If the parent domain is the only domain using the child name server, then both the domain and the glue record are removed from the zone.

Check during explicit name server delete:

- The Registry Backend Services Provider confirms that the current name server is not referenced by any domain name (in-zone) before deleting the name server.

Zone-file impact:

- If the parent domain references the child name server AND if other domains in the zone also reference it AND if the parent domain name is assigned a serverHold status, then the parent domain goes out of the zone but the name server glue record does not.
- If no domains reference a name server, then the glue record is removed from the zone file.



2.4 Resourcing plans for the initial implementation of, and ongoing maintenance of, the Abuse Prevention and Mitigation initiatives

Details related to resourcing plans for the initial implementation and ongoing maintenance of the Applicant's abuse plan are provided in Section 7 of this response.

3 Measures to promote WHOIS accuracy both directly by the Registry and by Registrars via requirements in the Registry-Registrar Agreement ("RRA"):

The Applicant acknowledges that ICANN has developed a number of mechanisms over the past decades that are intended to address the issue of inaccurate WHOIS information. Such measures alone have not proven to be sufficient and the Applicant will offer a mechanism whereby third parties can submit complaints directly to the Applicant about inaccurate or incomplete WHOIS data. Such information shall be forwarded to the sponsoring Registrar, who shall be required to address those complaints with their Registrants. Thirty days after forwarding the complaint to the Registrar, the Applicant will examine the current WHOIS data for names that were alleged to be inaccurate to determine if the information was corrected, the domain name was deleted, or any other action was taken. If the Registrar has failed to take any action, or it is clear that the Registrant was either unwilling or unable to correct the inaccuracies, the Applicant reserves the right to suspend the applicable domain name(s) until such time as the Registrant is able to cure the deficiencies. Further efforts to pre-empt inaccurate WHOIS data made by the Applicant will include:

- 1) The Applicant will in general discourage the use of proxy registration services. The Applicant understands that there are instances when proxy registrations may be required and will develop best practices for when these instances occur.
- 2) The Applicant will maintain a web-based form for third parties to submit claims regarding false and/or inaccurate WHOIS data and the Applicant will forward credible claims to the Registrar for investigation/resolution. The Applicant will follow up to verify that the claim has been satisfactorily resolved. Failure of the Registrar or the Registrant to resolve the problem may result in the Applicant placing the domain name on hold, except in extraordinary circumstances.
- 3) The Applicant's Registry Backend Services Provider will regularly remind Registrars of their obligation to comply with ICANN's WHOIS Data Reminder Policy. This policy requires Registrars to validate the WHOIS information provided during the registration process, to investigate claims of fraudulent WHOIS information, and to cancel domain name registrations for which WHOIS information is determined to be invalid.
- 4) WHOIS Verification by Registrars. As part of their Registry-Registrar Agreement all accredited Registrars will be required to revalidate WHOIS data for each record they have registered in the gTLD. The Applicant will leave the ultimate determination of how this procedure takes place to the Registrar, but it must include one of the following approved methods. (1) Email notification (2) Outbound telemarketing effort to the individual listed as the administrative contact for the domain.

3.1 Regular monitoring of registration data for accuracy and completeness

As part of their Registry-Registrar Agreement, all of the Applicant's Registrars will be required to revalidate WHOIS data for each record they have registered on a bi-annual basis. This revalidation will require the Registrar to notify its Registrants in the gTLD about this requirement. While the Applicant reserves the right to suspend domain names that are not verified in a timely manner, the Applicant will engage in other outreach to the Registrant prior to suspending any domain name. As part of the gTLD Abuse reporting system, users can report missing or incomplete WHOIS data via the Registry website. The Applicant will also perform randomized audits of verified WHOIS information to ensure compliance and accuracy.

The Applicant's selected Registry Backend Services Provider has established policies and procedures to encourage Registrar compliance with ICANN's WHOIS accuracy requirements..

### 3.2 Registrar WHOIS policy self-certification and authentication

The self-certification program consists, in part, of evaluations applied equally to all operational ICANN accredited Registrars for the gTLD and is conducted from time to time throughout the year. Process steps are as follows:

The Registry Backend Services Provider sends an email notification to the ICANN primary Registrar contact, requesting that the contact go to a designated URL, log in with his/her Web ID and password, and complete and submit the online form. The contact must submit the form within 15 business days of receipt of the notification.

When the form is submitted, the Registry Backend Services Provider sends the Registrar an automated email confirming that the form was successfully submitted.

The Registry Backend Services Provider reviews the submitted form to ensure the certifications are compliant.

The Registry Backend Services Provider sends the Registrar an email notification if the Registrar is found to be compliant in all areas.

If a review of the response indicates that the Registrar is out of compliance or if the Registry Backend Services Provider has follow-up questions, the Registrar has 10 days to respond to the inquiry.

If the Registrar does not respond within 15 business days of receiving the original notification, or if it does not respond to the request for additional information, the Registry Backend Services Provider sends the Registrar a Breach Notice and gives the Registrar 30 days to cure the breach.

If the Registrar does not cure the breach, the Registry Backend Services Provider may terminate the Registry-Registrar Agreement (RRA).

### 3.3 WHOIS data reminder process.

The Registry Backend Services Provider regularly reminds Registrars of their obligation to comply with ICANN's WHOIS Data Reminder Policy, which was adopted by ICANN as a consensus policy on 27 March 2003 (<http://www.icann.org/en/Registrars/wdrp.htm>). The Registry Backend Services Provider sends a notice to all Registrars once a year reminding them of their obligation to be diligent in validating the WHOIS information provided during the registration process, to investigate claims of fraudulent WHOIS information, and to cancel domain name registrations for which WHOIS information is determined to be invalid.

### 3.4 Establishing policies and procedures to ensure Registrar compliance with policies, which may include audits, financial incentives, penalties, or other means.

The Applicant will require as part of the RRA obligations that all accredited Registrars for the gTLD participate in the abuse prevention and mitigation procedures and policies, as well as efforts to improve the accuracy and completeness of WHOIS data. In addition, the Applicant will work to develop an economic incentive program, such as Market Development Funds for Registrars who meet certain SLAs for performance in this area.

### 3.5 Registry bi-annual WHOIS verification

Additionally, the Applicant will, of its own volition and no less than twice per year, perform a manual review of a random sampling of gTLD domain names in its Registry to test the accuracy of the WHOIS information. Although this will not include verifying the actual information in the WHOIS record, the Applicant will be examining the WHOIS data for prima facie evidence of inaccuracies. In the event that such evidence exists, it shall be forwarded to the sponsoring Registrar, who shall be required to address those complaints with their Registrants. Thirty days (30) after forwarding the complaint to the Registrar, the Applicant will reexamine the current WHOIS data for names that were alleged to be inaccurate to determine if the information was corrected, the domain name was deleted, or some other action was taken. If the Registrar has failed to take any action, or it is clear that the Registrant was either unwilling or unable to correct the inaccuracies, The Applicant reserves the right to suspend the applicable domain name(s) until such time as the Registrant is able to cure the deficiencies.

### 3.6 Registrar bi-annual verification of WHOIS

The Applicant will require in the Registry-Registrar Agreement that all accredited Registrars in this gTLD will be obliged to verify WHOIS data for each record they have registered in the gTLD twice a year. Verification can take place via email, phone or any other method to confirm the accuracy of the WHOIS data associated with the domain name. The Applicant will randomly audit WHOIS records to ensure compliance and accuracy. As part of the gTLD Abuse reporting system, users can report missing or incomplete WHOIS data via the Registry website.

## 4 Policies and procedures that define malicious or abusive behaviour

The applicant has developed policies and procedures that define malicious and abusive behaviour. More information on these policies and procedures can be found in section 14 - Acceptable Use Policy.

### 4.1 Service Level Requirements for resolution of APM related activities

As pertains to the Applicant's service level requirements for resolution, we aim to address and potentially rectify the issue as it pertains to all forms of abuse and fraud within 24 hours. Once abusive behaviour is detected or reported, the Applicant's Customer Service center immediately creates a support ticket in order to monitor and track the issue through resolution. This support team is operational 24/7/365. A preliminary assessment will be performed in order to determine whether the abuse claim is legitimate. We will classify each incidence of legitimately reported abuse into one of two categories based on the probable severity and immediacy of harm to Registrants and Internet users.

#### Category 1:

- Probable Severity or Immediacy of Harm: Low
- Examples of types of abusive behaviour: Spam, Malware
- Mitigation steps:
  - Investigate
  - Notify Registrant
- Response times - up to 3 days depending on severity.

#### Category 2:

- Probable Severity or Immediacy of Harm: Medium to High
- Examples of types of abusive behaviour: Fast Flux Hosting, Phishing, Illegal Access to other Computers or Networks, Pharming, Botnet command and control
- Mitigation steps:
  - Suspend domain name
  - Investigate
  - Restore or terminate domain name
- Response times - up to 1 day.

### 4.2 Service Level Requirements and Coordination regarding Law enforcement APM requests

With the assistance of its Registry Backend Services Provider, the Applicant will meet its obligations under Section 2.8 of the Registry Agreement where required to take reasonable steps to investigate and respond to reports from law enforcement, governmental and quasi-governmental agencies of illegal conduct in connection with the use of the gTLD. The Registry will respond to legitimate law enforcement inquiries within one business day from receiving the request. Such a response shall include, at a minimum, an acknowledgement of receipt of the request, questions or comments concerning the request, and an outline of the next steps to be taken by the Applicant for rapid resolution of the request.

In the event such request involves any of the activities which can be validated by the Registry and involves the type of activity set forth in the Acceptable Use Policy, the sponsoring Registrar is then given 24 hours to investigate the activity further and either take down the domain name by placing the domain name on hold or by deleting the domain name in its entirety or providing a compelling argument to the Registry to keep

the name in the zone. If the Registrar has not taken the requested action after the 24-hour period (i.e., is unresponsive to the request or refuses to take action), the Registry may place the domain on "ServerHold".

#### 4.3 Coordination with sector Groups and Law Enforcement

One of the reasons for which the Registry Backend Services Provider was selected to serve as the Registry Backend Services Provider by the Applicant is the Registry Backend Services Provider's extensive experience and its close working relationship with a number of law enforcement agencies.

The Registry Backend Services Provider is also a participant in a number of sector groups aimed at sharing information amongst key sector players about the abusive registration and use of domain names. Through these organizations the Registry Backend Services Provider shares information with other registries, Registrars, ccTLDs, law enforcement, security professionals, etc. Not only on abusive domain name registrations within its own gTLDs, but also provides information uncovered with respect to domain names in other registries. The Registry Backend Services Provider has often found that rarely are abuses found only in the gTLDs which it manages, but also within other gTLDs. The Registry Backend Services Provider routinely provides this information to the other registries so that it can take the appropriate action.

When executed in accordance with the Registry Agreement, plans will result in compliance with contractual requirements.

The Applicant believes that the proposed collection of protections that involve both proactive and reactive mechanisms outlined above will provide an unmatched level of security and anti-abuse activity within the gTLD. These mechanisms will be part of both the Registry-Registrar Agreement as well as the Registrant Registration Agreement.

#### 4.4 Rapid takedown and suspension system

The Applicant is committed to ensuring that the use of the internet within its Registry is compliant with all relevant laws and legal directions.

The Applicant notes that its role as the Registry operator is not one of judge and jury in all jurisdictions and as such shall direct all complainants to the legal process in the relevant jurisdiction. Upon receiving a valid and enforceable legal judgment or direction it shall comply forthright with the appropriate action which shall include rapid takedown and/or suspension.

### 5 Controls to Ensure Proper Access to Domain Functions

#### 5.1 Enabling two-factor authentication from Registrants to process update, transfers, and deletion requests;

To ensure proper and secure access to domain functions, the Applicant will develop best practices for its Registrars relating to enabling its Registrants to utilize two factor authentication in its interaction with their Registrar and ultimately the Registry. The goal of these best practices is to improve domain name security and assist Registrars in protecting the accounts they manage by providing another level of assurance that only authorized registrants can communicate through the registrar with the Registry.

#### 5.2 Enabling multiple, unique points of contact to request and/or approve update, transfer, and deletion requests;

The Applicant will investigate the costs and benefits for introducing a service whereby a Registrant can elect to designate multiple points of contact for each domain registered to approve changes to a domain before they are effectuated. The Applicant is of the opinion that these additional checks could improve the security of each domain and will look for ways to deploy them in the most cost-effective and user-friendly manner possible.

#### 5.3 Enabling the notification of multiple, unique points of contact when a domain has been updated, transferred, or deleted

The Applicant will investigate the costs and benefits for introducing a service where by

a Registrant can elect to designate multiple points of contact for each domain registered to receive notification of changes to a domain when they are effectuated. The Applicant is of the opinion that these additional checks could improve the security of each domain and will look for ways to deploy them in the most cost-effective and user-friendly manner possible.

## 6. Additional Abuse Prevention and Mitigation initiatives

### 6.1 Additional Mechanism for Protection of Capital City Names

In parallel with the Landrush Period defined in the answer to question 18, the Applicant will implement a Capital City Claim ("CCC") service whereby additional protection will be granted to the capital city names of a country or territory listed in the ISO 3166-1 standard. The CCC process is as follows:

1. Any prospective domain name Registrant applying to register a domain name identical to the capital city name of a country or territory listed in the ISO 3166-1 standard will receive from the Applicant a CCC notification highlighting the fact that the applied-for domain name corresponds to a capital city name of a country or territory listed in the ISO 3166-1 standard.
2. A potential domain name Registrant receiving a CCC notification will have to send a response to the Applicant whereby it will unconditionally comply with the requirements as to representations and warranties required by the Applicant. This will protect the reputation of the capital city as well as any further relevant terms and conditions provided.
3. Unconditional acceptance of the warranties set out in the CCC notification will be a material requirement for a prospective Registrant to be eligible to register the domain name in question should said prospective Registrant be successful in the Landrush period.
4. Upon registration during the Landrush period of a domain name identical to a capital city name of a country or territory listed in the ISO 3166-1 standard, the Applicant will send a notification in writing to the ICANN Government Advisory Committee ("GAC") Chair.

### 6.2 Additional Mechanisms to Protect and Reserve IGO Names

The Applicant considers the Protection of Intergovernmental Organization ("IGO") names to be very important. The Applicant will use strings registered as second level domains in the .int gTLD as the basis for this protection. To register in the .int domain, the Registrants must be an IGO that meets the requirements found in RFC 1591. The .int domain is used for registering organizations established by international treaties between or among national governments and which are widely considered to have independent international legal personality. Thus, the names of these organizations, as with geographic names, can lend an official imprimatur, and if misused, be a source of public confusion or deception.

#### Reservation of IGO names:

In addition to the mandated and additional reservation of geographic names as provided for in response to Question 22, the Applicant will reserve, and thereby prevent registration of, all names that are registered as second level domains in the most recent .int zone as of 1st November 2012. By doing so, the Applicant will extend additional protection to IGOs that comply with the current eligibility requirements for the .int gTLD as defined at <http://www.iana.org/domains/int/policy/>, and that have obtained a second-level registration in the .int zone.

#### Release of IGO names:

In the future, should any of the IGOs wish to make use of the protected strings, the Registry will release and assign the domain to the respective IGOs using the following process:

- a) The IGO submits a request to the Applicant in the hope of the reserved name being assigned to themselves and provides the necessary documentation and details of the proposed registrant entity for the domain name registration.
- b) The Applicant will validate and authenticate the request to establish that it is a genuine bona fide request.
- c) Once the request has been approved the Applicant will notify the requesting IGO as well as ICANN and the GAC of the approval for the assignment of the domain name.
- d) The Applicant will issue a unique authorization code to the proposed IGO registrant.
- e) The proposed IGO registrant will then be able to request that the assignment of the domain name is given to them using the authorization code with an ICANN and gTLD accredited Registrar of their choice.

### 6.3 Governance Council

The Applicant believes that the success of the gTLD will be determined in large by the gTLD's stakeholders. Not only will these stakeholders have the primary interest of registering domains on the gTLD, but they will also be motivated to protect the sector from practices that would negatively impact the sector overall. The Applicant further believes that sector stakeholders should be afforded the opportunity to influence the manner in which the gTLD is governed. Accordingly, the Applicant is establishing a Governance Council (the "GC"), to be comprised of key sector stakeholders that will serve as an advisory body.

The GC will elect its own Board of Directors, which will be responsible for self-governance, the recommendation of sector-specific policies, and the formulation of guidance on intellectual property and other best practices related to the gTLD. This will lead the policy development process of defining how the APM Reporting Website should best reflect the options users, rights holders, etc., have for addressing infringing content or other issues.

## 7. Resource Planning

### 7.1 Resource Planning Specific to Backend Registry Activities

ARI's Anti-Abuse Service serves to prevent and mitigate abusive behavior in the gTLD as well as activities that may infringe trademarks. These responsibilities will be undertaken by three teams:

(1) ARI's Development Team will be responsible for developing the technical platforms and meeting technical requirements needed to implement the procedures and measures adopted to mitigate the potential for abuse, identify abuse and handle identified abuse.

(2) ARI's Abuse and Compliance Team will be responsible for the ongoing implementation of measures to minimize abusive registrations and other activities that have a negative impact on Internet users.

(3) ARI's Service Desk will be responsible for responding to reports of abuse received through the abuse point of contact on the Registry's website and logging these in a ticket in ARI's case management system.

#### ARI Abuse and Compliance Team

ARI's Abuse and Compliance Team will be staffed by six full-time equivalent positions. These roles will entail the following:

**Policy Compliance Officers:** A principal responsibility of the Policy Compliance Officers will be handling notifications of abuse through the SAPOC. This will involve managing the expedited process, identifying and categorizing suspected abuse according to our Anti-Abuse Policy, and carrying out the appropriate mitigation response for all categorized abuses. When abuse is identified, Policy Compliance Officers will investigate other domain names held by a Registrant whose domain name is subject to a mitigation response. They will maintain a list of and disqualify Registrants found to have repeatedly engaged in abusive behavior. They will also be responsible for analyzing

Registry data in search of behaviors indicative of abuse, reviewing sector lists in search of data that may identify abuse in the gTLD.

Another key responsibility of Policy Compliance Officers will be implementing measures to promote WHOIS accuracy (including managing and addressing all reports of inaccurate WHOIS information received from the web submission service) and verifying the physical address provided by a Registrant against various databases for format and content requirements for the region.

Policy Compliance Officers will act on the instructions of verified LEA and Dispute Resolution Providers and participate in ICANN and sector groups involved in the promulgation of policies and best practices to address abusive behavior. They will escalate complaints and issues to the Legal Manager when necessary and communicate with all relevant stakeholders (Registrars, Registrants, LEA, general public) as needed in fulfilling these responsibilities. This role will be provided on a 24/7 basis, supported outside of ordinary business hours by ARI's Service Desk.

Policy Compliance Officers will be required to have the following skills/qualifications: customer service/fault handling experience, comprehensive knowledge of abusive behavior in a gTLD and related policies, Internet sector knowledge, relevant post-secondary qualification, excellent communication and professional skills, accurate data entry skills, high-level problem solving skills, and high-level computer skills.

**Legal Manager:** The Legal Manager will be responsible for handling all potential disputes arising in connection with the implementation of ARI's Anti-Abuse service and related policies. This will involve assessing escalated complaints and issues, liaising with Legal Counsel and the Registry operator, resolving disputes and communicating with all relevant stakeholders (Registrars, Registrants, LEA, general public) as needed in fulfilling these responsibilities. The Legal Manager will be responsible for forwarding all matters requiring determination by the Registry operator which fall outside the scope of ARI's Anti-Abuse functions. The Legal Manager will be required to have the following skills/qualifications: legal background (in particular, intellectual property/information technology law) or experience with relevant tertiary or post-graduate qualifications, dispute resolution experience, Internet sector experience, strong negotiation skills, excellent communication and professional skills, good computer skills and high-level problem solving skills.

**Legal Counsel:** A qualified lawyer will be responsible for all in-house legal advice, including responding to LEA and dealing with abusive behavior. The globally distributed team consists of:

Policy Compliance Officers - 4 people  
Legal Manager - 1 person  
Legal Counsel - 1 person

#### ARI Service Desk

ARI's Service Desk will be staffed by 14 full-time equivalent positions. Responsibilities of Service Desk relevant to ARI's Anti-Abuse Service include the following: responding to notifications of abuse through the abuse point of contact and expedited process for LEA, logging notifications as a ticket in ARI's case management system, notifying us of a report received through the expedited process for LEA, government and quasi-governmental agencies, and forwarding tickets to ARI's Abuse and Compliance team for resolution in accordance with the Anti-Abuse Policy.

#### ARI Development Team

All tools and systems needed to support the initial and ongoing implementation of measures adopted to mitigate the potential for abuse, identify abuse and handle identified abuse will be developed and maintained by ARI. ARI has a software development department dedicated to this purpose which will ensure that the tools are fit for purpose and adjusted as requirements change.

ARI's Development Team participate actively in the sector; this facilitates collaboration with relevant organizations on abuse related issues and ensures that the ARI Development Team is responsive to new and emerging domain name abuses and the tools and systems required to be built to address these abuses. This globally distributed team consists of:

Development Manager - 1 person  
Business Analysts - 2 people  
Developers - 6 people  
Quality Analysts - 2 people

## 7.2 Administrative Services Provider - Famous Four Media Limited

In addition to those resources set out above provided by the Registry's backend services provider the Applicant's Administration Services Provider shall provide the following extra resources:

- Sunrise Validation Team - This shall comprise of 11 employees of which at least one shall be a qualified lawyer specializing in intellectual property law.
- Ongoing Rights Protection Team - This shall comprise of 11 employees of which at least one shall be a qualified lawyer specializing in intellectual property law.

The two key objectives of the Sunrise Validation Team and the Ongoing rights Protection Team (together the "Rights Team") is to:

- a. Prevent abusive registrations; and
  - b. Identify and address the abusive use of registered names on an ongoing basis
- Because rights protection is a fundamental core objective of the Applicant it has contracted with its Registry Administration Services Provider that the number of full time personnel made available to the Applicant will be 125% of the estimated requirement to ensure that at all times the Applicant is over resourced in this area. In addition the Applicant shall instruct outside Counsel in any relevant jurisdiction on all matters that are unable to be adequately dealt with by the Sunrise Validation Team or the Ongoing Rights Protection Team.

## 8. ICANN Prescribed Measures

In accordance with its obligations as a Registry operator, the Applicant will comply with all requirements in the 'gTLD Applicant Guidebook'. In particular, we will comply with the following measures prescribed by ICANN which serve to mitigate the potential for abuse in the gTLD:

- DNSSEC deployment, which reduces the opportunity for pharming and other man-in-the-middle attacks. We will encourage Registrars and Internet Service Providers to deploy DNSSEC capable resolvers in addition to encouraging DNS hosting providers to deploy DNSSEC in an easy-to-use manner in order to facilitate deployment by Registrants. Prohibition on Wild Carding as required by section 2.2 of Specification 6 of the Registry Agreement.
- Removal of Orphan Glue records (discussed above in section 4).

## 9. Increasing Registrant Security Awareness

In order to operate a secure and reliable gTLD, the Applicant will attempt to improve Registrant awareness of the threats of domain name hijacking, Registrant impersonation and fraud, and emphasise the need for and responsibility of Registrants to keep registration (including WHOIS) information accurate. Awareness will be raised by:

- Publishing the necessary information on the Abuse page of our Registry website in the form of presentations and FAQ's.
  - Developing and providing to Registrants and resellers Best Common Practices that describe appropriate use and assignment of domain auth Info codes and risks of misuse when the uniqueness property of this domain name password is not preserved.
- The increase in awareness renders Registrants less susceptible to attacks on their domain names owing to the adoption of the recommended best practices thus serving to mitigate the potential for abuse in the gTLD. The clear responsibility on Registrants to provide and maintain accurate registration information (including WHOIS) further serves to minimise the potential for abusive registrations in the gTLD.



## 10. Registrant Disqualification

Registrants, their agents or affiliates found through the application of the AUP to have repeatedly engaged in abusive registration may be disqualified from maintaining any registrations or making future registrations. This will be triggered when the Registry Backend Services Provider's records indicate that a Registrant has had action taken against it an unusual number of times through the application of our Anti-Abuse Policy. Registrant disqualification provides an additional disincentive for qualified Registrants to maintain abusive registrations in that it puts at risk even otherwise non-abusive registrations, through the possible loss of all registrations.

In addition, name servers that are found to be associated only with fraudulent registrations will be added to a local blacklist and any existing or new registration that uses such fraudulent NS record will be investigated.

The disqualification of 'bad actors' and the creation of blacklists mitigates the potential for abuse by preventing individuals known to partake in such behaviour from registering domain names.

For a Registrant to be placed on a list of bad actors, the Applicant will examine the factors noted above, and such determination shall be made by the Applicant at its sole discretion. Once the Applicant determines that a Registrant should be placed onto the list of bad actors, the Applicant will notify its Registry Backend Services Provider, who will be instructed to cause all of the Registrant's second-level domains in the gTLD to resolve to a page which notes that the domain has been disabled for abuse-related reasons. The second-level domains at issue will remain in this state until the expiration of the Registrant's registration term or a decision from a UDRP panel or court of competent jurisdiction requires the transfer or cancellation of such domains.

## 11. Restrictions on Proxy Registration Services

The Applicant will in general discourage the use of proxy registration services. The Applicant further understands that there are instances when proxy registrations may be required and will develop best practices when these instances occur. Whilst it is understood that implementing measures to promote WHOIS accuracy is necessary to ensure that the Registrant may be tracked down, it is recognised that some Registrants may wish to utilise a proxy registration service to protect their privacy. In the event that Registrars elect to offer such services, the following conditions apply:

- Registrars should take the best practice guidance developed by the Applicant and the Governance Council for the gTLD into account when making Proxy registration services available to its Registrants.
- Registrars must ensure that the actual WHOIS data is obtained from the Registrant and must maintain accurate records of such data.
- Registrars must provide Law Enforcement Agencies ("LEA") with the actual WHOIS data upon receipt of a verified request.

These conditions will be implemented contractually by inclusion of corresponding clauses in the RRA as well as being published on the Abuse page of the Registry website.

Individuals and organisations will be encouraged through the Abuse page to report any domain names they believe violate the above restrictions, following which appropriate action may be taken by the Registry Backend Services Provider. Publication of these conditions on the Abuse page of the Registry website ensures that Registrants are aware that despite utilisation of a proxy registration service, actual WHOIS information will be provided to LEA upon request in order to hold Registrants liable for all actions in relation to their domain name.

The certainty that WHOIS information relating to domain names which draw the attention of LEA will be disclosed results in the gTLD being less attractive to those seeking to register domain names for abusive purposes, thus mitigating the potential for abuse in the gTLD.

## 12. Registry Lock

Certain mission-critical domain names such as transactional sites, email systems and site supporting applications may warrant a higher level of security. Whilst the Applicant will take efforts to promote the awareness of security amongst Registrants, it is recognised that an added level of security may be provided to Registrants by 'Registry locking' the domain name and thereby prohibiting any updates at the Registry operator level. The Registry lock facility will be offered to all Registrars who may request this service on behalf of their Registrants in order to prevent unintentional transfer, modification or deletion of the domain name. This facility mitigates the potential for abuse by prohibiting any unauthorised updates that may be associated with fraudulent behaviour. For example, an attacker may update nameservers of a mission-critical domain name, thereby redirecting customers to an illegitimate website without actually transferring control of the domain name.

Upon receipt of a list of domain names to be placed on Registry lock by an authorised representative from a Registrar, the Registry Backend Services Provider will:

1. Validate that the Registrar is the Registrar of record for the domain names.
2. Set or modify the status codes for the names submitted to serverUpdateProhibited, serverDeleteProhibited and/or serverTransferProhibited depending on the request.
3. Record the status of the domain name in the Shared Registration System (SRS).
4. Provide a monthly report to Registrars indicating the names for which the Registry lock service was provided in the previous month.

### 13. Scope/Scale Consistency

The Applicant believes that the proposed collection of protections that involve both proactive and reactive mechanisms outlined above will provide an unmatched level of security and anti-abuse activity within the gTLD and is appropriate for the size and scale of the gTLD.

#### 13.1 Scope/Scale Consistency Specific to Backend Registry Activities

The Registry Backend Services Provider is an experienced backend Registry provider that has developed and uses proprietary system scaling models to guide the growth of its gTLD supporting infrastructure. These models direct the Registry Backend Services Provider's infrastructure scaling to include, but not be limited to, server capacity, data storage volume, and network throughput that are aligned to projected demand and usage patterns. The Registry Backend Services Provider periodically updates these models to account for the adoption of more capable and cost-effective technologies.

The Registry Backend Services Provider's scaling models are proven predictors of needed capacity and related cost. As such, they provide the means to link the projected infrastructure needs of the gTLD with necessary implementation and sustainment cost. Using the projected usage volume for the most likely scenario (defined in Question 46, Template 1 - Financial Projections: Most Likely) as an input to its scaling models, The Registry Backend Services Provider derived the necessary infrastructure required to implement and sustain this gTLD and its APM policies.

### 14. Acceptable Use Policy

This Acceptable Use Policy gives the Registry the ability to quickly lock, cancel, transfer or take ownership of any domain name, either temporarily or permanently, if the domain name is being used in a manner that appears to threaten the stability, integrity or security of the Registry, or any of its Registrar partners and/or that may put the safety and security of any Registrant or user at risk. The process also allows the Registry to take preventive measures to avoid any such criminal or security threats. The Acceptable Use Policy may be triggered through a variety of channels, including, among other things, private complaint, public alert, government or enforcement agency outreach, and the on-going monitoring by the Registry or its partners. In all cases, the Registry or its designees will alert the Registry's Registrar partners about any identified threats, and will work closely with them to bring offending sites into compliance.

The following are some (but not all) activities that may be subject to rapid domain compliance:

- Phishing; a criminal activity employing tactics to defraud and defame Internet users via sensitive information with the intent to steal or expose credentials, money or identities. A phishing attack often begins with a spoofed email posing as a trustworthy electronic correspondence that contains hijacked brand names e.g.(financial institutions, credit card companies, e-commerce sites). The language of a phishing email is misleading and persuasive by generating either fear and/or excitement to ultimately lure the recipient to a fraudulent Web site. It is paramount for both the phishing email and Web site to appear credible in order for the attack to influence the recipient. As with the spoofed email, phishers aim to make the associated phishing Web site appear credible. The legitimate target Web site is mirrored to make the fraudulent site look professionally designed. Fake third-party security endorsements, spoofed address bars, and spoofed padlock icons falsely lend credibility to fraudulent sites as well. The persuasive inflammatory language of the email combined with a legitimate looking Web site is used to convince recipients to disclose sensitive information such as passwords, usernames, credit card numbers, social security numbers, account numbers, and mother's maiden name.
- Malware; malicious software that was intentionally developed to infiltrate or damage a computer, mobile device, software and/or operating infrastructure or website without the consent of the owner or authorized party. This includes, amongst others, Viruses, Trojan horses, and worms.
- Domain Name or Domain Theft; the act of changing the registration of a domain name without the permission of its original Registrant.
- Botnet Command and Control; Services run on a domain name that is used to control a collection of compromised computers or "zombies," or to direct Distributed Denial of Service attacks ("DDoS attacks")
- Distribution of Malware; The intentional creation and intentional or unintentional distribution of "malicious" software designed to infiltrate a computer system without the owner's consent, including, without limitation, computer viruses, worms, keyloggers, and Trojans.
- Fast Flux Attacks/Hosting; A technique used to shelter Phishing, Pharming, and Malware sites and networks from detection and to frustrate methods employed to defend against such practices, whereby the IP addresses associated with fraudulent sites are changed rapidly so as to make the true location of the sites difficult to find.
- Hacking; the attempt to gain unauthorized access (or exceed the level of authorized access) to a computer, information system, user account or profile, database, or security system.
- Pharming; The redirecting of unknown users to fraudulent sites or services, typically through, but not limited to, DNS hijacking or poisoning;
- Spam; The use of electronic messaging systems to send unsolicited bulk messages. The term applies to email spam and similar abuses such as instant messaging spam, mobile messaging spam, and spamming of websites and Internet forums.
- Child Pornography; the storage, publication, display and/or dissemination of pornographic materials depicting individuals under the legal age in the relevant jurisdiction.
- Further abusive behaviours include, but are not limited to; Cybersquatting, Front-Running, Gripe Sites, Deceptive and/or Offensive Domain Names, Fake Renewal Notices, Cross-gTLD Registration Scam, Name Spinning, Pay-per-Click, Traffic Diversion, False Affiliation, Domain Kiting / Tasting, fast-flux and 419 scams.

The Registry reserves the right, at its sole discretion, to take any administrative and operational actions necessary, including the use of computer forensics and information security technological services, among other things, in order to implement the Acceptable Use Policy. In addition, the Registry reserves the right to deny, cancel or transfer any registration or transaction, or place any domain name(s) on Registry lock, hold or similar status, that it deems necessary, to its discretion; (1) to protect the integrity and stability of the Registry; (2) to comply with any applicable laws, government rules or requirements, requests of law enforcement, or any dispute resolution process; (3) to avoid any liability, civil or criminal, on the part of the Registry as well as its affiliates, subsidiaries, officers, directors, and employees; (4) per the terms of the registration agreement or (5) to correct mistakes made by the Registry or any Registrar

in connection with a domain name registration. The Registry also reserves the right to place upon Registry lock, hold or similar status a domain name during resolution of a dispute.

Registrants must also agree that they will not use their domain for any purposes which are prohibited by the laws of the jurisdiction(s) in which they do business or any other applicable law. You may not use your domain for any purposes or in any manner which violate a statute, rule or law governing use of the Internet and/or electronic commerce, including those statutes related to gaming and/or online gambling.

In addition, The Applicant reserves the right to deny attempted registrations from repeat violators of the Registry's Acceptable Use Policy. The Registry's Acceptable Use Policy will incorporate a certification by the Registrant that the domain will be used only for licensed, legitimate activities, and not to facilitate piracy or infringements. The Registrant will be required to accept these terms as part of its registration agreement. The Applicant reserves the right to suspend or cancel a domain for violation of the Registry's Acceptable Use Policy.

#### 15. Abuse Response Process

The Registry is committed to ensuring that those domain names associated with abuse or malicious conduct in violation of the Acceptable Use Policy are dealt with in a timely and decisive manner. These include taking action against those domain names that are being used to threaten the stability and security of the gTLD, or are part of a real-time investigation by law enforcement.

Once a complaint is received from a trusted source, third-party, or detected by the Registry, the Registry will use commercially reasonable efforts to verify the information in the complaint. If that information can be verified to the best of the ability of the Registry, the sponsoring Registrar will be notified and be given 48 hours to investigate the activity. This will result in either the take down of the domain name by placing the domain name on hold or the deletion of the domain name in its entirety or providing a compelling argument to the Registry to keep the name in the zone. If the Registrar has not taken the requested action after the 48-hour period (i.e., is unresponsive to the request or refuses to take action), the Registry may place the domain on "ServerHold". Although this action removes the domain name from the gTLD zone, the domain name record still appears in the gTLD WHOIS database so that the name and entities can be investigated by law enforcement should they desire to get involved.

Additionally, the Applicant will require Registrars to adhere to the following abuse-prevention procedures:

- Each new gTLD accredited Registrar must provide and maintain a valid primary point of contact for abuse complaints. The Applicant will require this as part of the new gTLD RRA.
  - The Applicant will explicitly define for Registrars what constitutes abusive behaviour including but not limited to, malicious, negligent, and reckless behaviour. The definition of abusive behaviour will be contained in the AUP and the Applicant will require this as part of the new gTLD RRA.
  - Registrars must notify the Registry Operator immediately regarding any investigation or compliance action including the nature of the investigation or compliance action by ICANN or any outside party (e.g., law enforcement, etc.), along with the gTLD impacted. This will be required as part of the new gTLD RRA.
  - The Applicant will initiate an Abuse Prevention and Mitigation Working Group. This group will be developed in conjunction with the gTLD Governance Council mentioned above. Its aim will be to give the Applicant's team alternate perspectives about handling incidents of abuse and ways to mitigate them. The group will meet regularly to discuss the latest trends in domain name abuse and the most effective way to prevent and remedy them for the gTLD.
- end-

## 29. Rights Protection Mechanisms

Q29

The Applicant will be implementing an extensive range of Rights Protection Mechanisms ("RPMs") designed to minimize abusive registrations and other activities that may affect the legal rights of others. The Applicant will implement and comply with all ICANN required RPMs and will in addition implement further measures to better protect the rights of others and minimize abusive registrations.

The following is an overview of Applicant's response to Q29:

1. Rights Protection as a core objective
2. Plans for Rights Protection Mechanisms as part of Start-Up
3. ICANN Mandated Rights Protection Mechanisms
  - 3.1. Trademark Clearinghouse ("TMCH")
  - 3.2. Applicant's Sunrise Period ("ASP")
  - 3.3. Trademark Claims Service ("TCS")
  - 3.4. Uniform Domain Name Dispute Resolution Policy ("UDRP")
  - 3.5. Uniform Rapid Suspension System ("URS")
  - 3.6. Trademark Post-Delegation Dispute Resolution Procedure ("PDDRP")
4. Additional Rights Protection Mechanisms to be implemented by the Applicant on a Voluntary Basis
  - 4.1. Mechanism to protect IGO Names ("PIN")
  - 4.2. Mechanism for Further Protection of Capital City Names ("CCC")
5. Efforts to promote WHOIS Accuracy
  - 5.1. Thick WHOIS
  - 5.2. Semi Annual Audits to Ensure Accurate WHOIS
6. Policies Handling Complaints Regarding Abuse and Rights Issues
7. Registry Acceptable Use Policy("AUP")
8. Monitoring for Malicious Activity
9. Resourcing Plans Specific to Backend Registry Activities

#### 1 Rights Protection as a core objective

The Applicant is firmly committed to the protection of Intellectual Property rights and to implementing the mandatory RPMs contained in the Applicant Guidebook and detailed in Specification 7 of the Registry Agreement. Use of domain names that infringe upon the legal rights of others in the gTLD will not be tolerated and preventing abusive registrations is a core objective of the Applicant. The nature of such uses creates security and stability issues for the Registry, Registrars, and Registrants, as well as for users of the Internet in general. The Applicant will prevent abusive registrations and reduce opportunities for behaviours such as phishing or pharming by implementing comprehensive registration, anti-abuse, and rights protection guidelines as defined in its AUP, as well as innovative additional RPMs such as PIN and the CCC, as described below. In order to identify and address the abusive use of registered names on an ongoing basis, the Applicant will also incorporate and abide by all mandated RPMs as specified in Specification 7 of the Registry Agreement and as adopted by the ICANN Board of Directors as ICANN Consensus Policies.

#### 2 Plans for Rights Protection Mechanisms as part of Start-Up

The timeline for start-up RPMs in the Applicant's gTLD is as follows:

##### Phase 1 - Sunrise Process:

- Day 1: Sunrise round opens
- Day 60: Sunrise round Closes
- Day 61: Sunrise Allocation including Contention Resolution Mechanisms ("CRM") opens
- Day 71: Sunrise Allocation CRM closes
  
- The following Rights Protection Mechanisms apply:
  - a. TMCH
  - b. Sunrise Eligibility Requirements ("SER")

- c. Sunrise Dispute Resolution Policy ("SDRP")
- d. UDRP
- e. URS
- f. PIN
- g. TCS\*

#### Phase 2 - Landrush process:

- Day 72: Landrush opens
- Day 102: Landrush closes
- Day 103: Landrush CRM opens
- Day 113: Landrush CRM closes
  
- The following Rights Protection Mechanisms apply:
  - a. UDRP
  - b. URS
  - c. PIN
  - d. CCC
  - e. TCS\*

#### Phase 3 - General Availability/Registrations:

- Day 114: General availability begins
  
- The following Rights Protection Mechanisms apply:
  - a. UDRP
  - b. URS
  - c. PIN
  - d. PDDRP
  - e. TCS\* (90 days)

\* To ease the concerns of trademark owners and mitigate the impact of infringing registrations, the Applicant will be implementing the Trademark Claims service in all three phases of launch. It is important to note that during the General Availability Phase, the Trademark Claims service will be used for 90 days, 30 days longer than the ICANN mandated minimum.

### 3 ICANN Mandated Rights Protection Mechanisms

#### 3.1 Trademark Clearinghouse ("TMCH")

The first mandatory RPM required of each new gTLD Registry is support for, and interaction with, the TMCH. The TMCH is intended to serve as a central repository for information pertaining to the rights of trademark holders to be authenticated, stored, and disseminated. The data maintained in the clearinghouse will support and facilitate other RPMs, including the mandatory Sunrise Period and Trademark Claims service. Although the operational details of how the TMCH will interact with Registry operators and Registrars are still being developed by ICANN, the Applicant is actively monitoring the developments of the Implementation Assistance Group ("IAG"). The IAG is working with ICANN staff to refine and finalize the rules, procedures and technical requirements for the TMCH. In addition, the gTLD's Registry Backend Services Provider is actively participating in the IAG to ensure that the protections afforded by the clearinghouse and associated RPMs are feasible, implementable, and well understood.

Utilizing the TMCH, the Applicant will offer: (i) a Sunrise registration service for 60 days during the pre-launch phase giving eligible trademark owners an early opportunity to register second-level domains in new gTLDs; and (ii) a TCS in all 3 phases of launch including 90 days after phase 3 general availability.

#### 3.2 Applicant's Sunrise Period ("ASP")

All domain names registered during the Sunrise Period will be subject to the Applicant's domain name registration policy. The Applicant will surpass ICANN's mandated minimum by offering a Sunrise Period for sixty (60) days. Owners of trademarks listed in the TMCH

that also meet the Applicant's domain name registration requirements will be able to register domain names that are an identical match of their listed trademarks. The Applicant has engaged Famous Four Media Limited ("FFM") as well as other suppliers to assist with this process. The FFM Sunrise Validation Team will consist of a minimum of 11 employees who will work with the Applicant's Trademark Validation Team ("TVT") and outside counsel, to receive and authenticate all Sunrise registrations.

Registrars who are accredited to sell names in the gTLD will ensure that all Sunrise Registrants meet SERs, which will be verified by Clearinghouse data. The proposed SERs include: (i) ownership of a mark that is (a) nationally or regionally registered and for which proof of use, such as a declaration and a single specimen of current use - was submitted to, and validated by, the TMCH; or (b) that have been court-validated; or (c) that are specifically protected by a statute or treaty currently in effect and that was in effect on or before 26 June 2008, (ii) optional Registry-elected requirements regarding the international class of goods or services covered by registration; (iii) representation that all provided information is true and correct; and (iv) provision of data sufficient to document rights in the trademark.

Upon submission of all of the required information and documentation, the Registrar will forward the information to the Applicant's TVT for authentication. The Applicant's TVT will review the information and documentation and verify the trademark information and registration eligibility, and notify the potential registrant of any deficiencies.

The Applicant will also incorporate a SDRP. The SDRP will allow challenges to Sunrise Registrations by third parties after acceptance of the registration based on the following four grounds: (i) at the time the challenged domain name was registered, the registrant did not hold a trademark registration of national or regional effect or the trademark had not been court-validated or protected by statute or treaty; (ii) the domain name is not identical to the mark on which the registrant based its Sunrise registration; (iii) the trademark registration on which the registrant based its Sunrise registration is not of national or regional effect or the trademark had not been court-validated or protected by statute or treaty; or (iv) the trademark registration on which the domain name registrant based its Sunrise registration did not have the necessary protections on or before the effective date of the Registry Agreement.

After receiving a Sunrise Complaint, the TVT will review the Complaint to see if the Complainant reasonably asserts a legitimate challenge as defined by the SDRP. If not, the TVT will send a notice to the Complainant that the complaint does not fall within one of the delineated grounds as defined by the SDRP and that the Applicant considers the matter closed.

If the domain name is found to not meet the SERs, the TVT will immediately suspend the domain name. Thereafter, the TVT will immediately notify the Sunrise Registrant of the suspension of the domain name, the nature of the complaint, and provide the registrant with the option to correct the SER deficiencies in a timely manner or the domain name will be cancelled.

If the registrant responds in a timely manner, the response will be reviewed by the TVT to determine if the SERs are met. If the TVT is satisfied by the registrant's response, the TVT will submit a request to lift the suspension of the domain name and notify the Complainant that their dispute was denied. If the registrant does not respond in a timely manner, the TVT will then notify the Complainant that the complaint was upheld and the registration will be cancelled.

### 3.3 Trademark Claims Service

The Applicant will offer a TCS in Sunrise and Landrush as well as 90 days of general registration (30 days longer than the ICANN mandated minimum period.) The TCS will be monitored by the TVT. Registrars who are accredited to sell names in the gTLD will be required to review all domain names requested to be registered during the Trademark Claims period to determine if they are an identical match of a trademark that has been filed with the TMCH. A domain name will be considered an identical match when the domain name consists of the complete and identical textual elements of the mark, and includes

domain names where (a) spaces contained within a mark are either replaced by hyphens or omitted; (b) certain special characters contained within a trademark are spelled out with appropriate words describing it (e.g., @ and &); and (c) punctuation or special characters contained within a mark that are unable to be used in a second-level domain name are either (i) omitted or (ii) replaced by hyphens or underscores. Domain names that are plural forms of a mark or that merely contain a mark as a sub string will not qualify as an identical match.

If the Registrar determines that a prospective domain name registration is identical to a mark registered in the TMCH, the Registrar will be required to ensure that a "Trademark Claims Notice" ("Notice") in English is sent to the prospective registrant of the domain name and a blind copy is sent to the Applicant's TVT. The Notice will provide the prospective registrant with information regarding the trademark referenced in the notice to enhance understanding of the Trademark rights being claimed by the trademark holder. The Notice will be provided in real time without cost to the prospective registrant.

After sending the Notice, the Registrar will require the prospective registrant to specifically warrant within five (5) days that: (i) the prospective registrant has received notification that the mark(s) is included in the Clearinghouse; (ii) the prospective registrant has received and understood the notice; and (iii) to the best of the prospective registrant's knowledge that the registration and use of the requested domain name will not infringe on the rights that are the subject of the notice. If the warranty satisfies these requirements, the Registrar will effectuate the registration and notify the Applicant's TVT.

After the effectuation of a registration that is identical to a mark listed in the TMCH, the Registrar will be required to notify the trademark owner that a domain name representing the listed mark has been registered. A copy of this communication will also be sent to the TVT. The trademark owner then has the option of filing a Complaint under the UDRP and the URS against the domain name registrant. The Applicant will require in its relevant agreements that the Registry, Registrar, and registrant all submit to and abide by the determinations of the UDRP and the URS providers.

#### 3.4 Uniform Domain Name Dispute Resolution Policy

The Applicant will abide by all decisions rendered by UdrpP providers and will specify in its Registry Registrar Agreement ("RRA") and Registration Agreements ("RA") that all parties must also abide by all decisions made by panels in accordance with the UDRP. On the Applicant's Registry website, the Applicant will designate a Rights Protection Contact ("Rights Contact") which will receive all UDRP Complaints and decisions. Upon receipt of a determination, the Rights Contact will work with technical staff at the Registry Backend Services Provider to temporarily lock any domain names as required, and will notify the appropriate Registrar to cancel or transfer all registrations determined by a UDRP panel to be infringing.

#### 3.5 Uniform Rapid Suspension System

The Applicant will implement the URS as provided in the Applicant Guidebook. The Applicant will also specify in its RRA that all parties abide by all decisions made by panels in accordance with the URS. In response to complaints made by trademark owners that the UDRP was too cost prohibitive and slow, and that more than 70 percent of UDRP cases were "clear cut" cases of cybersquatting, ICANN adopted the Implementation Review Team's ("IRT") recommendation that all new gTLD registries be required, pursuant to their contracts with ICANN, to take part in a URS. The purpose of the URS is to provide a more cost effective and timely mechanism for brand owners than the UDRP to protect their trademarks and to promote consumer protection on the Internet.

The URS is not meant to address questionable cases of alleged infringement (e.g., use of terms in a generic sense) or for anti-competitive purposes or denial of free speech, but rather for those cases in which there is no genuine contestable issue as to the infringement and abuse that is taking place.

Unlike the UDRP which requires little involvement of gTLD registries, the URS envisages much more of an active role at the Registry-level. For example, rather than requiring the Registrar to lock down a domain name subject to a UDRP dispute, under the URS it is the Registry that must lock the domain within 24 hours of receipt of the complaint from the



URS Provider to restrict all changes to the registration data, including transfer and deletion of the domain names.

The Rights Contact will receive all URS Complaints verified by the URS Provider and provide its contact information. In the event of a decision in favour of the complainant, the Registry is required to suspend the domain name. This suspension remains in effect for the remainder of the registration period and would not resolve the original website. The nameservers would be redirected to an informational web page describing the URS Process. The WHOIS for that domain will state that the domain name will not be able to be transferred, deleted, or modified for the life of the registration. Finally, there is an option for a successful complainant to extend the registration period for one additional year at commercial rates. Upon receipt of a decision in the registrant's favour, Rights Contact will notify the Registry operator to unlock the domain name.

### 3.6 Trademark Post-Delegation Dispute Resolution Procedure ("PDDRP")

The Applicant will participate in all post-delegation procedures required by the Registry agreement, including the PDDRP, and will abide by any decisions of any PDDRP Provider as required in Specification 7 of the Registry Agreement.

## 4 Additional Rights Protection Mechanisms to be implemented by the Applicant

### 4.1 Mechanism to Protect IGO Names

The Applicant considers the Protection of Intergovernmental Organization ("IGO") names to be very important. The Applicant will use strings registered as second level domains in the .int gTLD as the basis for this protection. To register in the .int domain, the Registrants must be an IGO that meets the requirements found in RFC 1591. The .int domain is used for registering organizations established by international treaties between or among national governments and which are widely considered to have independent international legal personality. Thus, the names of these organizations, as with geographic names, can lend an official imprimatur, and if misused, be a source of public confusion or deception.

#### Reservation of IGO names:

In addition to the mandated and additional reservation of geographic names as provided for in response to Question 22, the Applicant will reserve, and thereby prevent registration of, all names that are registered as second level domains in the most recent .int zone as of 1st November 2012. By doing so, the Applicant will extend additional protection to IGOs that comply with the current eligibility requirements for the .int gTLD as defined at <http://www.iana.org/domains/int/policy/>, and that have obtained a second-level registration in the .int zone.

#### Release of IGO names:

In the future, should any of the IGOs wish to make use of the protected strings, the Registry will release and assign the domain to the respective IGOs using the following process:

- a) The IGO submits a request to the Applicant in the hope of the reserved name being assigned to themselves and provides the necessary documentation and details of the proposed registrant entity for the domain name registration.
- b) The Applicant will validate and authenticate the request to establish that it is a genuine bona fide request.
- c) Once the request has been approved the Applicant will notify the requesting IGO as well as ICANN and the GAC of the approval for the assignment of the domain name.
- d) The Applicant will issue a unique authorization code to the proposed IGO registrant.
- e) The proposed IGO registrant will then be able to request that the assignment of the domain name is given to them using the authorization code with an ICANN and gTLD accredited Registrar of their choice.

### 4.2 Mechanism for Further Protection of Capital City Names

In parallel with the Landrush Period defined in the answer to question 18, the Applicant will implement a Capital City Claim (CCC) service whereby additional protection will be granted to the capital city names of a country or territory listed in the ISO 3166-1

standard. The CCC process is as follows:

- a) Any prospective domain name registrant applying to register a domain name identical to the capital city name of a country or territory listed in the ISO 3166-1 standard will receive from the Applicant a CCC notification highlighting the fact that the applied-for domain name matches a capital city name of a country or territory listed in the ISO 3166-1 standard.
- b) A potential domain name registrant receiving a CCC notification will have to send a response to the Applicant whereby they will agree to unconditionally comply with requirements as to representations and warranties required by the Applicant in order to protect the reputation of the capital city as well as any further relevant terms and conditions provided.
- c) Unconditional acceptance of the warranties set out in the CCC notification will be a material requirement for a prospective registrant to be eligible to register the domain name in question should said prospective registrant be successful in the Landrush period.
- d) Upon registration during the Landrush period of a domain name identical to a capital city name of a country or territory listed in the ISO 3166-1 standard, the Applicant will send a notification in writing to the ICANN Government Advisory Committee ("GAC") Chair.

## 5 Efforts to promote WHOIS Accuracy

### 5.1. Thick WHOIS

The Applicant will include a thick searchable WHOIS database both accessible on port 43 as well as on port 80 (http) as required in Specification 4 of the Registry Agreement. A thick WHOIS provides numerous advantages including a centralized location of registrant information, the ability to more easily manage and control the accuracy of data, and a consistent user experience, as well as greater transparency, a factor critical to rights holders as well as law enforcement in pursuing abusive uses of a domain.

### 5.2. Bi-Annual Audits to Ensure Accurate WHOIS

The Applicant's TVT will perform a bi-annual review of a random sampling of domain names within the applied-for gTLD to test the accuracy and authenticity of the WHOIS information. Through this review, the Applicant's TVT will examine the WHOIS data for evidence of inaccurate or incomplete Whois information. In the event that such errors or missing information exists, it shall be forwarded to the Registrar, who shall be required to address such deficiencies with its Registrants.

## 6 Policies Handling Complaints Regarding Abuse and Rights Issues

In addition to the RPMs addressed above, the Applicant will implement a number of measures to handle complaints regarding the abusive registration of domain names in its gTLD that may infringe on the rights of others. Further details are described in the response to Question 28.

## 7 Registry Acceptable Use Policy

One of the key policies each new gTLD Registry needs is to have an AUP that clearly delineates the types of activities that constitute "abuse" and the repercussions associated with an abusive domain name registration. The policy must be incorporated into the applicable Registry-Registrar Agreement and reserve the right for the Registry to take the appropriate actions based on the type of abuse. This may include locking down the domain name preventing any changes to the contact and nameserver information associated with the domain name, placing the domain name "on hold" rendering the domain name non-resolvable, transferring the domain name to another Registrar, and/or in cases in which the domain name is associated with an existing law enforcement investigation, substituting name servers to collect information about the DNS queries to assist the investigation. The gTLD's AUP, set forth in our response to Question 28, will include prohibitions on phishing, pharming, dissemination of malware, fast flux hosting, hacking, and child pornography. In addition, the policy will include the right of the Registry to take action necessary to deny, cancel, suspend, lock, or transfer any registration in violation of the policy.

In addition, the Applicant reserves the right to deny attempted registrations from repeat violators of the Registry's AUP. The Registry's AUP will incorporate a certification by the registrant that the domain will be used only for licensed, legitimate activities, and not to facilitate piracy or infringements. The registrant will be required to accept

these terms as part of its registration agreement. The Applicant reserves the right to suspend or cancel a domain for violation of the Registry's AUP.

#### 8 Monitoring for Malicious Activity

The Applicant is committed to ensuring that those domain names associated with abuse or malicious conduct in violation of the AUP are dealt with in a timely and decisive manner. These include taking action against those domain names that are being used to threaten the stability and security of the gTLD, or are part of a real-time investigation by law enforcement.

Once a complaint is received or detected by the Registry, the Registry will use commercially reasonable efforts to verify the information in the complaint. If that information can be verified to the best of the ability of the Registry, the sponsoring Registrar will be notified and be given 12 hours to investigate the activity and either take down the domain name by placing the domain name on hold or by deleting the domain name in its entirety, or to provide a compelling argument to the Registry to keep the name in the zone. If the Registrar has not taken the requested action after the 12-hour period (i.e., is unresponsive to the request or refuses to take action), the Registry may place the domain on "ServerHold". Although this action removes the domain name from the gTLD zone, the domain name record still appears in the gTLD WHOIS database so that the name and entities can be investigated by law enforcement should they desire to get involved.

#### 9 Resourcing Plans Specific to Backend Registry Activities

Responsibility for rights protection rests with a variety of functional groups. The Trademark Validation Team and Sunrise Validation Teams are primarily responsible for investigating claims of marks for domain registration. The customer service team also plays an important role in assisting with the investigations, responding to customers, and notifying Registrars of abusive domains. Finally, the Policy/Legal team is responsible for developing the relevant policies and procedures.

This function will be performed by ARI. Abuse services will be supported by the following departments:

- Legal, Abuse and Compliance Team - 6 people
- Development Team - 11people

The number of resources required to design, build, operate and support the SRS does not vary significantly with, and is not linearly proportional to, the number or size of gTLDs that ARI provides Registry services to.

ARI provides Registry backend services to 5 gTLDs and has very substantial experience in estimating the number of resources required to support a Registry system.

Based on past experience ARI estimates that the existing staff is adequate to support a Registry system that supports in excess of 50M domains.

ARI protects against loss of critical staff by employing multiple people in each role. Staff members have a primary role plus a secondary role for protection against personnel absence. Additionally ARI can scale resources as required. Additional trained resources can be added to any of the above teams with a 2 month lead time.

The measures described serve to prevent and mitigate abusive behavior in the gTLD as well as activities that may infringe. These responsibilities will be undertaken by two teams. ARI's Development Team will be responsible for developing the technical platforms and meeting technical requirements needed to implement the RPMs discussed above. ARI's Legal, Abuse and Compliance Team will be responsible for the ongoing operations of our measures to minimize abusive registrations and other activities that affect trademark rights recognized through the RPMs.

ARI Legal, Abuse and Compliance Team

ARI's Policy Compliance Team will be staffed by five full-time people. These roles will

entail the following:

Policy Compliance Officers will be responsible for managing sunrise and land rush applications, supporting the SDRP, trademark claims service, URS, UDRP and Trademark PDDRP, managing communications with the TMCH, receiving, assessing and managing trademark infringement complaints received through the single abuse point of contact, escalating complaints and issues to the Legal Manager when necessary, and communicating with all relevant stakeholders (Registrars, Registrants, trademark holders, general public) as needed in fulfilling these responsibilities. This role will be provided on a 24/7 basis. Policy Compliance Officers will be required to have the following skills/qualifications: customer service/fault handling experience, complete knowledge of all RPMs offered by the gTLD and related policies, Internet sector knowledge, relevant post-secondary qualification, excellent communication and professional skills, accurate data entry skills, high-level problem solving skills and high-level computer skills.

The Legal Manager will be responsible for handling all potential disputes arising in connection with RPMs and related policies. This will involve assessing complaints and issues, liaising with legal counsel and management, resolving disputes and communicating with all relevant stakeholders (Registrars, Registrants, trademark holders, general public) as needed in fulfilling these responsibilities. The Legal Manager will be required to have the following skills/qualifications: legal background (in particular, intellectual property/information technology law) or experience with relevant tertiary or post-graduate qualifications, dispute resolution experience, Internet sector experience, strong negotiation skills, excellent communication and professional skills, good computer skills and high-level problem solving skills.

The team consists of:

- Policy Compliance Officers - 4 people
- Legal Manager - 1 person

Based on the projections and the experience of ARI, the resources described here are more than sufficient to accommodate the needs of this gTLD.

#### ARI Development Team

All tools and systems used for the transmission and receipt of information related to rights protection mechanisms will be developed and maintained by ARI. ARI has a Development Team dedicated to this purpose which will ensure that the tools are fit for purpose and adjusted as requirements change.

ARI will ensure that systems and tools will be compliant with the appropriate processes for dealing with Registrars, the TMCH, URS and Trademark PDDRP providers as these processes are defined. ARI has been and will remain active in the formulating of these processes. ARI will use its resources to remain current with the approved measures for exchange of RPM-related material or any other material relevant to RPMs, whether that is during sunrise, landrush or on an ongoing basis. This team consists of:

- Development Manager - 1 person
- Business Analysts - 2 people
- Developers - 6 people
- Quality Analysts - 2 people

Administrative Services Provider - Famous Four Media Limited

In addition to those resources set out above provided by the Registry's backend services provider the Applicant's Administration Services Provider shall provide the following extra resources:

- Sunrise Validation Team - This shall comprise of 11 employees of which at least one shall be a qualified lawyer specializing in intellectual property law.
  - Ongoing Rights Protection Team - This shall comprise of 11 employees of which at least one shall be a qualified lawyer specializing in intellectual property law.
- The two key objectives of the Sunrise Validation Team and the Ongoing rights Protection

Team (together the "Rights Team") is to:

a) Prevent abusive registrations; and

b) Identify and address the abusive use of registered names on an ongoing basis

Given that rights protection is a fundamental core objective of the Applicant it has contracted with its Registry Administration Services Provider that the number of full time personnel made available to the Applicant will be 125% of the estimated requirement to ensure that at all times the Applicant is over resourced in this area.

In addition the Applicant shall instruct outside Counsel in any relevant jurisdiction on all matters that are unable to be adequately dealt with by the Sunrise Validation Team or the Ongoing Rights Protection Team.

-end-

## 30(a). Security Policy: Summary of the security policy for the proposed registry

Q30A

The Applicant has engaged ARI Registry Services (ARI) to deliver services for this TLD. ARI provide registry services for a number of TLDs including the .au ccTLD. For more background on ARI see attachment 'Q30a - ARI Background & Roles.pdf'. This response describes Security as implemented by ARI under direction from the Registry operator taking into account any specific needs for this TLD.

### 1 SECURITY POLICY SUMMARY

ARI operates an ISO27001 compliant Information Security Management System (ISMS) for Domain Name Registry Operations; see attachment 'Q30a - SAI Global Certificate of Compliance.pdf'. The ISMS is an organisation-wide system encompassing all levels of Information Security policy, procedure, standards, and records. Full details of all the policies and procedures included in the ISMS are included in the attachment to Question 30b.

#### 1.1 The ISMS

ARI's ISMS's governing policy:

- Defines the scope of operations to be managed (Domain Name Registry Operations).
- Designates the responsible parties (COO, CTO and Information Security Officer) for governance, Production Support Group for implementation and maintenance, and other departments for supporting services.
- Requires a complete Risk Assessment (a developed Security Threat Profile for the Service - in this case registry services for the TLD - and a Risk Analysis tracing threats and vulnerabilities through to Risks) and Risk Treatment Plan (each major risk in the Risk Assessment references the Statement of Applicability indicating controls to be implemented, responsible parties, and the effectiveness metrics for each).
- Includes a series of major sub policies governing security, which include but are not limited to:
  - ICT acceptable use policy and physical security policies.
  - PSG Security Policy which outlines the registry operations policies, the management of end-user devices, classification of networks and servers according to the classification of information they contain, networking, server & database configuration and maintenance guidelines, vulnerability and patch management, data integrity controls, access management, penetration testing, third party management, logging and monitoring, and cryptography.
- Requires ongoing review:
  - Of risks, threats, the Risk Treatment Plan, client requirements and commitments, process and policy compliance, process and policy effectiveness, user etc.
  - Regular internal and external penetration testing & vulnerability scanning.
  - Ad-hoc review raised during normal operations, common sources being change management processes, scheduled maintenance or project debriefs, and security incidents.
  - Yearly review cycle which includes both internal and external audits, including external surveillance audits for compliance.

- Additional yearly security controls assessment reviews, which include analysis of the security control implementations themselves (rather than compliance with any particular standard).

- At 24 month intervals, external penetration testing of selected production services.
- periodic ISO reaccreditation

ARI's ISMS encompasses the following ARI standards:

- Configuration standards for operating systems, networking devices and databases based on several key publications, including those released by NIST (eg SP800-123, SP800-44v2, SP-800-40, SP800-41) and the NSA, staff testing and experience, and vendor supplied standards.

- Security Incident Classification, which identifies the various classifications of security incidents and events to ensure that events that qualify as security incidents.
- Information Classification and Handling which specifies the information classification scheme and the specific requirements of handling, labelling, management and destruction for each level of classification.

## 1.2 SECURITY PROCESSES

Processes are used to implement the policies. These include, but are not limited to:

### 1.2.1 Change Management

This includes change management and its sub-processes for access management, software deployment, release of small changes and scheduled maintenance. This process includes:

- The classification of changes and the flow into sub processes by classification.
- The release and deployment process for change control into production environments, outlining peer review, testing steps, approval points, checklist sets, staging requirements and communication requirements.
- The software release and deployment process with its specific testing and staged rollout requirements.
- The scheduled maintenance process and its various review points.

### 1.2.2 Incident Management

This includes incident management process and its sub-process for unplanned outages. These outline:

- How incidents are managed through escalation points, recording requirements, communication requirements etc.
- The unplanned outage procedure which applies directly to situations where the registry itself or other critical services are unexpectedly offline.

### 1.2.3 Problem Management

The goal of problem management is to drive long term resolution of underlying causes of incidents. This centres on finding and resolving the root causes of incidents. It defines escalation points to third parties or other ARI departments such as Development, as well as verification of the solution prior to problem closure.

### 1.2.4 Security Incident Management

This process deals with the specific handling of security incidents. It outlines the requirements and decision points for managing security incidents. Decision points, escalation points to senior management and authorities are defined, along with evidence-gathering requirements, classification of incidents and incident logging.

### 1.2.5 Access Management

This process handles all access changes to systems. HR must authorize new users, and access changes are authorized by departmental managers and approved by the Information Security Officer.

When staff leave or significantly change roles, a separation process is followed which ensures all access that may have been granted during their employment (not just their initially granted access) is checked and where appropriate, revoked.

Finally, quarterly review of all access is undertaken by the ISO, reviewing and approving or rejecting (with an action ticket) as appropriate.

## 2 ARI's SECURITY INFRASTRUCTURE SOLUTIONS

ARI has developed a layered approach to IT security infrastructure. At a high level, some

of the layers are as follows:

- DDoS countermeasures are employed outside ARI networks. These include routing traps for DDoS attacks, upstream provider intervention, private peering links and third party filtering services.
- Routing controls at the edge of the network at a minimum ensures that only traffic with valid routing passes into ARI networks.
- Overprovisioning and burstable network capabilities help protect against DoS and DDoS attacks.
- Network firewalls filter any traffic not pre-defined by network engineering staff as valid.
- Application layer firewalls then analyse application level traffic and filter any suspicious traffic. Examples: SQL injection, script injection, cross-site scripting, or session hijacking.
- Server firewalls on front-end servers again filter out any traffic that is not strictly defined by systems administrators during configuration as valid traffic.
- Only applications strictly necessary for services are running on the servers.
- These applications are kept up-to-date with the latest security patches, as are all of the security infrastructure components that protect them or that they run on.
- ARI infrastructure is penetration-tested by external tools and contracted security professionals for vulnerabilities to known exploits.
- ARI applications are designed, coded and tested to security standards such as OWASP and penetration-tested for vulnerabilities to common classes of exploits by external tools and contracted security professionals.
- ARI configures SELinux on its production servers. Specific details of this configuration is confidential; essentially any compromised application is extremely limited in what it can do.
- Monitoring is used to detect security incidents at all layers of the security model.
  - Network Intrusion Detection systems are employed to monitor ARI networks for suspicious traffic.
  - ARI maintains its own host-based Intrusion Detection System based on tripwire, which has now undergone four years of development. Specific details are confidential, but in summary, the system can detect any unusual activity with respect to configuration, program files, program processes, users, or network traffic.
  - More generic monitoring systems are used as indicators of security incidents. Any behaviour outside the norm across over 1,100 individual application, database, systems, network and environmental checks is investigated.
- Capacity management components of the monitoring suite are also used to detect and classify security incidents.
  - Network traffic counts, packet counts and specific application query counts.
  - Long term trend data on network traffic vs. specific incident windows.
  - CPU, Storage, Memory and Process monitors on servers.
- A second layer of hardware firewalling separates application and middle tier servers from database servers.
- Applications only have as much access to database information as is required to perform their function.
- Finally, database servers have their own security standards, including server-based firewalls, vulnerability management for operating system and RDBMS software, and encryption of critical data.

### 2.1 Physical Security Infrastructure

ARI maintains a series of physical security infrastructure measures including but not limited to biometric and physical key access control to secured areas and security camera recording, alarm systems and monitoring.

### 3 COMMITMENTS TO REGISTRANTS

We commit to the following:

- Safeguarding the confidentiality, integrity and availability of registrant's data.
- Compliance with the relevant regulation and legislation with respect to privacy.
- Working with law enforcement where appropriate in response to illegal activity or at the request of law enforcement agencies.
- Maintaining a best practice information security management system that continues to be ISO27001-compliant.

- Validating requests from external parties requesting data or changes to the registry to ensure the identity of these parties and that their request is appropriate. This includes requests from ICANN.
- Access to DNS and contact administrative facilities requires multi-factor authentication by the Registrar on behalf of the registrant.
- Registry data cannot be manipulated in any fashion other than those permitted to authenticated Registrars using the EPP or the SRS web interface. Authenticated Registrars can only access Registry data of domain names sponsored by them.
- A Domain transfer can only be done by utilizing the AUTH CODE provided to the Domain Registrant.
- Those emergency procedures are in place and tested to respond to extraordinary events affecting the integrity, confidentiality or availability of data within the registry.

The Applicant will be implementing a thorough and extensive Abuse Prevention and Mitigation plan, designed to minimise abusive registrations and other detrimental activities that may impact security and negatively impact internet users. For other security related initiatives undertaken by the Applicant see Q28.

#### 4 AUGMENTED LEVEL OF SECURITY

This TLD is a generic TLD and as such requires security considerations that are commensurate with its purpose.

The following attributes describe the security with respect to the TLD:

- ARI, follows the highest security standards with respect to its Registry Operations. ARI is ISO 27001 certified and has been in the business of providing a Registry backend for 10 years. ARI have confirmed their adherence to all of the security standards as described in this application. As per recommendation 24 this ensures that the technical implementations do not compromise elevated security standards
- Registrant will only be permitted to make changes to their domain name after authenticating to their Registrar.
- Registrants will only be able to access all interfaces for domain registration and management via HTTPS. A reputed digital certificate vendor will provide the SSL certificate of the secure site.
- Registrar identity will be manually verified before they are accredited within this TLD. This will include verification of corporate identity, identity of individuals involved / mentioned, and verification of contact information
- Registrars will only be permitted to connect with the SRS via EPP after a multi-factor authentication that validates their digital identity. This is described further ahead.
- Registrars will only be permitted to use a certificate signed by ARI to connect with the Registry systems. Self-signed certificates will not be permitted.
- The Registry is DNSSEC enabled and the TLD zone will be DNSSEC enabled. This is described in detail in our response to question 43. The following additional requirements will exist for Registrars who want to get accredited to sell this TLD:
  - Registrars must support DNSSEC capabilities within its control panels.
  - If the Registrar provides Managed DNS services to Registrants within this TLD they must provide the option for DNSSEC. This ensures that DNSSEC is deployed at each zone and subsequent sub-zones at Registry, Registrar and Registrant level as per recommendation 26.
- Registrar access to all Registry Systems will be via TLS and secured with multi-factor authentication as per recommendation 27. This is described in detail in our responses to Question 24 and Question 25.
- Registrant access to all Registrar and Registry Systems will be via TLS and secured with multi-factor authentication as per recommendation 28. This is described in detail in our response to Question 25, Question 27 and Question 29.
- All communication between the Registrar or the Registrars systems and the registry system is encrypted using at least 128 bit encryption which been designated as 'Acceptable' till '2031 and beyond' by NIST Special Publication 800-57. This includes the following communication:
  - Secure websites and control panels provided by the Registrar to the Registrant.
  - Ticketing systems provided by the Registrar to the Registrant.
  - Web and EPP interfaces provided by ARI to the Registrars.
  - Ticketing systems provided by ARI to the Registrar.
  - Any communication between the Registrant, Registrar and Registry that is deemed as



critical or contains credentials or sensitive information.

Where these requirements put controls on Registrars these will be enforced through the RRA.

#### BITS Recommendations

The Applicant will structure its policies around the BITS Recommendations where relevant to this gTLD.

The Applicants goal with this gTLD is to provide a safe and secure browsing experience for consumers of this gTLD. A domain within this gTLD that is owned, operated by or compromised by a malicious party could cause harm to consumers, to the TLD's reputation and to the reputation of the Internet itself. As such, additional controls are in place relating to the validity of registrations, as well as additional measures to ensure the correct identity of both Registrants and Registrars relating to changes made within the SRS, and to protecting the integrity of the DNS service as a whole.

The Security Standards Working Group ("SSWG") formed by BITS drafted a set of policy recommendations that should be applied to financial TLDs. The policy comprises of a set of 31 recommendations that should be adopted by ICANN in evaluating any applicant of a financial TLD. The recommendations were posted by BITS in the form of a letter to ICANN at [<http://www.icann.org/en/correspondence/aba-bits-to-beckstrom-crocker-20dec11-en.pdf>] We welcome the recommendations from SSWG and will strongly consider the recommendations relating to the implementation of this gTLD where considered relevant.

#### Coalition for Online Accountability ("COA") Recommendations

The Applicant will structure its policies around the COA Recommendations where relevant to this gTLD.

The Applicant's goal with this gTLD is to provide a safe and secure browsing experience for consumers of this gTLD. A domain within this gTLD that is owned, operated by or compromised by a malicious party could cause harm to consumers, to the gTLD's reputation and to the reputation of the Internet itself. As such, additional controls are in place relating to the validity of registrations, as well as additional measures to ensure the correct identity of both Registrants and Registrars relating to changes made within the SRS, and to protecting the integrity of the DNS service as a whole.

The COA have drafted a set of policy recommendations, also endorsed by many other international organizations representing the creative industries, that should be applied to entertainment gTLDs -especially those dependent on copyright protection. The policy comprises of a set of 7 recommendations that should be adopted by ICANN in evaluating any applicant for an entertainment-based gTLD. The recommendations were posted by COA in the form of a letter to ICANN at <http://bit.ly/HuHtmq>.

We welcome the recommendations from the COA and will strongly consider the recommendations relating to the implementation of this gTLD where considered relevant.

#### 5 RESOURCES

This function will be performed by ARI. Resources allocated to deliver the services:

-Executive Management 4 staff, Production Support Group 27 staff

ARI has ten years' experience designing, developing, deploying, securing and operating critical Registry systems, as well as TLD consulting and technology leadership.

ARI's senior management are technology and methodology leaders in their respective fields who ensure the organisation maintains a focus on technical excellence and hiring, training and staff management.

Executive Management is heavily involved in ensuring security standards are met and that continued review and improvement is constantly undertaken. This includes the:

-COO, CTO

A detailed list of the departments, roles and responsibilities in ARI is provided as attachment 'Q30a -ARI Background & Roles.pdf'.

ARI provides registry backend services to 5 TLDs and has a wealth of experience in estimating the number of resources required to support a registry system.

Based on past experience ARI estimates that the existing staff is adequate to support a registry system that supports in excess of 50M domains. See attachment 'Q30a -Registry Scale Estimates & Resource Allocation.xlsx' for more information.

ARI protects against loss of critical staff by employing multiple people in each role. Staff members have a primary role plus a secondary role for protection against personnel absence. Additionally ARI can scale resources as required. Additional trained resources

can be added to any of the above teams with a 2 month lead time.

The Production Support Group is responsible for the deployment and operation of TLD registries.

-Production Support Manager (also the ISO)

-Service Desk:

-1 Level 1 Support Team Lead, 8 Customer Support Rep(Level 1 support), 1 Level 2 Support Team Lead, 4 Registry Specialists (Level 2 support),

-Operations (Level 3 support):

-1 Operations Team Lead, 2 Systems Admin, 2 Database Admin, 2 Network Engineers

-Implementation:

-1 Project Manager, 2 Systems Admin, 1 Database Admin, 1 Network Engineers

ARI employs a rigorous hiring process and screening (Police background checks for technical staff and Australian Federal Government 'Protected' level security clearances for registry operations staff).

-end-

**© Internet Corporation For Assigned Names and Numbers.**

## **Annex 2.**



## **New gTLD Application Submitted to ICANN by: SportAccord**

**String: sport**

**Originally Posted: 13 June 2012**

**Application ID: 1-1012-71460**

### **Applicant Information**

#### **1. Full legal name**

SportAccord

#### **2. Address of the principal place of business**

Contact Information Redacted

#### **3. Phone number**

Contact Information Redacted

#### **4. Fax number**

Contact Information Redacted

## 5. If applicable, website or URL

<http://www.sportaccord.com>

## Primary Contact

### 6(a). Name

Mr. Pierre Germeau

### 6(b). Title

Digital Media Manager

### 6(c). Address

### 6(d). Phone Number

Contact Information Redacted

### 6(e). Fax Number

### 6(f). Email Address

Contact Information Redacted

## Secondary Contact

### 7(a). Name

Mr. Werner Staub

**7(b). Title**

Coordinator of the Permanent Secretariat

**7(c). Address**

**7(d). Phone Number**

Contact Information Redacted

**7(e). Fax Number**

**7(f). Email Address**

Contact Information Redacted

**Proof of Legal Establishment**

**8(a). Legal form of the Applicant**

Not-for-profit Association

**8(b). State the specific national or other jurisdiction that defines the type of entity identified in 8(a).**

Articles 60-79 of the Swiss Civil Code

**8(c). Attach evidence of the applicant's establishment.**

Attachments are not displayed on this form.

**9(a). If applying company is publicly traded, provide the exchange and symbol.**

**9(b). If the applying entity is a subsidiary, provide the parent company.**

**9(c). If the applying entity is a joint venture, list all joint venture partners.**

## Applicant Background

**11(a). Name(s) and position(s) of all directors**

**11(b). Name(s) and position(s) of all officers and partners**

Pierre Germeau	Digital Media Manager
Vincent Gaillard	Director General

**11(c). Name(s) and position(s) of all shareholders holding at least 15% of shares**

**11(d). For an applying entity that does not have directors, officers, partners, or shareholders: Name(s) and position(s) of all individuals having legal or executive responsibility**

Antonio ESPINOS ORTUETA	Council Member
Denis OSWALD	Council Member
Espen LUND	Council Member
Gian Franco KASPER	Council Member
Hein VERBRUGGEN	President
Jan FRANSOO	Council Member
Pat MCQUAID	Council Member
Ron FROEHLICH	Vice President

**Applied-for gTLD string**

**13. Provide the applied-for gTLD string. If an IDN, provide the U-label.**

sport

**14(a). If an IDN, provide the A-label (beginning with "xn--").**

**14(b). If an IDN, provide the meaning or restatement of the string in English, that is, a description of the literal meaning of the string in the opinion of the applicant.**

**14(c). If an IDN, provide the language of the label (in English).**

**14(c). If an IDN, provide the language of the label (as referenced by ISO-639-1).**

**14(d). If an IDN, provide the script of the label (in English).**

**14(d). If an IDN, provide the script of the label (as referenced by ISO 15924).**

**14(e). If an IDN, list all code points contained in the U-label according to Unicode form.**

**15(a). If an IDN, Attach IDN Tables for the proposed registry.**

Attachments are not displayed on this form.

**15(b). Describe the process used for development of the IDN tables submitted, including consultations and sources used.**



**15(c). List any variant strings to the applied-for gTLD string according to the relevant IDN tables.**

**16. Describe the applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string. If such issues are known, describe steps that will be taken to mitigate these issues in software and other applications.**

The .sport Registry (and CORE Internet Council of Registrars as its technical provider) ensured that there are no known operational or rendering problems concerning the applied-for gTLD string "sport".

Since the gTLD string "sport" is an ASCII-only string, it is safe to assume that, just like with existing ASCII-only TLD strings like .com, .net or .de, no operational or rendering problems may be expected. In particular, the name consists only of ASCII characters that are already used for existing top level domains; all the characters in the name are even used in the leftmost position of existing TLD labels. In order to confirm this, CORE Internet Council of Registrars conducted a thorough research regarding whether operational or rendering issues occurred for any existing ASCII-only top level domain in the past. The results of this research confirmed the assumption.

Since the registry does not support right-to-left scripts on the second level, bi-directional issues (like the ones described at <http://stupid.domain.name/node/683>) will not occur.

Moreover, the gTLD string exclusively uses characters from a single alphabet, does not contain digits or hyphens, and it contains characters that are not subject to homograph issues, which means there is no potential for confusion with regard to the rendering of other TLD strings.

Finally, CORE Internet Council of Registrars set up a testing environment for the .sport TLD using the CORE Registration System, including an EPP SRS, Whois and DNS servers, in order to conduct a series of tests involving typical use cases (like web site operation and e-mail messaging) for a TLD. The tests revealed no operational or rendering issues with any popular software (web browsers, e-mail clients) or operating systems.

**17. (OPTIONAL) Provide a representation of the label according to the International Phonetic Alphabet (<http://www.langsci.ucl.ac.uk/ipa/>).**

## Mission/Purpose

**18(a). Describe the mission/purpose of your proposed gTLD.**

Q18a Description

18.a.1 Mission and Purpose of .SPORT

SportAccord is submitting this application on behalf of a global Sports community to

ensure that the .SPORT gTLD shall serve as a trusted and intuitive name space for the global Sports community. The Sport Community is organized primarily through International, Regional and National Sports Federations and their members. All domain names registered within the .SPORT gTLD will be required to comply with the following three policies: Registrant Eligibility (who can register within the .SPORT gTLD); Name Selection Criteria (what domain names can be registered); and Authorized Usage Policy (how the domain names can be used). The umbrella of policies will provide the Sports Federations the confidence that the .SPORT gTLD can be operated on behalf of the global Sports community. The registry will incorporate both active and passive safeguards into its operation to ensure that these registrants continue to abide by the terms and conditions set forth in the registration agreement.

SportAccord is fully committed to operating the .SPORT gTLD in a commercially viable manner, as evidenced by the formal Request for Proposal (RFP) process that it undertook as part of this application process. However, SportAccord is also filing this application for defensive purposes to ensure that a .SPORT gTLD is kept out of the hands of a third party that for commercial reasons may turn a blind eye toward illegal and or inappropriate activity within the gTLD. While SportAccord closely analyzed the objection mechanisms currently incorporated into the Guidebook, it was decided that filing this application was the most prudent course of action in the collective interests of the global Sport community.

#### 18.a.2 SportAccord's Role and Legacy as a Trustee to the Global Sport Community

SportAccord was originally founded in 1967 when delegates from 26 international sports federations met in Lausanne. The purpose of this meeting was to address the need for permanent liaisons between the IFs, for the defense of their objectives and common goals, the preservation of their autonomy and constant exchange of information. The name "General Assembly of International Sports Federations" was adopted.

In 1976, this name was replaced by "General Association of International Sports Federations" (GAISF). GAISF represented the logical continuation of the past IFs' meetings, dealing not only with Olympic matters but also with all questions of common interest for the IFs. In 2003, in collaboration with ASOIF (Association of Summer Olympic International Federations) and AIOWF (Association of International Olympic Winter Sports Federations), GAISF launched the first SportAccord Convention. The objective was to answer a growing need of the IFs for a "one-stop-shop" where they could all hold their annual meetings, network and share knowledge. In March 2009, GAISF was rebranded SportAccord at the meeting of the 7th SportAccord International Convention in Denver.

Today SportAccord serves as the umbrella organization for all (Olympic and non-Olympic) international sports federations as well as organizers of multi-sports games and sport-related international associations. Currently, SportAccord comprises 90 international sports federations governing specific sports and 15 organizations which conduct activities closely related to the international sports federations. SportAccord has defined conditions for membership which focus on three principles: good governance, universality, and ethics/social responsibility.

#### 18.a.3 POTENTIAL BUSINESS MODELS

SportAccord is still analyzing potential use case options on the type of domain names to be permitted to be registered and by whom. This analysis is currently being undertaken by an independent Policy Advisory Board (PAB) supported by SportAccord for the purpose of recommending policy and best practice advice for the .SPORT gTLD and any other sport themed gTLD that may wish to voluntarily adopt its best practices. To date, over fifty International Sport Federations and sport event organizers have formally supported SportAccord's .SPORT gTLD initiative. Out of these supporters, over twenty have actively engaged in participating in the PAB to help make this initiative beneficial to the global Sport community.

The emerging consensus on potential business models includes the following elements.

First, SportAccord is keenly aware that any new gTLD must have relevant content to achieve recognition and trust. SportAccord has evaluated recent TLD launches and their experience with new paradigms, such as the dotAsia Pioneer program. Recent experience shows that it is critical for relevant content to be available as soon as possible and ideally before any general registration phases. SportAccord would ideally like to launch a series of information portals shortly after delegation. In addition to building awareness and recognition within the community, these portals will also provide appropriate IT staff to test the seamless and secure access of .SPORT domain names.

Second, as noted above, the .SPORT gTLD will incorporate the following minimal safeguards into any business model at the time of launch: Registrant Eligibility; Name Selection Criteria; and Authorized Usage. The current consensus involves the initial reservation of all sport disciplines (basketball, football, ski, cricket, rugby, etc.) and their corresponding acronyms (e.g. FIFA, FIG, FIBA, FIM, etc.) The exact composition of this reserve list will be compiled with the assistance and guidance of the PAB and based on new research to be conducted throughout 2012. There will also be a corresponding policy defining how reserved domain names can be assigned to the appropriate body.

Domain name registration of the .SPORT registry will normally be confined to the second level, though in special cases the .SPORT registry may also handle third-level registrations. Domains at the third level within individual sport specific domain names may be created by the appropriate International Federation who will set their own policies. Registrant Eligibility criteria at the second level within the .SPORT gTLD will be based on recommendations of the PAB acting in consultation with all International Sport Federations. Eligible registrants may include, but are not limited to: clubs, universities, athletes, sponsors, educational bodies, service providers, media, organizers, and fans.

All domain names within the .SPORT name space would be subject to suspension, cancellation or forcible change of administration in case of violation of the terms and conditions set forth in the domain name registration agreement. In addition, the registry will incorporate both active and passive safeguards into its operation to ensure that registrants abide by the terms and conditions and applicable policies.

SportAccord believes that the approach described above can achieve the following goals:

- Provide a trusted and intuitive namespace for the Sport community;
- Facilitate digital communication, from, to and within the Sport community;
- Provide a platform for the development in the digital space of the Sport community;
- Promote the values of sport; and
- Provide a namespace free from illegal gambling, and doping, violence, incitement to hatred and other content incompatible with the values of Sport.

## **18(b). How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?**

Q18b Benefit

18b HOW DO YOU EXPECT THAT YOUR PROPOSED GTLD WILL BENEFIT REGISTRANTS, INTERNET USERS, AND OTHERS?

SportAccord designs the .SPORT gTLD to offer the following benefits to community members as well as Internet users and consumers:

- \* A trusted online space for members of the Sport community seeking to access information, goods and services about sports online;
- \* Provide short, predictable and memorable domain names (in particular for sport governing bodies);

- \* Facilitate navigation to information, services, public interest content, products, etc;
- \* A protected, curated name space for the benefit of institutions, consumers and the overall community - all registrations will be subject to the following policies identified above as Registrant Eligibility, Name Selection Criteria and Acceptable Use Policy;
- \* Post registration safeguards, both active and passive, to ensure that registrants continue to act in compliance with the terms and conditions of registration;
- \* An intrinsic link between the string and the Sport community;
- \* The proactive design and development of the name space from its inception to ensure that the operation of the TLD is accountable to the Sport community;
- \* Reduced contention among registrants - because the TLD is a curated name space reserved for the sport community, a sport community member is more likely to be able to register a name that matches her/his/its needs;
- \* Predictability relating to the choice of the name and the content the user may expect from a name corresponding to a certain pattern;
- \* Facilitates clear and easy communications from, to and within the Sport community;
- \* Strong intellectual property support, including strong protections against ambush marketing (the illegitimate use of advertising opportunities related to a sport event without paying sponsorship).

18.b.1 What is the goal of your proposed gTLD in terms of areas of specialty, service levels, or reputation?

The primary mission and purpose of the .SPORT gTLD is to provide a trusted, hierarchical, and intuitive online marketplace to aggregate information, services, public interest content, and products for the Sport community. As technologies for delivering content and services evolve, SportAccord will continue to pursue and explore opportunities to distribute the above identified information and services to the community. SportAccord believes that a .Sport gTLD has the potential to provide a virtual platform to offer interactive features to deepen and broaden its relationship with existing and new members of the Sport community.

18.b.2 What do you anticipate your proposed gTLD will add to the current space, in terms of competition, differentiation, or innovation?

The sport TLD will create a name space specific to the Sport. Sport has considerable economic and cultural significance in all parts of the world. The .SPORT TLD will therefore fill a large gap in terms of consumer choice. From a competition standpoint, it creates a level playing field with respect to the market power of large unspecific TLDs. It is naturally differentiated both by its scope, by its governance model and by its intrinsic meaning from other TLDs. Innovation is greatly enhanced by the proactive structured development of the name space. The development process involves an open process with calls for proposals for purpose-built community-specific services based on designated portions of the .sport name space. This approach helps use innovative potential worldwide for the benefit of the Sport community and for the advancement of the global Internet.

The primary goal pursued by SportAccord is to provide a safe and secure online space for the Sport community. The success of the TLD will not be measured by the number of domain names registered. Instead it will be measured by the level of consumer recognition and trust that is placed place in .SPORT gTLD. Using this benchmark, SportAccord strives to achieve a level of recognition and trust comparable to that of the .EDU and .INT TLDs.

SportAccord is committed to serving the Sport community as it increasingly relies upon emerging technologies to deliver information and other products and services to its members. A .SPORT gTLD has the potential to serve as a cornerstone of this online strategy. Many members of the Sport community face a barrage of spam and phishing activities. The .SPORT TLD will be reserved from day one for trusted sources of information, goods and services relating to the Sport community.

SportAccord plans a comprehensive approach toward mitigating abusive and/or non-compliant registrations within the .SPORT name space. The .SPORT governance model reflects, among other things, the tapestry approach first proposed by ICANN's Implementation Recommendation Team (IRT). This tapestry approach includes, but is not limited to, the following requirements: registrant eligibility; name selection criteria; content and use restrictions; escalated compliance, response and takedown procedures. (See response to Question 30.)

#### 18.b.3 What goals does your proposed gTLD have in terms of user experience

Compared to most existing TLDs, the .SPORT user experience will greatly enhance predictability and memorability of domain names. The community-based focus, the orderly development process and strong intellectual property support ensure that users will generally find the services they are looking for under the names they intuitively tend to use for them. The user will also be ensured that the .SPORT namespace is free from resources that enable illegal gambling or advocate/promote doping and/or prohibited substances, or other content incompatible with the values of Sport.

In particular, the names and acronyms of international and national sport federations, the names of sport disciplines, key terms related to various sport disciplines, the names of sport clubs, as well as important slogans or keywords for sport will be assigned in an organized and controlled framework. This affords users a high degree of certainty that they will find, or have found, the intended sport-related resource if the domains end in .SPORT.

Users will have greater comfort on the context of naming variants: in key portions of the .SPORT name space, alternative names and variants (redirected to the canonical forms) will systematically be activated. Wherever spelling variants exist, all variants belonging together will be reserved and delegated to the same registrant. The registry will not charge for variants based on spelling differences, such as the use or absence of hyphens or diacritical marks in IDN strings. Thanks to these policies and a general focus on building user confidence, users in the Sport community will be able to get accustomed to the predictability of .SPORT domain names. As a result, they also avoid stumbling upon common nuisances like typo-squatting, robotized traps or domain-for-sale pages in the .SPORT TLD.

#### 18.b.4 Provide a complete description of the applicant's intended registration policies in support of the goals listed above.

As noted above, SportAccord has proposed a range of registrations that will be interwoven into the operation of the .SPORT gTLD. These proposed registration policies include, but are not limited to, the following requirements: Registrant Eligibility (who can register within the .SPORT gTLD); Name Selection Criteria (what domain names can be registered); Acceptable Use Policy (how the domain names can be used, e.g. no illegal gambling or doping); escalated compliance; response and takedown procedures. Each of these individual elements are elaborated in greater detail in SportAccord's response to Questions 28, 29 and 30.

In addition, SportAccord will implement registration policies that are differentiated between the following phases: pre-launch phase, launch phase and general availability.

During pre-launch, projects and content provision commitments are actively sought and

negotiated, especially for key public-interest portions of the name space. All potential registrants and mandate holders are subject to screening and thorough pre-validation.

During the launch phase, all registrations are thoroughly pre-validated; launch phase pre-validation depends on priority status, and eligibility requirements for each of the the fundamental categories of .sport:

1. Federations and Other Governing Bodies
  - 1.1 International, Continental, Regional, National, Local Federations
  - 1.2 Other International Sports-related Governing Bodies
  - 1.3 Public Authorities for their geographic names in relation to sports events.
2. Sport Clubs affiliated to Sports Federations
  - 2.1 Sport Clubs taking part in international-level championships
  - 2.2 Other Sports Clubs
3. Corporate Partners
  - 3.1 Recognised Sport Events Organizers
  - 3.2 Sponsors
  - 3.3 Rights-holders, sports-related media, and other sports-related Corporate Partners.
4. Athletes
  - 4.1 Athletes with participation in World Championships or Olympic Games
  - 4.2 Other eligible athletes.
5. Defensive Trademark Registrations (when not sports-related, as then they would fit in 3. above)
6. Same Categories as 1-3 above, but with extended Name Selection criteria.

At general availability, community nexus is subject to post-validation by way of an extensive compliance program, though pre-validation may be applied when and where necessary. The ongoing compliance program will regularly be adapted to current needs based on experience and audit findings. Community nexus validation combined with strong protection of trademarks helps stamp out cybersquatting and abusive registrations.

18.b.5 Will your proposed gTLD impose any measures for protecting the privacy or confidential information of registrants or users? If so, please describe any such measures

SportAccord recognizes first hand that this is an evolving area of law in which there is no international standard. The protection of privacy and confidential information of registrants and users will comply with applicable Law, in particular the European Data Protection framework. Within the bounds of applicable regulations, the registry will implement anti-data mining measures by way of rate limitation, authenticated access or white-listing/black-listing, as well as tools to prevent unauthorized recourse to repetitive automated access.

SportAccord also intends to incorporate contractual language in its Registry Registrar Agreement (RRA) modeled after language which has been included in the template Registry Agreement and which has been successfully utilized by existing ICANN gTLD registry operators.

Specifically, the following language in the RRA is will be one of the foundations of the .SPORT privacy protection measures: "Registry Operator shall notify Registrar of the purposes for which Personal Data submitted to Registry Operation by Registrar is collected, the intended recipients (or categories of recipients) of such Personal Data, and the mechanism for access to and correction of such Personal Data. Registry Operator shall take reasonable steps to protect Personal Data from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars. Registry Operator may from time to time use the demographic data collected for statistical analysis, provided that this analysis will not disclose individual Personal Data and provided that such use is compatible with the notice provided to registrars regarding the purpose and procedures for such use."

18.b.6 Describe whether and in what ways outreach and communications will help to achieve your projected benefits.

SportAccord will implement outreach and communication programs uniquely tailored to each phase of the launch of .SPORT.

The pre-launch negotiations involving calls for projects by innovators and pioneer users. They foster the intuitive usability of the .SPORT TLD with a focus on the needs of the Sport community. Once these domain names are active, they become an outreach mechanism in their own right because they establish the touch-and-feel of the .SPORT TLD in the minds of the users.

The launch phase will involve outreach mechanisms that specifically leverage participation by the local public services, locally relevant trademarks and local actors.

Through these phases and continuing through to general availability, SportAccord will be leveraging the use of its Policy Advisory Board (PAB) engaged in outreach and communication with key leadership within the Sport community. SportAccord plays a leading role in organizing the annual SportAccord Convention and IP Forum. Both are major Sport community gatherings. SportAccord will use these events to actively promote the adoption and use of the .SPORT gTLD. These events are also the natural venues for the proposed bi-annual face-to-face meetings of the .SPORT Policy Advisory Body (PAB).

## **18(c). What operating rules will you adopt to eliminate or minimize social costs?**

### Q18c Social-Costs

18.c.1 What operating rules will you adopt to eliminate or minimize social costs (e.g., time or financial resource costs, as well as various types of consumer vulnerabilities)? What other steps will you take to minimize negative consequences/costs imposed upon consumers?

The pre-launch, launch and ongoing registration phases of the .SPORT TLD are designed to minimize social costs and negative externalities. They protect potential registrants and potentially affected parties while maximizing the value of the name space to its registrants and users. This approach is based on the premise that extensive screening efforts by the registry in the early stages will create a fair and orderly name space with lower compliance costs in the long term. In phases and areas where the first-come-first-served principle tends to yield perverse results, alternative modes are used. The introduction involves the following phases:

0) Lexical Research.

- 1) A pioneer name program and name space mandate program.
- 2) A long launch phase based on domain applications and contention resolution.
- 3) Ongoing registration.

0) Lexical Research:

This is necessary for reserved names and key name assignments. Research will analyze the usage of key strings in a sport context. This initiative will be conducted by SportAccord and overseen by the PAB.

1) Pioneer name program and name space mandate program:

These programs adjudicate domain names based on an open and transparent project selection process. This process is highly economical in terms of social costs and yields

substantial external benefits.

The pioneer name and name space mandate programs are part of the .sport outreach program. It begins before delegation of the TLD. In terms of workload, it mainly affects proposers who themselves are required to demonstrate support for their projects. Support will be required to come from the segment of the community concerned with the respective portion of the name space. Given the high value of the resulting on-line resources for the community and the public interest, and given the economic benefits that can be derived from their operation, the administrative effort is largely justified. To further protect affected parties, all adjudications in name space mandates have a safety-valve clause, allowing for later adjustments based on community input. The principle of the safety-valve is that affected parties can obtain adjustments to a component of a mandate if they propose (and commit to) an improved use of the underlying domain names from a public interest perspective.

## 2) Launch phase:

The launch combines the so-called "sunrise" and "landrush" processes simultaneously in one phase. The EPP protocol with standardized extensions for TLD launch phases will be used. The use of domain registration requests instead of synchronous domain registrations means that the registry accepts multiple EPP registration requests for the same domain name. (By contrast, only a single active registration can exist for a given domain.) In this way, contention resolution can take place without time pressure in a transparent, fair and orderly manner.

During the launch phase, the time stamp of domain registration request is not relevant for priority. Adjudication is based on priority differentiation and, in case of equal priority, through a largely automated, multi-step contention resolution process. This mechanism has the lowest aggregate social costs and the aggregate highest public benefits while individually protecting each stakeholder from the risk of an excessive burden.

All applications are published on the Whois service. Requesters mark their prior rights by specifying the class they claim to qualify for in the registration request. There are five fundamental classes: sports governing bodies, sports clubs, corporate partners, athletes and defensive registrations.

Pre-defined presumptive priority rules are based on the lexical research conducted prior to launch and principles of priority. During the launch phase, the registration requests along with the presumptive priority are published on the Whois. Affected parties can submit comments regarding the presumptive priority.

For a given domain, the highest priority applications will be validated with respect to the claimed priority right. If there is more than one application for the same domain in that priority class, a contention resolution process begins. The contention resolutions process allows agreement between contenders (withdrawal and refund of application), an RFP, and, as a tie-breaker of last resort, auction.

The options available to a contender are thus designed to promote quiet resolution by way of withdrawal, RFP or auction. Thanks to automation this minimize efforts for all parties.

## 3) Ongoing registration phase:

Registrations are checked in a post-validation process and subject to an enforcement program based on statistically targeted random investigation and complaint follow-up. This program minimizes both costs to registrants and third parties. In particular, it strongly diminishes the attractiveness of rights violations, abuse or malicious behavior. Having been preceded by a controlled launch phase, the validation and enforcement workload faces no resource bottleneck and thus achieves a high degree of credibility, further dissuading abuse from the start. This mode of operation has a strong positive side effect in the interest of trademark holders.



18.c.2 How will multiple applications for a particular domain name be resolved, for example, by auction or on a first-come-first-serve basis?

As described above, during pre-launch and launch phase, the first-come-first-served principle is NOT applied. However, due to the limited and restrictive nature of the .SPORT namespace, SportAccord does envisage the case of multiple Sport community members vying for the same domain name. However, in the event there are multiple registrations a domain name either during Sunrise or Landrush, a two-step process will determine which registrant receives the domain. Contending registrants may be asked to submit a proposed use plan as well as an evaluation fee to demonstrate to SportAccord how the TLD will be used. Emphasis will be placed on developing and deploying the domain in the general interest of the Sport community. In the event that there is no clear winner, or if the contending parties prefer skipping comparative evaluation, adjudication by auction is the tie-breaker of last resort.

18.c.3 Explain any cost benefits for registrants you intend to implement (e.g., advantageous pricing, introductory discounts, bulk registration discounts).

The focus of the .SPORT TLD is the bottom-line cost to registrants and stakeholders. This takes into account all burdens, including the effort needed to register or the potential alternative cost to obtain a name on the secondary market. The direct per-unit cost is merely a component of the bottom-line cost.

The bottom-line cost is greatly reduced thanks to avoiding contention between legitimate community-based applicants on one side and speculators on the other. This is a way to avoid potential perverse effects of low prices, such as speculation with ultimately high costs to registrants, large-scale confusion and waste of the name space, or cybersquatting. Certain names such as initial reserved registry names will have special contractual terms in order to ensure that key portions of name space are used in the public interest.

18.c.4 Note that the Registry Agreement requires that registrars be offered the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years. Additionally, the Registry Agreement requires advance written notice of price increases. Do you intend to make contractual commitments to registrants regarding the magnitude of price escalation? If so, please describe your plans.

SportAccord is committed to providing domain name registration services in accordance with the periods set forth in the registry agreement and providing domain name registrants with pricing predictability. SportAccord further acknowledges that the current template Registry Agreement requires that the Registry Operator "shall offer registrars the option to obtain registration periods for one to ten years at the discretion of the registrar."

In connection with premium domain names, SportAccord will set pricing for premium/pioneering domain names, as well as renewal terms, in advance of these domain names being offered for registration. However, in connection with this class of domain names, there may be additional requirements that would legally bind these registrants in connection with the registration and use of these domain names. These terms will be known by this class of domain name registrants prior to the creation of any legal obligation between the parties.

Overall, the design of the .SPORT introduction is to ensure that prices will tend to fall over time rather than ever having to be increased. This means that initially, prices will be relatively high. Gradual adjustment follows depending on experience. This sliding price paradigm achieves the best resource allocation. Price increases for financial reasons would only have to be contemplated in case of inflation. However, it cannot be excluded that, by consensus within the Sport community, the price of certain categories

of registrations must be adjusted for policy reasons in the general interest.

## Community-based Designation

### 19. Is the application for a community-based TLD?

Yes

### 20(a). Provide the name and full description of the community that the applicant is committing to serve.

Q20a Community Served

#### 20.a.0 Name and Description

The .sport TLD serves the Sport community, which is defined at the highest level for the purposes of this application as being primarily represented through International, Regional and National Sports Federations. The potential community of individuals and organizations that associate themselves with sports is much broader, therefore SportAccord has engaged the International Sports Federations and the International Olympic Committee to comprise a Policy Advisory Board (PAB) to assist in deciding how best to responsibly expand the universe of potential registrants in the .SPORT gTLD.

Sport is defined as activity by individuals or teams of individuals, aiming at healthy exertion, improvement in performance, perfection of skill, fair competition and desirable shared experience between practitioners as well as organizers, supporters and audience.

Under the policy principles of the .sport TLD, membership in the Sport community is a necessary but not a sufficient condition for the right to hold a given domain name ending in .sport. The .sport TLD and any domain under it must be used in the interest of the entire Sport community.

Registrations under .sport are restricted to bona-fide members of the Sport community and subject to the further requirement that the registrant's role in the Sport community, as well as the registrant's use of the registered domain name, must be:

- (i) generally accepted as legitimate; and
- (ii) beneficial to the cause and the values of Sport; and
- (iii) commensurate with the role and importance of the registered domain name; and
- (iv) in good faith at the time of registration and thereafter.

Furthermore, registrants in .sport must be recognized performers, organizers, promoters or supporters of federated Sport, or belong to categories of registrants recognized by the .sport Policy Advisory Board (PAB).

The Sport community's organizational efforts for the present .sport TLD application and the subsequent operation of the TLD are built upon the community's existing organizational structures, capabilities and principles.

As a global association of International Sports Federations, SportAccord will take the operational responsibility for .sport in line with SportAccord's existing coordinating or facilitating functions in many sport-related areas.

In order to achieve as broad and inclusive representation of all Sport community stakeholders as possible, policy development for the .sport Internet TLD will be based upon advice provided by a Policy Advisory Board (PAB) specifically established for this purpose. The PAB will provide policy advice for .sport regarding eligibility, name selection, acceptable use, compliance enforcement on the basis of the .sport Policy Principles described under (A) above.

The key point is participation in, or organization of, sports activities. This means that membership in the Sport community is based on the respective person or entity's will and actions. The .sport TLD is restricted to bona fide members of the Sport community. However, as described in the Policy Principles, being a member of the Sport community does not in itself convey a right to register a .sport domain name. Furthermore, beyond the question of eligibility, there are community-based conditions of content and use.

The PAB includes representatives from International Sports Federations and other sport stakeholders. It is also open to the participation of interested parties not represented by SportAccord.

#### 20.a.1 Delineation

The Sport community relates to organizers, performers, sponsors and viewers of sport.

The wish to hold a .sport domain name is not in itself a sufficient indication of a bona fide membership of the sport community.

Furthermore, if a person has been able to register a domain name in .sport, this does not in itself entitle that person to register any other imaginable .sport domain name.

#### 20.a.2 Organization

The Sport community is finely structured and strongly organized. It stands as a key example of the bottom-up organizational paradigm, achieving local and worldwide organizational structures in most sports disciplines. The sport community organizes itself naturally and spontaneously by discipline, between disciplines and between different forms of community participation. The organization of the Sport community is not driven by central command, but rather based on voluntary integration.

Within sport disciplines, the Sport community mostly has voluntary hierarchical structures with amateurs and professional individuals organized in clubs; clubs being grouped into leagues and national federations, national federations being grouped in regional and International Sports Federations.

Sports governing bodies are essential components of the organization of the Sports community. They include International Federations (IFs), Regional and National federations or leagues for most sports disciplines. Many clubs and schools also play a governing body role, often involving more than one sport discipline. Shared organizational resources across sports disciplines exist on the national, regional and global levels, addressing common goals and concerns. (Examples are shared sport infrastructure and events, shared communications infrastructure, shared terminology and shared values.)

On an international level, Sports governing bodies collaborate through global associations of International Sport Federations (such as SportAccord), the organizations of the Olympic Movement and well as special-purpose bodies for specific shared concerns.

Institutions such as IOC (International Olympic Committee), ASOIF (Association of Summer Olympic International Federations), AIWOF (Association of International Winter Olympic Federations) and ARISF (Association of IOC Recognised International Sports Federations) unite and support some or all of the International Federations.

SportAccord is the widest representative body, with 90 International Federations (both

Olympic and non Olympic) and 15 associated members (such as International Federation of University Sports, Commonwealth Games).

#### 20.a.3 Community Establishment

The sport has existed as a cause and as an organized community as long as humanity. The strength of the sport global community is exemplified by the fact that even though sport often related to military disciplines, it was possible for enemies to compete in sport events.

The Sport community has always been a link between cultures. Its activities and organizational structures have naturally evolved over time and continue to evolve. The constant evolution of the values of Sport towards an ever greater respect for life, human dignity and diversity demonstrates the timeless nature of the Sport community.

Overall, the quest for improvement (illustrated but not constrained by the motto "citius, altius, fortius" - "faster, higher, stronger") has always been common to all members of the sport community.

As the organization of Sport is voluntary and natural, there are many community organizations. SportAccord is one of the key a global community institution of the Sport community.

#### 20.a.4. Size of Community

The Sport community is present in all countries and cultures of the world. Its formal organizational structures involve:

- over 100 International Federations
- 15,000 National Federations
- 5 million sport clubs
- Tens or hundreds of million athletes, depending on the definitions.

## **20(b). Explain the applicant's relationship to the community identified in 20(a).**

### Q20b Applicant Relationship to Community

#### 20.b.a. Relationships to community organizations

SportAccord acts as the coordinating body of the representative organizations for the Sport community regarding the .sport Internet TLD in consultation with the stakeholders of the Sport community and their representative organizations.

SportAccord is the umbrella organization for both Olympic and non-Olympic sports as well as organizers of sporting events. One of the main objectives is to unite and support international sports federations (IFs) by encouraging and facilitating knowledge sharing and by providing expertise in relevant areas. SportAccord aims to promote its Members and to increase their visibility by establishing various multi-sports games that group together similar sports and put them on a worldwide stage.

As defined in Article 2 of its Statutes, the Objectives of SportAccord are:

1. to promote sport at all levels, as a means to contribute to the positive development of society;
2. to assist its Members in strengthening their position as world leaders in their respective sports;
3. to develop specific services for its Members, and provide them with assistance, training and support;
4. to increase the level of recognition of SportAccord and its Members by the Olympic

- Movement stakeholders as well as by other entities involved in sport;
5. to actively support the organisation of multi-disciplinary games by its Members;
  6. to be a modern, flexible, transparent and accountable organisation;
  7. to organise, at least once a year, a gathering of all of its Members, and of other stakeholders of the sport movement, preferably on the occasion of its General Assembly;
  8. to recognise unconditionally the autonomy of its Members and their authority within their respective sports;
  9. to promote closer links among its Members, and between its Members and any other sport organisation;
  10. to coordinate and protect the common interests of its Members;
  11. to collaborate with organisations having as their objective the promotion of sport on a world-wide basis;
  12. to collect, collate and circulate information to and among its Members.

#### 20.b.3 Relations to the community and its constituents parts/groups

The list of the Members of SportAccord is provided in response to Question 11.

The list of Sports International Sport Federations and other international Sport organizations have formally expressed their official support for to date for SportAccord's Application for the .sport TLD is shown under Question 20d.

#### 20.b.3. Accountability Mechanisms

As an association under Swiss Law, SportAccord is entirely accountable to its members, the International Sport Federations - each of which has accountability mechanism of its own to national federations, which in turn are accountable to their constituents.

Each member of SportAccord has one vote, as required for Associations under Swiss Law. (SportAccord is an Association under Articles 60-79 of the Swiss Civil Code.) The legal framework ensures furthermore that membership cannot be sold and that the Association cannot be acquired or controlled by anyone, member or otherwise. All key decisions are reserved to the General Assembly, defined as the meeting attended by all the Members of SportAccord. The General Assembly is the supreme and legislative organ of SportAccord. The Statutes of SportAccord stipulate the as follows the Powers of the General Assembly: The General Assembly adopts or amends the Statutes, regulations and directives of SportAccord.

The General Assembly admits, suspends or expels a Member.

The General Assembly elects the President.

The General Assembly approves the budgets, financial statements and the activity report.

The General Assembly sets the amount of the subscription for Members;

The General Assembly exercises any other competence specifically attributed to it by the Statutes, regulations and directives of SportAccord.

Additional accountability and consultation mechanism are organized horizontally between International Federations, related associations of international federations, associate members of SportAccord and others Sport Stakeholders. Permanent coordination processes exist through the Yearly SportAccord Convention, IF Forum, working group involving IOC, the Association of Summer Olympic International Federations (ASOIF), the Association of International Olympic Winter Sports Federations (AIOWF), the Association of the IOC Recognised International Sports Federations (ARISF) as well as specialized sport-related organizations.

### **20(c). Provide a description of the community-based purpose of the applied-for gTLD.**

## 20c Community-based purpose

### 20.c.1 Relationship between registrant categories and community members

The .sport TLD is to serve the collective interest of the all the members of the Sport Community. For the largest portion of members of the Sport community in numeric terms - sports practitioners, spectators and fans worldwide - the greatest value of .sport lies in the reliability and trustworthiness of the .sport name space. They want to see .sport domain names in the right hands rather than to own .sport domain names themselves.

The inverse analysis comes to the same conclusion: given the intrinsic scarcity of domain names (each name can only exist once), the objective of the .sport TLD cannot be to provide a domain name each to billions of Sport community members. An approach where all Sport community members could register any .sport name would destroy the value of all .sport names. Fair allocation of names would be impossible, community members would be pushed into sterile contention. In such an environment, all stakeholders would experience .sport as a nuisance rather than a useful resource.

For this reason, the .sport TLD is designed as an orderly, curated name space. Registrant categories are differentiated and confined to the two groups playing a primary role in the creation of Sport-related content of interest to the members of the Sport community:

- Sports Performers and Organizers, who produce the sport content as publicly visible performers or organize and structure it. (This group includes Athletes, Clubs, Events, Governing Bodies.)
- Corporate Partners, who support the production of sport content by providing resources in exchange for sport-related visibility. (This group includes sponsors and media.)

These two groups of the Sport community create or help create content for the sport community and have a need for .sport domain names for that activity. They share an interest in making sure that the .sport name space is curated and controlled. The difference between the two groups lies in the relationship of their respective names, brands and slogans to Sport.

- Sports Performers and Organizers use names belonging to a Sport context, by virtue of rights specific to Sport,
- Corporate Partners use names in a general trademark context and relate their names to sport in exchange of sponsorship or other contributions to performers and organizers.

Both the registration policies and the financial model of the .sport TLD takes this reality into account. It provides a basis for priority and contention resolution as well as for funding the effort of providing a curated name space. For instance, names in .sport need to take into account sport-specific naming rights which will take precedence over generic trademark rights in many cases. On the other hand, the Corporate Partners expect the sport organizers (which includes the organization of the .sport TLD itself) to reflect their role as Sport sponsors in the treatment the non-sport trademarks within the .sport TLD. As they derive value from the visibility created by Sport, they are ready to fund the bulk of the effort to curate the name space.

The Corporate Partners thus pay higher registration fees per domain in exchange for two value propositions: (1) the legitimate sport-related visibility and (2) the curated name space free from the need for defensive registrations. The substantially higher registration fee for corporate partners in itself further enhances their protection against trademark infringement. From a moral standpoint, it is also a form of contribution to sport in the sense of sponsorship, for the benefit of the entire Sport community. The Corporate Partners thus pay for the bulk of the effort to curate the name space and in doing so create value for themselves and the rest of the Sport community.

## 20.c.2. Description of Registrant Categories

Note: the Sport community is extremely diverse. This also applies to registrant categories, even though potential registrants are only a fraction of the Sport community. The following is a simplified description of the primary registrant categories. For the purpose of analysis in other parts of the present gTLD application, further simplifications are made. The future .sport registration policy will have detailed category descriptions. It will be adapted regularly to take into account experience and the evolution of the Sport community, under the guidance of the .sport Policy Advisory Board (PAB).

**Athletes** - Comprised primarily of elite and other top-level athletes competing at the highest levels of national and international sport.

**Sports Clubs** - Comprised of the sports clubs affiliated with officially-recognized Federations (lists of names, terms and acronyms specific to the .sport TLD needs will be compiled in the lexical research phase prior to launch).

**Governing Bodies** - includes governing bodies, international, continental, national, regional federations, associations, event organizing committees, major leagues, major (national) teams. By a simplifying extension, this category includes cities and venues for sports events.

**Corporate Partners (Media and Brands)** - includes media partners (including rights holders), corporate sponsors, sporting goods manufacturers etc.

## 20.c.3. Evolution over time of registrant access to .sport

Both the principle of prudence and the objective of optimal name allocation dictate that the policy should gradually evolve from strongest validation to gradually easier access, and from high prices to gradually lower prices. (The price differentiation between categories facilitates access where necessary.)

Registrants in the .sport TLD will include athletes, event organizers, sponsors, clubs and other organizations and individuals that share the values of Sport and actively and constructively participate in, organize or support sport activities.

Any person or organization can be a member of the Sport community by faithfully adhering to its values, be it as a practitioner, organizer, supporter or as a member of the audience.

The values of Sport include respect for life, health and human dignity, organization in the common interest, adherence to rules, honesty, courage, loyalty, equal opportunity, objective metrics and not counting luck as proof of achievement.

## **20(d). Explain the relationship between the applied-for gTLD string and the community identified in 20(a).**

### Q20d String Relationship to Community

#### 20.d.1. Relationship to the established name of the community

The TLD string ".sport" matches the name of the community, Sport, in the generally accepted sense of the word, in French, English and many other internationally used

languages.

As stated above, Sport is usually defined as a physical or athletic activity, with often an element of competition. Sport can be primarily physical, primarily mind, primarily motorized, primarily coordination, primarily animal-supported. The sport proposed should in no way be harmful to any living creatures. The sport should not rely on any "luck" element specifically designed into the sport. The activities of the Sport community related to Learning/teaching, Performing, Organizing, Viewing, Developing, Improving (fortius, altius, citius). All these aspects are part of the generally accepted connotations of the word "sport" and also match the spirit and the letter of the community definition.

#### 20.d.2. Relationship to the identification of community members

The identification of community members is based on the Community delineation described in the response to Question 20(a)

Note: Community membership is a necessary condition for the right to hold a .sport domain name, but is not in itself a sufficient qualification, as is also described in the response to Question 20(a).

The activities inside the Sport the sport community demonstrate the same constancy throughout millennia, relating to

- learning, practice and teaching of sport,
- organizing sport activities and events,
- viewing or otherwise witnessing sport,
- developing equipment, tools, criteria and procedures in support of sport.

#### 20.d.3. Other connotations of the word sport

The word sport has no frequently-used connotations that are unrelated of the Sport community.

#### 20.d.4. Express support from Sport community organizations

The following Organizations have formally expressed their official support for to date for SportAccord's Application for the .sport TLD:

IOC	INTERNATIONAL OLYMPIC COMMITTEE
ASOIF	ASSOCIATION OF SUMMER OLYMPIC INTERNATIONAL FEDERATIONS
AIOWF	ASSOCIATION OF WINTER OLYMPIC INTERNATIONAL FEDERATIONS
ARISF	ASSOCIATION OF IOC RECOGNISED INTERNATIONAL FEDERATIONS
BWF	BADMINTON WORLD FEDERATION
CGF	COMMONWEALTH GAMES FEDERATION
CIPS	CONFEDERATION INTERNATIONALE DE LA PECHE SPORTIVE
CMAS	CONFEDERATION MONDIALE DES ACTIVITES SUBAQUATIQUES
CSIT	CONFEDERATION SPORTIVE INTERNATIONALE DU TRAVAIL
FAI	FEDERATION AERONAUTIQUE INTERNATIONALE
FEI	FEDERATION EQUESTRE INTERNATIONALE
FIAS	FEDERATION INTERNATIONALE AMATEUR DE SAMBO
FIBA	FEDERATION INTERNATIONALE DE BASKETBALL
FIDE	FEDERATION INTERNATIONALE DES ECHECS
FIE	FEDERATION INTERNATIONALE D'ESCRIME
FIFA	FEDERATION INTERNATIONALE DE FOOTBALL ASSOCIATION
FIG	FEDERATION INTERNATIONALE DE GYMNASTIQUE
FIH	FEDERATION INTERNATIONALE DE HOCKEY
FIM	FEDERATION INTERNATIONALE DE MOTOCYCLISME



FIQ FEDERATION INTERNATIONALE DES QUILLEURS  
 FIS FEDERATION INTERNATIONALE DE SKI  
 FISA FEDERATION INTERNATIONALE DES SOCIETES D'AVIRON  
 FISU FEDERATION INTERNATIONALE DU SPORT UNIVERSITAIRE  
 FIVB FEDERATION INTERNATIONALE DE VOLLEYBALL  
 FMJD FEDERATION MONDIALE DU JEU DE DAMES  
 IAAF INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS  
 IAF INTERNATIONAL AIKIDO FEDERATION  
 IAKS INTERNATIONAL ASSOCIATION FOR SPORTS AND LEISURE FACILITIES  
 ICF INTERNATIONAL CANOE FEDERATION  
 IDBF INTERNATIONAL DRAGON BOAT FEDERATION  
 IFA INTERNATIONAL FISTBALL ASSOCIATION  
 IFBB INTERNATIONAL FEDERATION OF BODYBUILDING & FITNESS  
 IFF INTERNATIONAL FLOORBALL FEDERATION  
 IFMA INTERNATIONAL FEDERATION OF MUAYTHAI AMATEUR  
 IFSS INTERNATIONAL FEDERATION OF SLEDDOG SPORTS  
 IGF INTERNATIONAL GOLF FEDERATION  
 IJF INTERNATIONAL JUDO FEDERATION  
 IKF INTERNATIONAL KORFBALL FEDERATION  
 ILS INTERNATIONAL LIFE SAVING FEDERATION  
 IOF INTERNATIONAL ORIENTEERING FEDERATION  
 IPC INTERNATIONAL PARALYMPIC COMMITTEE  
 IPF INTERNATIONAL POWERLIFTING FEDERATION  
 IRB INTERNATIONAL RUGBY LEAGUE  
 IRF INTERNATIONAL RACQUETBALL FEDERATION  
 ISA INTERNATIONAL SURFING ASSOCIATION  
 ISAF INTERNATIONAL SAILING FEDERATION  
 ISSF INTERNATIONAL SHOOTING SPORT FEDERATION  
 ITTF THE INTERNATIONAL TABLE TENNIS FEDERATION  
 IWGA INTERNATIONAL WORLD GAMES ASSOCIATION  
 IWUF INTERNATIONAL WUSHU FEDERATION  
 JJIF JU-JITSU INTERNATIONAL FEDERATION  
 TWIF TUG OF WAR INTERNATIONAL FEDERATION  
 UCI UNION CYCLISTE INTERNATIONALE  
 WA WORLD ARCHERY FEDERATION  
 WAKO WORLD ASSOCIATION OF KICKBOXING ORGANIZATIONS  
 WDF WORLD DART FEDERATION  
 WKF WORLD KARATE FEDERATION  
 WMF WORLD MINIGOLFSPORT FEDERATION  
 WSF WORLD SQUASH FEDERATION  
 WTF WORLD TAEKWONDO FEDERATION

## **20(e). Provide a description of the applicant's intended registration policies in support of the community-based purpose of the applied-for gTLD.**

Q20e Intended Policies and Enforcement

### 20.e.0. General registration policy principles

As described in the response to Questions 20(a), two types of conditions must be fulfilled for the right to register a .SPORT name. These are:

- (A) community membership and
- (B) the additional requirements that the registrant's role in the Sport community, as well as the registrant's use of the registered domain name, must be:
  - (i) generally accepted as legitimate; and
  - (ii) beneficial to the cause and the values of Sport; and

- (iii) commensurate with the role and importance of the registered domain name; and
- (iv) in good faith at the time of registration and thereafter.

Furthermore, registrants in .sport must be recognized performers, organizers, promoters or supporters of federated Sport, or belong to categories of registrants recognized by the .sport Policy Advisory Board (PAB).

These conditions must always be fulfilled. The strength of the validation is kept in line with the importance of the underlying domain name based on the assumption that a typical user would reasonably make.

#### 20.e.1. Eligibility, Validation

To facilitate validation, registrants are required to state their intended use of the registered domain name. A false statement of intended use is an indication of bad faith and can be the basis for the suspension of the domain name.

Registrants are further required to have an administrative contact in the Performers or organizers of sport. This is verified in part automatically (through the postal code in the administrative contact record and by a human eyes review pre-validation or post-validation).

The administrative contact may be any person or entity having received and accepted the mandate to act as such for the respective domain. (The registrar may act as administrative contact.) Any communications addressed to the administrative contact are deemed to have been brought to the attention of the domain holder. Validation checks include machine and human verification of address accuracy.

The validation may be assisted through pre-identification of potential registrants using existing community channels, in particular through promotion codes.

After the launch phase, the validation mode goes from pre-validation to post-validation and later to statistically targeted random validation, backed up by a ongoing enforcement program.

The validation and enforcement program are supported by an integrated issue tracking system. This system allows validating agents and personnel to cooperate and interact with the registrant. The system keeps track of decisions made by the agents and stores supplemental documentary evidence that may be supplied by the registrants.

#### 20.c.2. Name Selection

The fundamental rule on which name selection is based is part of the policy principles: the registrant's presence in Performers or organizers of sport and use of domain must be commensurate to role and importance of the domain registered.

#### 20.c.3. Content and use

The role and importance of the domain name is based on the meaning an average user would reasonably make in the context of that domain name.

This criterion also applies to the strength of the documentation or proof required of the registrant.

Pre-defined uses of the name space, especially names with significance for Performers or

organizers of sport from a public service or public interest standpoint, is developed through special programs with strong selection processes, based on proposals made by parties interested in providing content on such domain names. This process not only covers the identity and legitimacy of the party entrusted with the operation of the domain(s), but also a defined obligations with respect to the content to provide for the benefit of the public.

#### 20.c.4. Enforcement

The purpose of the enforcement program is to protect the credibility of the .SPORT TLD for use by the international public. In particular, it upholds the community-based purpose of the .SPORT TLD and helps prevent misuse or malicious behavior.

The enforcement program is based on statistically targeted random investigations and on a complaint follow-up process. The statistical targeting is strongly automated and involves the use of search engines and the analysis of registry data related to behavior of registrants.

Depending on the type of misuse to be investigated, web site content or content sent to victims of abuse will reviewed and analyzed by investigators.

Enhanced investigation takes place if the registrant has a bad track record in terms of compliance with the rules of the .SPORT TLD. Other violations of public record (such as UDRP or URS cases) will also be taken into account.

If the intended use cannot be deemed legitimate or has a negative impact on the sport community, the registration is rejected. If content or use of an existing .sport domain demonstrates that the registrant has shown bad faith by stating a false intended use, the domain name is suspended.

If a registrar is complicit with systematic violations of the .sport policies or causes an unacceptable burden for the validation and enforcement program by negligence, the registry can restrict that registrar's access to the new registrations, subject its inventory of .sport domains to enhanced investigation and require it conduct its own post-validation program.

An appeals process is available for all administrative measures taken in the framework of the enforcement program. The first instance of the appeals process is managed by the registry service provider.

The Policy Advisory Board (PAB) set up by SportAccord provides the second and last instance of an appeals process by itself or entrusts it to an alternative dispute resolution provider. The charter of the appeals process is promulgated by the PAB.

### **20(f). Attach any written endorsements from institutions/groups representative of the community identified in 20(a).**

Attachments are not displayed on this form.

## **Geographic Names**

## 21(a). Is the application for a geographic name?

No

## Protection of Geographic Names

### 22. Describe proposed measures for protection of geographic names at the second and other levels in the applied-for gTLD.

#### Reserved List of Geographic Names

In accordance with Specification 5 of the proposed TLD Registry Agreement published as Attachment to Module 5 of the Applicant Guidebook by ICANN, and with Governmental Advisory Committee (GAC) advice on geographic names at the second level, the .sport Registry will put the following names on the reserved list, therefore making them unavailable for registration or any other use:

- the short form (in English) of all country and territory names contained on the ISO 3166-1 list, as updated from time to time, including the European Union, which is exceptionally reserved on the ISO 3166-1 list, and its scope extended in August 1999 to any application needing to represent the name European Union;
- the United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World; and
- the list of United Nations member states in 6 official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names.

Technically, this is achieved by utilising the advanced domain name rule engine that is part of the CORE Registration System and described in detail in the answer to Question 28. As laid out there, the underlying set of checks can be tuned to block registrations of .sport names based on various syntactic rules, multiple reserved names lists, and patterns. Prior to the launch of the .sport TLD, the rule engine will be configured in accordance with the reserved list mandated by Specification 5, which means that the listed names are not available for registration by registrars.

#### 2. Exceptions

However, the .sport Registry recognizes that there may be cases where a request to register and use a geographic name at the second level should be considered legitimate, valid and useful.

For registration requests from the relevant public authority, the .sport Registry will put in place the procedure agreed between the GAC and Afilias for the .info gTLD, as referenced in the letter written by Mohamed Sharil Tarmizi, GAC Chair, on Sept 9, 2003; see

<https://gacweb.icann.org/download/attachments/1540128/dotinfocircular1.pdf>.

Technically, the registrar needs to use the authorisation code supplied by the registrant as the domain authinfo in the EPP "'domain:create'" request, which will let the request bypass the rule engine's blocking mechanism and permit the registration.

### 3. Additional monitoring

The .sport Registry does not plan to monitor use of geographic names below the second level (i.e. subdomains used by a .sport TLD domain name registrant), as those procedures are both difficult and ineffective. Available dispute resolution mechanisms are a more adequate resolution procedure in cases where third or higher level domains unduly use country or other territory names.

## Registry Services

### 23. Provide name and full description of all the Registry Services to be provided.

#### Q23 - Registry Services

##### 1. Overview

CORE Internet Council of Registrars will provide the technical registry services for the operations of the .sport Registry. The CORE Registration System offers the usual registry services for the .sport TLD: Receipt of data from registrars concerning registration of domain names and name servers via EPP (SRS; see also answer to Question 24, SRS Performance); Dissemination of top-level domain (TLD) zone files (DNS; see also answer to Question 35, DNS service, configuration and operation of name servers); Dissemination of contact or other information concerning domain name registrations (port-43 Whois, web-based Whois; see also answer to Question 26, Whois service); Internationalised Domain Names (see also answer to Question 44, Support for Registering IDN domains); DNS Security Extensions (DNSSEC; see also answer to Question 43, DNSSEC). These services are introduced below. For more detailed descriptions, please refer to the answer to the respective question in the gTLD Applicant Guidebook. Additional benefits offered by the registry are full support for Internet Protocol version 6 (IPv6), data escrow, registrar reports and support for Sunrise and Landrush phases. All of these are compliant with the new gTLD requirements. No further registry services according to the definition in the gTLD Applicant Guidebook are offered for the .sport TLD.

The Shared Registry System (SRS) is the central coordinating instance in the overall system concept. It is the authoritative source of the domain, host and contact data, provides client/server-based access methods for the registrars and internal personnel to this data, is responsible for the zone generation, performs accounting and reporting, and feeds the Whois servers.

The SRS is responsible for managing the domain registrations by accepting requests for the creation, update and deletion of domains and related information from the registrars, who act on behalf of the registrants.

The CORE Internet Council of Registrars and its developers have ample experience in designing, developing and operating shared registry systems. The CORE Registration System is compliant with established standards like Internet Engineering Task Force (IETF) Requests for Comments (RFCs) and can be customised for the specific needs of a top level domain, ensuring Internet Corporation for Assigned Names and Numbers (ICANN) gTLD standards compliance.

CORE Internet Council of Registrars has been entrusted with the technical operation of the .cat and .museum TLDs on behalf of the puntCAT and MuseDoma registries. Therefore,

CORE has the knowledge and experience that are necessary to provide the mentioned registry services. Since the software development is handled exclusively in-house, the .sport Registry Services do not depend on any external companies or developers. Software development at CORE is always based on principles like efficiency, scalability and security by design.

## 2. Infrastructure Design

### 2.1 Goals

The design of the .sport Registry infrastructure achieves three goals:

#### 2.1.1 High Availability

The resolution of domain names by the Domain Name System (DNS) infrastructure is the most critical part. If it fails, not only a large fraction of Internet users is affected, but other Internet infrastructure depends on the domain name resolution as well, causing a cascade of failures.

The shared registry system itself is also in the focus. While theoretically, a short outage would not have a direct and larger impact to the TLD users, a longer outage can become problematic, especially in the light of DNSSEC: If the registry is unable to re-sign the zone in time, the zone will become bogus and the effect will be similar to a failure of the whole DNS infrastructure.

#### 2.1.2 Scalability

The aspects of scalability must be observed for two reasons: The infrastructure must grow with the demand; economic considerations let it seem unreasonable to launch with oversized hardware equipment. The software design must be able to cope with increasing demand, it must allow the long term upgrade of the infrastructure. Scalability must also be provided for unforeseeable load peaks. The infrastructure must be resilient and one step ahead; spare resources must be available.

#### 2.1.3 Security

In an increasingly adverse environment, security is a cardinal goal. Various attack vectors need to be addressed. For example, the public infrastructure must be protected against pure (distributed) denial of service attacks and exploits of bugs in devices, operating systems and application software, and the SRS must be protected against intrusion by third parties with the intent of deletion or manipulation of data or stealing private keys used for DNSSEC.

## 2.2 Design Principles

The design principles that follow these goals are as follows:

- \* Shared Registry System (SRS)
- \*\* The SRS (actually all services except the name servers) is run on two sites, a primary and a secondary site. These sites are geographically separated for an event of force majeure that makes one of the sites unavailable.
- \*\* Fail-over strategies are used systematically, either by the software itself or by employing cluster technologies where applicable.
- \*\* Systematic data replication/backup/escrow is ensured.
- \*\* Modularisation of the software and avoidance of monolithic structures improves scalability and maintainability.

- \*\* Intrinsic support for multiple instances of software components to distribute load is guaranteed.
- \*\* State-of-the-art security technology reduces chances for attackers to a minimum.
- \*\* Some components like the Extensible Provisioning Protocol (EPP) interfaces may run in multiple instances. Incoming requests are distributed to these instances with the help of load balancers. Excluding instances one by one allows maintenance in respect to both hardware and software without interrupting the actual service.
- \* DNS Infrastructure
- \*\* Diversity in software and hardware increases security.
- \*\* Use of Anycast networks ensures high availability.

### 3. Features

#### 3.1 Receipt of Data from Registrars

The SRS receives data from the registrars, writes the data into the database and passes on TLD zone files to the DNS services. The registry has a Whois function to make information about contacts and domain registrations available to the general public. DNS and Whois are updated dynamically. The registry TLD name servers receive DNSSEC-signed master zone data.

The .sport TLD will be operated as a so-called "thick" registry, i.e. the data for domain registrants, administrative contacts, technical contacts and billing contacts is stored in the registry repository. Registry policy mandates that each domain must be associated with exactly four contacts, one contact of each type. In contrast to a "thin" registry (which doesn't store contact information), this allows the registry Whois service to provide contact information itself, i.e. it doesn't rely on registrars to operate their own Whois services for the inquiry of domain contact data.

Registrars can provide the data necessary for the registration of domains, contacts and name servers (hosts) in two ways. Firstly, using the EPP interface of the CORE Registration System, which allows completely automatic processing of requests. Secondly, there is the option of using a password-protected web interface ("Control Panel"). The Control Panel offers copious amounts of information and many tools for registrars and registry administrators. Registry objects can be inquired and modified, creating new objects is possible just as easily. In addition, automatically generated reports for registrars are made available for download. Each report contains detailed information about the registry objects of the respective registrar. The Control Panel also allows the administration of registrars. Such administrative functions are of course limited to users belonging to the registry. These can also - their privileges permitting - inspect the tariffs and make corrective entries in the billing system.

#### 3.2 Internationalised Domain Names

The CORE Registration System supports internationalised domain names (IDN, see RFC 3490, 5890-5894) in several ways.

In the extensible provisioning protocol (EPP), there are various XML elements that expect a domain name. The EPP implementation of the CORE Registration System accepts domain names in A-label notation (punycode) as well as in U-label notation (unicode). The former notation is preferred; all EPP responses use A-labels, even if the respective request used U-labels.

Internationalised domain names are not only supported as first-class objects, but also as so-called variants of a base domain. In this case, a domain has more than one representation. The alternatives are organised as attributes of the base domain, meaning they cannot exist by themselves. This has the advantage that they are much less subject to domain squatting, since the variants always belong to the same registrant as the base domain. In the DNS the variants are represented by DNAME records (as it is done in the

.cat and .gr TLDs) or published with the same name servers as the base domain. A precondition for the use of variants is that the specified language(s) allow the derivation of a canonical name from any valid domain name. This is, for example, achieved by the principles defined in RFC 3743 for the Chinese/Japanese/Korean languages.

For more information about IDN support, please refer to the answer to Question 44, Support for Registering IDN Domains.

### 3.3 DNSSEC

Support of the DNSSEC extension according to RFC 5910 allows to specify the DNSKEY data. The CORE Registration System calculates the delegation signer (DS) records from the DNSKEY data and adds them to the zone file. Further information about the DNSSEC implementation can be found in the answer to Question 43, DNSSEC.

### 3.4 IPv6 Support

The .sport Registry infrastructure supports IPv6 on all levels: Firstly, the name servers use IPv6 addresses on the DNS protocol level (port 53), i.e. domain names can be resolved by using the IPv6 protocol. Secondly, the registry software is able to assign IPv6 addresses to in-zone hosts as provided in the EPP Host Mapping (RFC 5732) and to publish these addresses via AAAA records in the zone. Thirdly, registrars can connect to the registry by using the EPP transport protocol via IPv6. Fourthly, the Whois service (both port 43 and web interface) can be accessed via IPv6. Fifthly, the registrar web interface can be accessed via IPv6. Details about the IPv6 capabilities can be found in the answer to Question 36, IPv6 Reachability.

## 4. Zone Management

Whenever the authoritative data of a domain or host is altered, the change is forwarded to the DNS component and other components. Upon reception of this change, the DNS-specific database tables are updated. The structure of these tables directly corresponds to the structure of the zone file, so that the zone file can be generated with little effort.

The generated zone is then fed into the DNSSEC signing component. Since the zone changes only marginally between the runs, the signing component re-uses RRSIG signatures and NSEC3 name mappings from previous runs. This reduces the run time of the signing process by an order of magnitude on average.

In the next step, the zone is delivered to the ironDNS system, which manages the distribution of the zone to the name servers independently. For more details about this process, please refer to the answer to Question 35, DNS Service.

The whole process is covered by integrity checks. The zone is inspected by heuristic rules, for example, the change in size between the previous and new zone is determined and checked against limits. If there is any evidence that the zone may contain problems, the deployment process is halted and manual inspection by the support team is requested. Where applicable, the distribution is accompanied by safeguards, like cryptographic digests, to allow the detection of changes or truncations.

## 5. Whois service

The CORE Registration System contains a public service that can be used to inquire data of registry objects (i.e. domains, contacts, hosts and registrars), the Registration Data Directory Services (RDDS). At the moment, this is implemented as a Whois service. Details regarding the Whois service can be found in the answer to Question 26, Whois service. Abuse of this service is effectively prevented, for details refer to the answer to



Question 28, Abuse Prevention and Mitigation.

## 6. Escrow and Reports

The SRS also handles the monthly reports to ICANN and the generation of escrow files according to ICANN's specifications. The reports and escrow files are automatically sent to ICANN and the escrow provider, respectively.

In its role as the registry backend operator for .museum and .cat, CORE Internet Council of Registrars has continuously provided reliable registry data escrow services for these registries, in full compliance with the escrow specifications of the respective ICANN registry agreements.

In the same fashion, CORE also produces registrar escrow files for its registrar activities, in full compliance with ICANN's Registrar Data Escrow (RDE) requirements.

Fully automated daily processes are in place that create the full or incremental XML escrow files as required, then split, sign and encrypt them according to the requirements from ICANN and the escrow agent, and finally transfer the resulting data to the escrow agent's server. The escrow files contain the main SRS data, zone data and RDDS/Whois data. CORE Internet Council of Registrars also provides access to full zone data for the .museum and .cat TLDs to eligible parties upon sign-up to this service. Access is granted to authenticated users via an SSL/TLS-secured web interface.

All registry agreements with ICANN require the registry operator to submit a monthly report about the registry's activities, inventory and performance to ICANN. CORE's registry system is able to create such a report containing (among other things) data about: domain/host inventory statistics, domain transfer statistics and domain renewal/deletion/restore statistics per registrar; service availability, outage durations and response times for SRS, DNS and Whois; Whois request statistics.

In addition, the following reports may be created for each registrar: Inventory report: domain, contact and host objects sponsored by the registrar on a specific date; Transfer report: transfers in progress, completed or rejected on a specific date; Autorenewal report: domains being automatically renewed on a specific date; Billing report: detailed information about every single billing operation that has been performed on the registrar's account (including refunds).

## 7. Support for Sunrise and Landrush Phases

A common problem that arises during the initial launch of a new top level domain (and, potentially, subsequently when new features like IDNs are introduced) is to ensure that trademark owners or otherwise eligible parties can claim their names in an organised manner that can be audited in case of legal disputes. To this end, registries usually offer a so-called "Sunrise" phase, i.e. a certain period of time during which only eligible parties are allowed to register domain names. Eligibility has to be proved by providing information about a trademark related to the domain name, for example. Such additional information is provided by the registrars during registration of the domain name, with the help of a special EPP extension (see answer to Question 25, Extensible Provisioning Protocol, for details).

The validity of a Sunrise domain name application is checked by an external service provider, the so-called Trademark Clearinghouse. At the time of writing, ICANN has issued a request for information for providers to perform the Trademark Clearinghouse functions. It is envisaged that the CORE Registration System will use a suitably defined interface of the Trademark Clearinghouse to submit requests according to the trademark data submitted by domain name applicants.

To facilitate the handling of Sunrise applications, the CORE Registration System is equipped with a built-in issue system that offers registry personnel a convenient web

interface to review domain name applications and to approve or reject them accordingly.

The issue system allows searching for applications by various criteria (e.g. domain name or current workflow/approval state). It offers a two-level review workflow that allows the delegation of pre-selection tasks to the first level support staff, after which a final decision - if still required - can be made by second level personnel. All application details, including registrant information and all supplied trademark information is conveniently displayed. The issue system fully tracks and documents application status and history, allowing for a complete audit in case of legal issues. Furthermore, it is fully integrated with the registry backend, i.e. it automatically notifies the SRS about the reviewers' decisions and immediately activates the respective domain in case of an approval.

The issue system was first used during puntCAT's elaborate multi-phase Sunrise period in 2006 and proved to be an invaluable tool for efficiently organising a TLD roll-out process.

Another problem registries are facing, mostly during initial launch phases, is the unbiased allocation of domains in case of multiple competing valid applications for the same name. This is predominantly an issue during the so-called "Landrush" phase (i.e. the beginning of a TLD's general availability (GA) when anybody may register a domain), but it may also apply to Sunrise cases in which multiple applicants present valid trademarks or similar proof of eligibility.

In the past, many registries have chosen a simple first-come, first-served approach to handle these situations - the registrar who was able to submit the first registration request after the opening of the GA phase was awarded the name. However, this seemingly fair model not only puts an unnecessary load on the registry's server infrastructure, it also gives registrars an unfair advantage if their systems are located closer (in terms of network topology) to the registry's SRS. The system also encourages the creation of "pseudo" registrars just for the purpose of getting more parallel connections to the registry system for fast submission of as many requests as possible.

Consequently, CORE suggests an alternative, auction-based approach for Landrush situations.

CORE's registry system provides the technical infrastructure required to conduct auctions for the assignment of domain names to the highest bidding registrant.

Its core component is an EPP extension that registrars may use to place a bid for a domain name and obtain information about the status of an auction they participate in (refer to the answer to Question 25, Extensible Provisioning Protocol, for more information).

The CORE Registration System offers built-in support for Sunrise and Landrush phases. In the case of the .sport Registry, both a Sunrise phase and a Landrush phase will be supported.

## 8. Domain Expiration and (Auto-)Renewal Policies

Domains are registered for a certain interval only. The possible intervals are multiples of a year. The system maintains a so-called "expiration" date, which represents the date up to which the registrar has paid the fees for the respective domain. This date is also published on the public Whois servers and is included in reports generated for the registrars.

Domains must be registered at least for a year. The registration period can be extended at any time by issuing a "renew" request to the registry. However, the resulting expiration date must be not beyond 10 full years in the future.

Since usually the registrars use the same intervals for their customers, there is always

the problem that some customers make up their decisions whether to keep a domain or to delete it at the very end of the registration term. To accommodate the registrars with this problem, it is common practice among the registries to grant a so-called grace period, which starts at the expiration date. During this 45 day period, the registrar may delete the domain without paying any fees for the already started next term. If after 45 days the domain has neither been deleted nor renewed by the registrar, the registry itself automatically renews the domain by one year.

## 9. Billing

The registry maintains an account for each registrar. All registrations, transfers, renewals and other billable operations have to be prepaid, and corresponding fees are deducted from the registrar's account.

Whenever a billable operation is attempted, the registrar's account is first checked for sufficient funds. If the account is lacking the required funds, the operation is rejected. A corresponding result code is returned if the rejection affects a realtime EPP command, as opposed to e.g. an internal autorenew operation that was not directly triggered by a registrar command. However, the autorenewal of expired domains is treated differently; to avoid accidental domain deletions, autorenewals are continued even in case of insufficient registrar funds. Non-billable operations (like all read-only commands) and activities that trigger refunds are always executed, regardless of the registrar's account balance.

If sufficient funds are available, the operation is executed and the registrar's account is charged with the corresponding fee (if the operation was completed successfully).

Each registrar may provide an account balance threshold value. The billing subsystem will automatically send an e-mail containing a "low account balance warning" to the registrar whenever the registrar's funds drop below the configured threshold value.

Some commands, like domain deletions or transfer cancellations, result in refunds if corresponding grace periods apply. The affected registrar's account is immediately credited for each refund.

The billing subsystem utilises its own database, containing tables for registrar accounts (including current balance and warning threshold), tariffs for billable operations along with their validity periods and book entries (each one representing a single credit or debit).

The SRS component responsible for actual registry operation communicates with the billing component. Any billable or refundable event (such as domain creation, domain deletion within grace period, request for domain transfer, domain renewal or autorenewal) results in the lookup of a suitable tariff in the tariff table, the creation of a corresponding record in the book entry table and the update of the registrar's account.

The entire implementation is carefully designed to ensure billing accuracy. The checking for sufficient funds as well as the processing of book entries representing the billable events are always done within the same database transaction that performs the actual billable repository change, thus ensuring transactional integrity and account consistency.

## 10. OT+E and Staging Environment

In addition to the production registry system, CORE Internet Council of Registrars provides an independent Operational Test and Evaluation (OT+E) system to give registrars the opportunity to develop and test their client software in a self-contained "sandbox" environment that does not interfere with production business.

The OT+E system emulates the behaviour of the production system as closely as possible to allow for realistic testing. It also includes a Whois server, as well as a name server

fed from the sandbox data, which facilitates the testing of transfer policy and DNSSEC implementations on the registrar side, respectively.

The OT+E system differs, however, from the production system in some respects to further simplify development for the registrars: Firstly, each registrar is granted two independent identities on the OT+E system. This enables each registrar to test domain transfers easily by creating domains with the first identity and transferring them to the second identity (or vice versa). Secondly, to allow short turnaround times for registrars during their tests, most of the periods and deadlines used by the production system are significantly shortened (or entirely disabled) on the OT+E system. For example, the OT+E system - contrary to the production SRS - uses an Add Grace Period shorter than 5 days to allow registrars to test domain name redemption more easily.

Apart from the mentioned differences, the OT+E system will always run the exact same software as the production system. Both systems are updated at the same time whenever a new release is deployed.

To facilitate a smooth roll-out of major software upgrades, especially those that involve protocol or policy changes requiring changes to client systems, a separate so-called "Staging" system is operated, on which these new software versions are deployed with appropriate lead time before the same changes are applied to the production and OT+E systems. The actual lead time depends on the nature and the extent of the changes involved.

The SRS is routinely adapted to improved standards and to cope with new technical, capacity and organisational demands.

## Demonstration of Technical & Operational Capability

### 24. Shared Registration System (SRS) Performance

#### Q24 - Shared Registration System (SRS) Performance

CORE Internet Council of Registrars provides a unified registration system for its members since 1997. This system grants access to a multitude of top-level domain registries, currently including .com, .net, .org, .info, .biz, .name, .us, .asia, .eu, .coop and .tel domains, via a single entry point. The activities concerning the CORE Registration System provide CORE with a great deal of expertise and know-how regarding the implementation, operation, maintenance and support of a shared registration system, facing a very heterogeneous user group regarding location, language, enterprise size and structure.

CORE is also handling the technical operation of the .cat and .museum TLDs on behalf of the puntCAT and MuseDoma registries. This proves that CORE has the knowledge and experience necessary to provide the offered registry services.

#### 1. High-Level System Description

The Shared Registry System for the .sport Registry is a local installation of the CORE Registration System, developed by CORE. Consequently, the SRS is compliant with the various relevant standards for EPP (s. Question 25), Whois (s. Question 26), DNS (s. Question 35), DNSSEC (s. Question 43) and IDNs (s. Question 44).

Each registry service is handled by its own server. Overall, the services are set up

ensuring n+1 redundancy. It is envisaged that further frontends will be added later, when increasing system usage requires such a step.

### 1.1 Multiple sites

The .sport Registry as a whole is distributed among a set of independent sites. Besides the geographical diversity of the sites, each site is designed to be independent of other sites. A complete failure of one site or of related infrastructure (i.e. upstream providers) does not affect the operation of the others. No networks or vital base services (like DNS resolvers, LDAP or SMTP servers) are shared among the sites.

For the main registry operation, i.e. all services except the name servers, two sites are designated, the primary one in Dortmund, Germany and the secondary one in Amsterdam, the Netherlands. Name servers, as far as operated by the .sport Registry itself, are located on other sites. Other name servers operated by contractors can be seen to be operated on other sites as well in this context.

To support scalability of the system, the SRS is modularised into components where possible. Components are allowed to run on different machines, so that the overall load of the system can be distributed hardware-wise. This approach also improves the efficiency of cluster technologies and fail-over strategies within a site.

Some components, for example the EPP interfaces to the registrars, are allowed to run in multiple instances if necessary. With the help of load balancers, the incoming requests are distributed to these instances. By directing the load balancers to exclude an instance, this instance can be maintained with respect to both hardware and software. The latter allows minor patches to be applied to the SRS software without interrupting the actual service.

Each of the two .sport Registry sites contains the full set of components that are required for operation and provides for redundancy. Under normal conditions, the primary site is active, while the secondary is inactive (components are in hot standby). In case of failure or maintenance that cannot or should not be compensated by redundant systems on the active site, the inactive site can take over the operation. The full switch-over, however, is not a requirement. Since the system consists of multiple subcomponents, the task of a failed subcomponent on one site can be transferred to the mirror subcomponent on the other site, while the other subcomponents remain on the first site. This gives the administration team freedom and flexibility to react to an incident and to minimise the impact on users. Switching of services is done using HSDNS pointers, see the answer to Q32, System and Network Architecture, for details.

The various sites are interconnected by virtual private networks (VPNs). This ensures the security and confidentiality of the communication. The VPNs are used both for data transferred between the sites as part of the .sport Registry operations (e.g. zone files to the name servers, replication data between the databases, data feed of the Whois servers) and for administrative purposes, including monitoring.

In the unlikely event of a simultaneous outage of multiple components that makes it impossible to provide the service at the SRS's main operating site (data centre) in spite of the redundancy provided within each site, or in case of natural/man-made disaster at that main site, a switch-over to a different site is possible. Thanks to continuous database replication, the other site is equipped with the entire data of the repository.

Figure Q24-F1 presents a "bird view" on the registry's sites, the services hosted at these sites (as described above), as well as the connections between them. The meanings of the graphical elements and symbols is described in Figure Q24-F2 (which provides a legend for all graphics attached to the answers throughout this gTLD application).

Figure Q24-F3 shows the overall structure of the registry systems per site. The various depicted resources and the relationship between them are described in detail in the answer to Question 31, Technical Overview of Proposed Registry, et seqq.

## 1.2 Software Development

Like all crucial components of CORE's registry system, the SRS has been developed from scratch by CORE staff or vendors. The custom-built main server component consists of 100% Java code. While it utilises a couple of proven, open-source third-party libraries and products (such as SLF4J for logging and PrimeFaces for the web applications), the core registry functionality remains fully under CORE's control and may thus be customised as needed.

### 1.2.1 Change Control

All Java code comprising CORE's SRS is maintained in a repository managed by Subversion (SVN), the leading open-source revision control system. All code check-ins into this repository – either into the SVN trunk or into dedicated development branches (for larger additions or changes) – are closely monitored by senior developers.

Software releases meant to be deployed on staging, OT+E or production environments (see below and answer to Question 23, Registry Services) are always built from so-called "release" branches within the SVN repository, i.e. not from the SVN trunk or development branches. Such branches are essentially snapshots of the code known to offer stable functionality with regard to a certain specification of the system. The exclusive use of these release branches ensures that no inadvertent changes from SVN trunk or development branches are affecting code deployed on systems used by registrars or the public.

### 1.2.2 Quality Assurance

Each release scheduled to be deployed undergoes a series of extensive tests by an internal QA team within CORE. This includes functional tests, but also stress tests to evaluate the system's behaviour under extreme load conditions.

Any issues found during these tests are reported back to the developers via JIRA, a widely used, enterprise-grade ticketing and issue system. Only after all issues were fixed to the satisfaction of the testers, a release is deployed – usually on the staging system first (also to give registrars an early opportunity to test their client systems against the new version), then on OT+E and production.

In addition to functional and stress testing, CORE's developers also write so-called unit tests with JUnit, a widely used Java unit testing framework that greatly facilitates regression testing.

## 1.3 Synchronisation Scheme

The synchronisation scheme is designed to enable any of the two sites to act as the master. However, in all cases except emergency and short annual fail-over tests, the system in Dortmund is the master. Data is synchronised on database level in real time.

The database software used will be PostgreSQL 9 (current version). There are four database systems altogether: two at the primary site (Dortmund) and two at the secondary site (Amsterdam). At any time, one of these four systems is active. Its data is replicated to the other three systems: locally to the other system at the same site and remotely to the other site, where a local copy is maintained, too.

## 2. System Reliability, Stability and Performance

### 2.1 Outage Prevention

### 2.1.1 Data Centre Precautions

The data centres hosting the system components of the .sport Registry have taken various precautions to ensure a continuous operation, such as backup power supply, technical and facility security. Please refer to the answer to Question 31, Technical Overview of Proposed Registry, for more details.

### 2.1.2 Availability by Design

The general system design includes various features to reduce the risk of outages. These are summarised in the following paragraphs.

The network infrastructure of the SRS is designed to compensate a failure of one of its components. This is achieved by doubling each of these components, i.e. the firewall/VPN system, the load balancer and the switches that represent the internal backbone. They are operated in an active-active configuration. All servers within the system are equipped with two Ethernet interfaces for each logical connection. Where applicable, the components themselves are equipped with redundant power supplies. The interconnection between the servers and the network components provides redundant paths between each two nodes without a single point of failure. For more details please refer to Question 32, System and Network Architecture.

For the database system used by the SRS, double redundancy is provided. Firstly, there are two database servers, a primary and a secondary one. The secondary database is operated as a hot-standby solution. Secondly, there are two more database servers at the secondary site. The database data at the active site is replicated to the non-active site.

To process the EPP requests of the registrars, multiple systems are provided, which run the SRS software simultaneously. A load balancer distributes the incoming requests to these systems. An outage of one server does not interrupt the service. Although the available computing power is reduced by such an outage, the provisioned spare capacities ensure that the overall performance does not violate the service level agreement.

In the unlikely event of a simultaneous outage of multiple components that makes it impossible to provide the service, or in case of natural/man-made disaster at the "main" site, a switch-over to the "mirror" site is performed. Thanks to continuous database replication, the mirror site is equipped with the entire data of the repository. Depending on the nature of the main site's failure, a limited data loss regarding transactions that were performed in the last few minutes of main site uptime may occur. Compared to the damage caused by a long-term outage, this is considered negligible.

The actual switch-over procedure consists mainly of the following steps: Complete shutdown of the main site if necessary. Despite the failure, some components may still be in an operative state. To avoid interference with the mirror site, these are deactivated. IP address change of the DNS address records belonging to externally visible servers to the corresponding servers on the mirror site. To facilitate this, a short time-to-live (TTL) setting will be used, and registrars are advised to use solely domain names to connect (not IP addresses). Name servers and Whois servers are reconfigured to use the mirror site as their data source. The registrars are informed about the switch-over, enabling them to adapt or restart their clients if necessary.

The Whois subsystem has the intrinsic ability to run an arbitrary number of Whois instances in geographically diverse locations (all fed from the same data source in a near-realtime fashion). The Whois servers operate their own databases for managing the Whois data. Load balancers are used to distribute the incoming requests to these instances. In such a setup, the outage of a single Whois instance will not disrupt Whois services for Internet users. Additional Whois servers can be added quickly to the existing setup if need be.

The huge number of different name server locations used by CORE and the involved diversity (in terms of both geography and network topology) provide a high degree of inherent protection against DNS outages. In particular, the use of state-of-the-art Anycast methodology ensures that a server will be able to respond to requests as long as at least one of the sites in its Anycast cloud is available. In addition, reliable facilities with sufficient redundancy are provided at the individual sites hosting the name servers.

### 2.1.3 Hardware supplies and Software Availability

The data centres will keep spare parts for all critical hardware involved, which allows fast replacement in case of hardware failures. In addition, continuous 24/7 phone and on-site support from the vendors ensures the availability of hardware and software, including operating systems. Contracts guarantee that out-of-stock components are delivered within hours.

## 2.2 Performance Specifications

All components of the registry system (SRS, Whois, DNS) are operated in full compliance with ICANN's performance requirements as set forth in Specification 10 of the gTLD Applicant Guidebook. In particular, the SRS will meet the following specifications.

### 2.2.1 SRS Performance

Upper bounds for the round-trip time (RTT) of EPP requests have to be met by at least 90 per cent of all commands. The upper bound for session commands (login, logout) is four seconds, for query commands (check, info, poll, transfer) it is two seconds and for transform commands (create, delete, renew, transfer, update) it is four seconds. The downtime of the EPP service will be not more than 12 hours per month.

### 2.2.2 Registration Data Directory Services (RDDS) Performance

The upper bound for the round-trip time (RTT) of RDDS queries and for the RDDS update time has to be met by at least 95 per cent of all queries/updates. The upper bound for the collective of "Whois query RTT" and "Web-based-Whois query RTT" is two seconds. The upper bound for the update time (i.e. from the reception of an EPP confirmation to a domain/host/contact transform command until the RDDS servers reflect the changes made) is 60 minutes. The downtime of the RDDS service will be not more than 8 hours per month, where non-availability of any service counts as downtime.

### 2.2.3 DNS Performance

The upper bound for the round-trip time (RTT) of DNS queries and for the DNS update time has to be met by at least 95 per cent of all queries/updates. The upper bound for the TCP DNS resolution RTT is 1500 milliseconds, for the UDP DNS resolution RTT it is 500 milliseconds. The upper bound for the DNS update time (i.e. from the reception of an EPP confirmation to a domain transform command until the name servers of the parent domain name answer DNS queries with data consistent with the change made) is 60 minutes. The downtime of the DNS service will be zero, i.e. continuous availability of this service is assured.

## 2.3 Operational Scalability

Operational scalability is primarily achieved by the underlying architecture of the components comprising the CORE Registration System.



The software used for the processing of EPP commands is designed to run on multiple systems simultaneously. Due to the fact that the software makes extensive use of Java's multi-threading capabilities, it scales well with the number of processors in each system. Therefore, long-term scalability due to increased registry activity can be accomplished by extending the system with additional processors and/or machines.

The SRS is dimensioned to run with about ten per cent load during regular operation. The initial system is able to handle the additional load resulting from increased domain numbers. To further cope with temporary unexpected load peaks, CORE ensures that at least 100 per cent spare capacity is available all the time.

The above measures can be applied to scale the system from handling 10000 names to up to 20 million names and beyond. The initial capacity will be 1 million names and can be increased in steps of at least 1 million names within a mutually agreed time frame.

An important point is fair and acceptable use of system resources by registrars. As far as transaction numbers are concerned, the .sport Registry subjects registrars' access to acceptable use policies that forbid wasteful use of system resources. The registry systematically avoids situations where registrars or potential registrants find themselves under pressure to enter into a race against one another with respect to registry system resources. This applies in particular to launch phases, where a contention resolution mechanism (including the use of auctions) replaces time priority. The .sport Registry furthermore imposes acceptable use restrictions to prevent the abuse of grace periods.

Additionally, the number of concurrent EPP connections per registrar is limited to a certain maximum, which is initially set to 10. Rate limiting is also implemented by limiting the EPP requests within a sliding window of one minute to a configurable number, in order to prevent monopolisation of the service by one registrar.

Thanks to these measures, the .sport Registry avoids disproportionate demand for registry resources.

### 3. Employed Hardware

For server and storage systems, products of HP are to be used. Network equipment products of CISCO, HP, Juniper and Foundry are to be used. Employment of upgradable blade and RAID systems as well as ensuring redundancy of network components, power supplies and such increases not only scalability, but also availability and data integrity.

The database server as the central system component is dimensioned to be able to keep the relevant database content in memory to avoid slow disk I/O operations. An HP server system with 2 six-core 3 GHz CPUs and 48 GB RAM will be used. All other servers will be equipped with 24 GB of RAM. The database server is connected to a storage attached network (SAN), which is connected to a high-performance RAID system, namely HP P6300 EVA 2.4 TB SFF SAS.

### 4. Resourcing Plans

#### 4.1 Implementation

Since the CORE Registration System itself has already been implemented, no resources are necessary for the initial implementation. For setting up and configuring database servers, firewalls and so on, the following resource allocations are estimated:

System Administrator: 25 man hours;

Network Operation Centre Officer: 25 man hours;

DNSSEC Signing Operator: 5 man hours.

#### 4.2 Ongoing Maintenance

For ongoing maintenance and occasional adaptation of the system, the following resource allocations are estimated:

System Administrator: 5 man hours per month;

Network Operation Centre Officer: 5 man hours per month;

Software Developer: 2 man hours per month;

Quality Assurance Agent: 1 man hour per month;

DNSSEC Signing Operator: 1 man hour per month.

Employees already working for CORE Internet Council of Registrars will be handling these tasks. The numbers above were determined by averaging the effort required for comparable tasks conducted by CORE in the past over the course of 12 months.

## 25. Extensible Provisioning Protocol (EPP)

### Q25 - Extensible Provisioning Protocol (EPP)

#### 1. Experience

The EPP interface for registrars of the .sport Registry is based on CORE's EPP implementation, which has been used for several registries.

Since 2006, CORE handles the backend registry operation for puntCAT (responsible for the .cat top-level domain). Right from the start, CORE's .cat Shared Registration System (SRS) offered an EPP frontend fully compliant with RFCs 3730-3734 (updated to compliance with 5730-5734 in the meantime), using various EPP extensions to cope with puntCAT's special requirements. The SRS also fully supports the provisioning of DNSSEC data in accordance with RFC 5910; for backward compatibility, the previous DNSSEC EPP extension (RFC 4310) is also supported.

In addition, based on the same technology, CORE Internet Council of Registrars is currently in the process of taking over back-end operations for a country code top-level domain managing between 200,000 and 500,000 domain names. The details of this cooperation cannot be disclosed at the time of writing. While this registry's DNS services have already been transitioned to CORE at this point, the migration of SRS and Whois operations are currently being finalised.

CORE Internet Council of Registrars provides the unified CORE Registration System for its members since 1997. This system grants access to a multitude of top-level domain registries, currently including .com, .net, .org, .info, .biz, .name (with support for domain name and e-mail forwarding addresses), .us, .asia, .cn, .tw, .eu, .mobi, .aero, .me, .tel, .coop, .ch and .li domains, via a single entry point. CORE members can access all supported registries using a single, unified protocol. The CORE Registration System maps the commands issued by the user to the corresponding EPP commands, sends them to the appropriate registry server and translates back the received results. Members do not need to cope with problems regarding registry communication (like different flavours of EPP, SSL/TLS certificate handling or Punycode conversion for internationalised domain names) themselves.

Since the CORE Registration System acts as a client regarding all the supported registries, its implementation also allowed CORE Internet Council of Registrars to gain considerable experience concerning all client side aspects of (different versions of) EPP. In particular, client-side EPP support had already started with the introduction of EPP by Afiliias and Neulevel. On the server side, EPP has been in use since starting the operation of the puntCAT registry some five years ago. At the heart of the EPP implementation lies the so-called Unikit, CORE's EPP toolkit implementation. The Unikit includes code for the client side and for the server side. In the context of the .sport Registry, the server-side part of the Unikit will be used.

In the person of Klaus Malorny, CORE also actively participated in the IETF Provisioning Registry Protocol (provreg) working group and contributed to some RFCs (see Acknowledgements in RFCs 5730-5733 and RFC 5910).

The software implementing the actual shared registry system, including its EPP interface, was entirely built by CORE, involving an international team of developers from several member companies – thus demonstrating the software development skills at CORE's disposal.

## 2. Standards Compliance

The EPP interface of the .sport Registry, provided by the CORE Registration System, is fully compliant with RFCs 5730-5734. These define mappings for the provisioning and management of Internet domain names, Internet host names and individual or organisational social information identifiers ("contacts") stored in a shared central repository.

Apart from these standards, the .sport Registry also supports the proposed standard for DNSSEC (RFC 5910). This is an EPP extension mapping for the provisioning and management of Domain Name System security (DNSSEC) extensions for domain names stored in a shared central repository.

The proposed standard for an EPP extension for "grace period" policies defined by the Internet Corporation for Assigned Names and Numbers (ICANN) is fully supported also (RFC 3915). Such grace period policies exist to allow protocol actions to be reversed or otherwise revoked during a short period of time after the protocol action has been performed.

Furthermore, a few proprietary EPP extensions are used by the .sport Registry to allow registrars to provide trademark information during the Sunrise phase, auction information during Sunrise and Landrush phases as well as language information. Documentation consistent with RFC 3735 for these proprietary EPP extensions can be found below.

All incoming requests will be validated against the schema definitions in the relevant RFCs and the ones of the proprietary EPP extensions, if applicable. This adds to security and stability, as invalid requests are dismissed early on. The EPP implementation of the .sport Registry is compatible with existing toolkits that produce valid EPP requests.

Pending, asynchronous operations are fully supported by the registry implementation. The SRS returns an EPP result code of 1000 if a command has succeeded synchronously, i.e. immediately. In contrast, a result code of 1001 is returned if a command was accepted but requires asynchronous processing before it can be completed.

## 3. Stability

A stable EPP interface is very important for smooth operation of a shared registry system. To ensure this, the CORE Registration System contains a multi-threaded, asynchronous communication implementation allowing a high number of concurrent EPP connections.

The incoming requests are filtered by their IP addresses via firewall rules in order to disallow access from unauthorised sites. This increases not only the security of the

system, but also its stability, since the load on the EPP servers is reduced.

#### 4. Equal opportunity

EPP access limitations for registrars are enforced by the CORE Registration System, allowing a certain number of concurrent connections only. This further enhances the stability of the system and is an important ingredient for equal opportunity as well. Registrars cannot effectively hinder their competitors from connecting by simply opening a great many connections themselves.

For the sake of equal opportunity, the .sport Registry also avoids first-come, first-served (FCFS) policies where possible. This is why the general availability (GA) phase is the only one using this principle. All popular domain names will probably have been registered already when GA starts (during previously conducted launch phases not using FCFS), so FCFS during GA does not contradict the idea of equal opportunity.

#### 5. Proprietary Extensions

CORE Internet Council of Registrars has already shown its ability to design, specify and implement proprietary EPP extensions in the context of the puntCAT registry. There, extensions exist for the specification of promotion codes, sponsor e-mail addresses, application objects (used during the Sunrise phase) and poll messages to notify registrars about application outcomes, for example. In the following, the proprietary EPP extensions planned to be used for .sport are described.

##### 5.1 Extension for Trademark Information during Launch Phases

The CORE Registration System used to operate the .sport Registry provides a proprietary EPP extension for submitting special data needed during launch phases.

###### 5.1.1 Introduction

This part of this answer describes an extension mapping for version 1.0 of the Extensible Provisioning Protocol (EPP) described in RFC 5730. This mapping is an extension of the domain name mapping described in RFC 5731. It is specified using the Extensible Markup Language (XML) and XML Schema notation.

This extension serves the purpose of supplying and querying information for special phases, usually at the beginning of registry operation. A typical use case is a "Sunrise" phase during which trademark holders have a prerogative to register a domain name related to their trademark. In particular, this extension allows the provisioning of trademark information and the querying of the current status of a domain name application.

In addition, the extension allows the specification of additional information about the application, such as the intended use for the domain name, a URL demonstrating prior use of similar names in other TLDs etc.; the registry's Sunrise policy determines whether and how this information is utilised.

An extension to the "poll" command is not included. Registrars are notified of application results via the poll message mechanism already included in EPP.

This extension has been developed along the lines of the Internet draft by Tan and Brown (see <http://tools.ietf.org/html/draft-tan-epp-launchphase-01>). Even though that document is currently only a draft, it serves the purpose needed for the .sport Registry and is clearly a step forward regarding the standardisation of launch phase handling in EPP. Since this draft does not supply a schema definition at the moment, the CORE Registration System implements its own, which can be found in attachment Q25-Ext-LP.pdf, Section 1. Once the draft was augmented by a concrete schema definition, the CORE Registration

System will be adapted to utilise it, retaining the custom XML namespace identifier. Once the draft becomes an RFC, a transition will be conducted to adopt the standard.

### 5.1.2 Object Attributes

This extension for launch phases adds additional elements to the EPP domain name mapping. Only new element descriptions are documented here.

Since registries usually allow multiple applications for a particular domain name during launch phases, an application object is used internally. Such an object has a unique ID that is returned upon creation and is used to refer to this application in further requests. Within this extension, an "lp:applicationID" element is used to specify this ID.

#### 5.1.2.1 Phase

The "lp:phase" element can be used to distinguish multiple simultaneous launch phases. Its content is a server-defined identifier corresponding to a particular launch phase.

#### 5.1.2.2 Application Status

The "lp:status" element is used to communicate extended status(es) of the application object, beyond what is specified in the object mapping to which this application object belongs.

The following status values are defined: "pending", the initial state of a newly-created application object; "validated", the application meets relevant registry rules; "invalid", the application does not validate according to registry rules; "allocated", the object corresponding to the application has been provisioned (one of two possible end states of an application object); "rejected", the object was not provisioned (the other possible end state).

#### 5.1.2.3 Claim Data

An application may have one or more "lp:claim" elements. An "lp:claim" element describes the applicant's prior right to the domain name.

The "lp:claim" element has the boolean "preValidated" attribute, which indicates whether a third party validation agency has already validated the claim. When this attribute has a true value, the "lp:pvrC" element must always be present.

Several child elements of the "lp:claim" element are defined. "lp:pvrC", the Pre-Validation Result Code, is a string issued by a third-party validation agent. "lp:claimIssuer" contains the ID of a contact object (as described in RFC 5733) identifying the contact information of the authority which issued the right (for example, a trademark office or company registration bureau). "lp:claimName" identifies the text string in which the applicant is claiming a prior right. "lp:claimNumber" contains the registration number of the right (i.e. trademark number or company registration number). "lp:claimType" indicates the type of claim being made (e.g. trademark, symbol, combined mark, company name). "lp:claimEntitlement" indicates the applicant's entitlement to the claim (i.e. owner or licensee). "lp:claimRegDate" contains the date of registration of the claim. "lp:claimExDate" contains the date of expiration of the claim. "lp:claimCountry" indicates the country in which the claim is valid. "lp:claimRegion" indicates the name of a city, state, province or other geographic region in which the claim is valid. This may be a two-character code from World Intellectual Property Organisation (WIPO) standard ST.3.

#### 5.1.2.4 Additional Application Information

An application may carry a "lp:applicationInfo" element. If present, it contains additional information (beyond the claim) about the application, such as the domain name's intended use.

### 5.1.3 EPP Command Mapping

This section deals with the specific command mappings for the .sport Registry EPP extension for launch phases.

#### 5.1.3.1 EPP Query Commands

There are four EPP commands to retrieve object information: "check" to find out whether an object is known to the server, "info" to ask for detailed information associated with an object, "poll" to discover and retrieve queued service messages for individual clients and "transfer" to get transfer status information for an object.

##### 5.1.3.1.1 EPP "check" Command

This extension does not add any elements to the EPP "check" command or to the "check" response described in the EPP domain mapping (s. RFC 5731).

##### 5.1.3.1.2 EPP "info" Command

This extension adds elements to the EPP "info" command and response described in the EPP domain mapping for launch phase processing.

The EPP "extension" element of the "info" command contains a child "lp:info" element to indicate that an application object should be queried. It identifies the registry launch phase namespace and the location of the registry launch phase schema. The "lp:info" element contains the following child elements: "lp:applicationID", the application identifier for which the client wishes to query, and "lp:phase" (optional), the phase the application is associated with.

When such an "info" command has been processed successfully, the EPP "extension" element in the response contains a child "lp:infData" element that identifies the registry launch phase namespace and the location of the registry launch phase schema. The "lp:infData" element contains the following child elements. "lp:applicationID" contains the application identifier of the returned application. "lp:phase" (optional) contains the phase the application is associated with. "lp:status" (optional) contains the status of the application. One or more "lp:claim" elements (optional) give the submitted data establishing the applicant's prior right to the domain name.

If any "lp:claim" element is present, each of them may contain the following child elements. "pvrc" gives the Pre-Validation Result Code. "claimIssuer" contains the ID of a contact object representing the issuing authority. "claimName" contains the textual representation of the right. "claimNumber" contains the registration number. "claimType" contains the type of claim being made. "claimEntitlement" contains the entitlement. "claimRegDate" contains the registration date. "claimExDate" contains the expiry date.

If additional information about the application was specified when the application was created, an "applicationInfo" element will be present containing that information.

Examples of an "info" command and corresponding response can be found in attachment Q25-Ext-LP.pdf, Section 2.1. EPP "info" command, since the TLD Application System (TAS) is not well suited to pre-formatted text.

#### 5.1.3.1.3 EPP "poll" Command

This extension does not add any elements to the EPP "poll" command or to the "poll" response described in the EPP domain mapping (s. RFC 5731).

#### 5.1.3.1.4 EPP "transfer" Command

This extension does not add any elements to the EPP "transfer" command or to the "transfer" response described in the EPP domain mapping (s. RFC 5731).

#### 5.1.3.2 EPP Transform Commands

There are five EPP commands to transform objects: "create" to create an instance of an object, "delete" to delete an instance of an object, "renew" to extend the validity period of an object, "transfer" to manage object sponsorship changes and "update" to change information associated with an object.

##### 5.1.3.2.1 EPP "create" Command

This extension adds elements to the EPP "create" command and response described in the EPP domain mapping for launch phase processing.

The EPP "extension" element of the "create" command contains a child "lp:create" element to indicate that an application object for a launch phase should be created. It identifies the registry launch phase namespace and the location of the registry launch phase schema. The "lp:create" element contains the following child elements: "lp:phase" (optional), the phase the application should be associated with, zero or more "lp:claim" elements to substantiate the prior rights of the applicant, and an optional "lp:applicationInfo" element providing additional information about the application, such as the intended use of the domain name.

When such a "create" command has been processed successfully, the EPP "extension" element in the response contains a child "lp:creData" element that identifies the registry launch phase namespace and the location of the registry launch phase schema. The "lp:creData" element contains a child "lp:applicationID" element, which informs the registrar about the application ID the server has assigned.

Examples of a "create" command and corresponding response can be found in attachment Q25-Ext-LP.pdf, Section 2.2. EPP "create" command, since the TLD Application System (TAS) is not well suited to pre-formatted text.

##### 5.1.3.2.2 EPP "delete" Command

This extension defines additional elements to extend the EPP "delete" command described in the EPP domain mapping for launch phase processing. No additional elements are defined for the "delete" response.

Clients may withdraw an application if permitted by registry policy. To do so, clients submit an EPP "delete" command along with an "lp:delete" element to indicate the application object to be deleted. The "lp:delete" element contains the following child elements: "lp:applicationID", the identifier of the application to be deleted, and "lp:phase" (optional), the phase the application is associated with.

An example of a "delete" command can be found in attachment Q25-Ext-LP.pdf, Section 2.3. EPP "delete" command, since the TLD Application System (TAS) is not well suited to pre-formatted text.

The CORE Registration System supports the withdrawal of an application using this

extension to the "delete" command. Note, however, that support for the withdrawal of an application depends on the .sport Registry Sunrise policy, which is described elsewhere.

#### 5.1.3.2.3 EPP "renew" Command

This extension does not add any elements to the EPP "renew" command or to the "renew" response described in the EPP domain mapping (s. RFC 5731).

#### 5.1.3.2.4 EPP "transfer" Command

This extension does not add any elements to the EPP "transfer" command or to the "transfer" response described in the EPP domain mapping (s. RFC 5731).

#### 5.1.3.2.5 EPP "update" Command

This extension defines additional elements to extend the EPP "update" command described in the EPP domain mapping for launch phase processing. No additional elements are defined for the "update" response.

Clients may modify an application if permitted by registry policy. To do so, clients submit an EPP "update" command along with an "lp:update" element to indicate the application object to be modified. The "lp:update" element contains the following child elements: "lp:applicationID", the identifier of the application to be modified, and "lp:phase" (optional), the phase the application is associated with.

An example of an "update" command can be found in attachment Q25-Ext-LP.pdf, Section 2.4. EPP "update" command, since the TLD Application System (TAS) is not well suited to pre-formatted text.

The CORE Registration System supports the modification of an application using this extension to the "update" command. Note, however, that support for the modification of an application depends on the .sport Registry Sunrise policy, which is described elsewhere.

### 5.1.4 Formal Syntax

The formal syntax of this EPP extension is a complete schema representation of the object mapping suitable for automated validation of EPP XML instances. The schema definition is listed in attachment Q25-Ext-LP.pdf, Section 1. Schema Definition (Formal Syntax), since the TLD Application System (TAS) is not well suited to pre-formatted text.

## 5.2 Extension for Auction Information

The CORE Registration System used to operate the .sport Registry provides a proprietary EPP extension for submitting special data needed for auctions as they occur after launch phases (e.g. Sunrise and Landrush).

### 5.2.1 Introduction

This part of this answer describes an extension mapping for version 1.0 of the Extensible Provisioning Protocol (EPP) described in RFC 5730. This mapping is an extension of the domain name mapping described in RFC 5731. It is specified using the Extensible Markup Language (XML) and XML Schema notation.

This extension serves the purpose of supplying and querying information for special phases, usually at the beginning of registry operation. A typical use case is a "Sunrise" phase during which trademark holders have a prerogative to register a domain name related



to their trademark.

Registries usually allow multiple applications for a particular domain name during launch phases. This extension helps to resolve such situations by means of an auction in an automated way. This is not a normal auction, however, insofar as every application has a "bid" associated with it. Bids cannot be modified after the phase the application belongs to has ended. Among all valid applications for a given domain name, the one with the highest bid wins the auction.

### 5.2.2 Object Attributes

This extension for auctions adds additional elements to the EPP domain name mapping. Only new element descriptions are documented here.

This extension allows the provisioning of auction information in the form of bids. A bid can be made when applying for a domain name. In case there is more than one valid application, an auction mechanism is used as a tie-breaker. The highest bid submitted for the domain name in question will win the auction.

#### 5.2.2.1 Bid

The "auction:bid" element is used to set and inform about a bid for a domain name. Its content is the amount of money the applicant is willing to pay for the domain name in case of an auction. The currency is given in the required currency attribute, specified by the corresponding ISO 4217 currency code.

Note that the amount is given as a non-negative number. This allows to submit a bid of zero in case the applicant is not interested in an auction at all.

### 5.2.3 EPP Command Mapping

This section deals with the specific command mappings for the .sport Registry EPP extension for auctions.

#### 5.2.3.1 EPP Query Commands

There are four EPP commands to retrieve object information: "check" to find out whether an object is known to the server, "info" to ask for detailed information associated with an object, "poll" to discover and retrieve queued service messages for individual clients and "transfer" to get transfer status information for an object.

##### 5.2.3.1.1 EPP "check" Command

This extension does not add any elements to the EPP "check" command or to the "check" response described in the EPP domain mapping (s. RFC 5731).

##### 5.2.3.1.2 EPP "info" Command

This extension does not add any elements to the EPP "info" command described in the EPP domain mapping. Additional elements are defined for the "info" response.

When an "info" command has been processed successfully, the EPP "extension" element in the response, if present, contains a child "auction:infData" element that identifies the registry auction namespace and the location of the registry auction schema. The "auction:infData" element contains an "auction:bid" element, which informs about the amount and currency of the currently set bid as described above.

An example of an "info" response can be found in attachment Q25-Ext-Auction.pdf, Section 2.1. EPP "info" command, since the TLD Application System (TAS) is not well suited to pre-formatted text. The included example simply retrieves the current bid for the given domain name.

#### 5.2.3.1.3 EPP "poll" Command

This extension does not add any elements to the EPP "poll" command or to the "poll" response described in the EPP domain mapping (s. RFC 5731).

#### 5.2.3.1.4 EPP "transfer" Command

This extension does not add any elements to the EPP "transfer" command or to the "transfer" response described in the EPP domain mapping (s. RFC 5731).

#### 5.2.3.2 EPP Transform Commands

There are five EPP commands to transform objects: "create" to create an instance of an object, "delete" to delete an instance of an object, "renew" to extend the validity period of an object, "transfer" to manage object sponsorship changes and "update" to change information associated with an object.

##### 5.2.3.2.1 EPP "create" Command

This extension defines additional elements to extend the EPP "create" command described in the EPP domain mapping for auction processing. No additional elements are defined for the "create" response.

The EPP "extension" element of the "create" command contains a child "auction:create" element to indicate that auction information should be submitted. It identifies the registry auction namespace and the location of the registry auction schema. The "auction:create" element must contain an "auction:bid" element, which specifies the amount and currency as described above.

An example of a "create" command can be found in attachment Q25-Ext-Auction.pdf, Section 2.2. EPP "create" command, since the TLD Application System (TAS) is not well suited to pre-formatted text. The included example sets the bid when applying for the given domain name to the specified amount.

##### 5.2.3.2.2 EPP "delete" Command

This extension does not add any elements to the EPP "delete" command or to the "delete" response described in the EPP domain mapping (s. RFC 5731).

##### 5.2.3.2.3 EPP "renew" Command

This extension does not add any elements to the EPP "renew" command or to the "renew" response described in the EPP domain mapping (s. RFC 5731).

##### 5.2.3.2.4 EPP "transfer" Command

This extension does not add any elements to the EPP "transfer" command or to the "transfer" response described in the EPP domain mapping (s. RFC 5731).

#### 5.2.3.2.5 EPP "update" Command

This extension defines additional elements to extend the EPP "update" command described in the EPP domain mapping for auction processing. No additional elements are defined for the "update" response.

The EPP "extension" element of the "update" command contains a child "auction:update" element to indicate that auction information should be updated. It identifies the registry auction namespace and the location of the registry auction schema. The "auction:update" element must contain an "auction:bid" element, which specifies the new amount and currency as described above.

Whether all modifications of bids are allowed, only certain ones (e.g. only increases) or none at all depends on the .sport Registry auction policy, which is described elsewhere.

An example of an "update" command can be found in attachment Q25-Ext-Auction.pdf, Section 2.3. EPP "update" command, since the TLD Application System (TAS) is not well suited to pre-formatted text. The included example modifies the bid for the given domain name.

#### 5.2.4 Formal Syntax

The formal syntax of this EPP extension is a complete schema representation of the object mapping suitable for automated validation of EPP XML instances. The schema definition is listed in attachment Q25-Ext-Auction.pdf, Section 1. Schema Definition (Formal Syntax), since the TLD Application System (TAS) is not well suited to pre-formatted text.

### 5.3 Extension for Language Information

The CORE Registration System used to operate the .sport Registry provides a proprietary EPP extension for internationalised domain names (IDNs).

#### 5.3.1 Introduction

This part of this answer describes an extension mapping for version 1.0 of the Extensible Provisioning Protocol (EPP) described in RFC 5730. This mapping is an extension of the domain name mapping described in RFC 5731. It is specified using the Extensible Markup Language (XML) and XML Schema notation.

This extension serves the purpose of supplying and querying information for internationalised domain names. In particular, the language or script used and domain name variants are addressed.

#### 5.3.2 Object Attributes

This extension for IDNs adds additional elements to the EPP domain name mapping. Only new element descriptions are documented here.

##### 5.3.2.1 Languages and Scripts

This extension allows the specification of either a language tag or a script tag when registering a domain name. The language or script defines the characters allowed for use in the domain name as specified in the IDN tables (see Question 44, Support for Registering IDN Domains). It is not allowed to specify more than one language or more than one script.

For the time being, the .sport Registry expects the value of a language tag element to be

a an ISO 639-1 language code referring to a supported language. The value of a script tag is expected to be an ISO 15924 script code referring to a supported script.

### 5.3.2.2 Variants

This extension allows to specify a number of variants of the domain name to be registered together with the supplied domain name. The variants are expected to be submitted in normalised form (see also Q44, Support for Registering IDN domains). The number of variants that can be specified is limited to at most 10.

### 5.3.3 EPP Command Mapping

This section deals with the specific command mappings for the .sport Registry EPP extension for IDNs.

#### 5.3.3.1 EPP Query Commands

There are four EPP commands to retrieve object information: "check" to find out whether an object is known to the server, "info" to ask for detailed information associated with an object, "poll" to discover and retrieve queued service messages for individual clients and "transfer" to get transfer status information for an object.

##### 5.3.3.1.1 EPP "check" Command

This extension defines additional elements to extend the EPP "check" command described in the EPP domain mapping for IDN processing. No additional elements are defined for the "check" response.

The EPP "check" command is used to determine if an object can be provisioned within a repository. This IDN extension modifies base check processing to support language and script tags.

The EPP "extension" element, if present, contains a child "idn:check" element that identifies the registry IDN namespace and the location of the registry IDN schema. If at least one of the checked domains is an IDN, the "idn:check" element must contain either an "idn:lang" element or an "idn:script" element. The "idn:lang" element contains the language whose characters may be used in the checked domain names; the "idn:script" element contains the script whose characters may be used in the checked domain names. The language or script specification applies to all domain names specified in the command. The results of the check (i.e., the domains names' availability for provisioning) are governed by the validity of the names with respect to the specified language or script.

Examples of "check" commands can be found in attachment Q25-Ext-IDN.pdf, Section 2.1. EPP "check" command, since the TLD Application System (TAS) is not well suited to pre-formatted text. Two examples are included, one with a language tag (Section 2.1.1), one with a script tag (Section 2.1.2).

##### 5.3.3.1.2 EPP "info" Command

This extension does not add any elements to the EPP "info" command described in the EPP domain mapping. Additional elements are defined for the "info" response.

When an "info" command has been processed successfully, the EPP "extension" element in the response, if present, contains a child "idn:infData" element that identifies the registry IDN namespace and the location of the registry IDN schema. The "idn:infData" element contains either an "idn:lang" element or an "idn:script" element. The "idn:lang" element contains the language that is set for the domain name object; the "idn:script"

element contains the script that is set for the domain name object.

The "idn:infData" element also contains an "idn:variants" element, which in turn contains a (possibly empty) sequence of "idn:nameVariant" elements. The "idn:nameVariant" elements represent the variants that are registered together with the actual domain name.

Examples of "info" responses can be found in attachment Q25-Ext-IDN.pdf, Section 2.2. EPP "info" command, since the TLD Application System (TAS) is not well suited to pre-formatted text. Three examples are included, one with a language tag only (Section 2.2.1), one with a script tag only (Section 2.2.2) and one with a language tag and variants (Section 2.2.3).

#### 5.3.3.1.3 EPP "poll" Command

This extension does not add any elements to the EPP "poll" command or to the "poll" response described in the EPP domain mapping (s. RFC 5731).

#### 5.3.3.1.4 EPP "transfer" Command

This extension does not add any elements to the EPP "transfer" command or to the "transfer" response described in the EPP domain mapping (s. RFC 5731).

#### 5.3.3.2 EPP Transform Commands

There are five EPP commands to transform objects: "create" to create an instance of an object, "delete" to delete an instance of an object, "renew" to extend the validity period of an object, "transfer" to manage object sponsorship changes and "update" to change information associated with an object.

##### 5.3.3.2.1 EPP "create" Command

This extension defines additional elements to extend the EPP "create" command described in the EPP domain mapping for IDN processing. No additional elements are defined for the "create" response.

The EPP "create" command provides a transform operation that allows a client to create an instance of a domain object. This IDN extension modifies base create processing to support language tags, script tags and domain name variants.

The EPP "extension" element, if present, contains a child "idn:create" element that identifies the registry IDN namespace and the location of the registry IDN schema. The "idn:create" element must contain either an "idn:lang" element or an "idn:script" element. The "idn:lang" element contains the language whose characters may be used in the domain name; the "idn:script" element contains the script whose characters may be used in the domain name.

The "idn:create" element must also contain an "idn:variants" element, which in turn contains a (possibly empty) sequence of "idn:nameVariant" elements. The "idn:nameVariant" elements represent the variants that are to be registered together with the actual domain name.

Note that the .sport Registry restricts the number of domain name variants given in the "idn:variants" element to at most 10. Submitting an empty "idn:variants" element is allowed; this will not register any domain name variants.

Examples of "create" commands can be found in attachment Q25-Ext-IDN.pdf, Section 2.3. EPP "create" command, since the TLD Application System (TAS) is not well suited to pre-formatted text. Three examples are included, one with a language tag only (Section

2.3.1), one with a script tag only (Section 2.3.2) and one with language tags and variants (Section 2.3.3).

#### 5.3.3.2.2 EPP "delete" Command

This extension does not add any elements to the EPP "delete" command or to the "delete" response described in the EPP domain mapping (s. RFC 5731).

#### 5.3.3.2.3 EPP "renew" Command

This extension does not add any elements to the EPP "renew" command or to the "renew" response described in the EPP domain mapping (s. RFC 5731).

#### 5.3.3.2.4 EPP "transfer" Command

This extension does not add any elements to the EPP "transfer" command or to the "transfer" response described in the EPP domain mapping (s. RFC 5731).

#### 5.3.3.2.5 EPP "update" Command

This extension defines additional elements to extend the EPP "update" command described in the EPP domain mapping for IDN processing. No additional elements are defined for the "update" response.

The EPP "update" command provides a transform operation that allows a client to change the state of a domain object. This IDN extension modifies base update processing to support domain name variants.

The EPP "extension" element, if present, must contain a child "idn:update" element that identifies the registry IDN namespace and the location of the registry IDN schema. The "idn:update" element may contain an "idn:add" element and an "idn:rem" element. Each of these contain a (possibly empty) sequence of "idn:nameVariant" elements. Similar to the "update" command's elements "domain:add" and "domain:rem", these are used to specify the domain name variants that are to be added to and removed from the domain object, respectively. If the EPP "extension" element is missing in the "update" command, no change to the domain name variants will be made.

Note that the .sport Registry restricts the number of domain name variants given in the "idn:add" and "idn:rem" elements to at most 10.

An example of an "update" command can be found in attachment Q25-Ext-IDN.pdf, Section 2.4. EPP "update" command, since the TLD Application System (TAS) is not well suited to pre-formatted text. The included example adds some variants to be associated with the given domain name while removing existing ones at the same time (Section 2.4.1).

### 5.3.4 Formal Syntax

The formal syntax of this EPP extension is a complete schema representation of the object mapping suitable for automated validation of EPP XML instances. The schema definition is listed in attachment Q25-Ext-IDN.pdf, Section 1. Schema Definition (Formal Syntax), since the TLD Application System (TAS) is not well suited to pre-formatted text.

## 6. Resourcing plans

### 6.1 Initial Work

No resources are necessary for the initial implementation, since the CORE Registration System (including the EPP extensions) has already been implemented.

## 6.2 Ongoing Work

For registrar support regarding the EPP extensions, the following resource allocations are estimated:

First Level Support: 4 man hours per month.

Employees already working for CORE Internet Council of Registrars will be handling these tasks. The numbers above were determined by averaging the effort required for comparable tasks conducted by CORE in the past over the course of 12 months.

## 26. Whois

### Q26 - Whois

#### 1. Overview

The CORE Registration System used by CORE Internet Council of Registrars to operate the .sport TLD will offer Registration Data Directory Services (RDDS) in compliance with Specification 4 of the Registry Agreement, consisting of a Whois Service, Zone File Access and Bulk Registration Data Access.

#### 2. Whois Service

##### 2.1 Interfaces

###### 2.1.1 Port 43 Whois Service

Whois data for .sport will be accessible via an interface on TCP port 43 at whois.nic.sport, using the "Whois" protocol (as defined in RFC 3912).

While the interface is publicly available, general use is rate limited to prevent data mining and mitigate denial of service attacks. Registrars may request to be exempted from the rate limiting measures by specifying IP addresses or address ranges to be put on a whitelist. Clients sending Whois requests from whitelisted IP addresses have unlimited access to the service.

###### 2.1.1.1 Input Format

The input sent by Whois clients to the port 43 Whois server consists of two parts: the query options (starting with a hyphen character) and the query itself.

By default, the port 43 Whois service searches for domain names and name server names matching the query string. By the following keywords, the search type can be specified explicitly:

- \* "domain": Search for domains with matching names or IDs.
- \* "nameserver": Search for name servers with matching names, IDs or IP addresses.
- \* "contact": Search for contacts with matching IDs.

\* "registrar": Search for registrars with matching IDs or organisation names.

The remaining tokens in the input are taken as the search parameter. It may contain the percent sign ('%') as a wildcard for any number (including zero) of characters or the underscore character ('\_') for a single character. For data mining prevention and resource protection, the number of objects returned for wildcard searches is limited to 50.

Evidently, the query format resulting from this input format specification is fully compliant with Specification 4, since it allows querying

\* domains via: whois example.sport,  
\* registrars via: whois "registrar Example Registrar, Inc.",  
\* name servers via: whois "ns1.example.sport" and  
\* name servers via: whois "nameserver (IP Address)".

#### 2.1.1.2 Output Format

The Whois implementation used by CORE follows a template-based approach for its output to achieve maximum flexibility with regard to the desired format. Key-value output templates containing well-defined placeholders (e.g., for domain name, registrar name, name servers, or contact fields) for variable data allow customising the output for each response type to meet ICANN's demands. To supply values for the placeholders in the templates, the local Whois database is fed with all properties of registrars, domains, contacts and name servers that need to be present in the Whois output. Metadata such as the "last Whois update" date, is also available for use in templates. Thanks to this template mechanism, adjustments for changing requirements over time may be implemented easily.

Additionally, the Whois implementation supports internationalised output. If a contact uses "localised" address fields in addition to "internationalised" data (as supported by RFC 5733), some data fields may contain non-US-ASCII characters. Also, internationalised domain names (IDN) allow the use of non-US-ASCII characters.

The results of a Whois query are encoded using either the US-ASCII character set, or, if a valid character set has been specified via the -C query option, the selected character set. If the output contains characters for which no encoding exists in the selected character set, they are replaced with a question mark, and a warning comment is added to the beginning of the output. Please see the answer to question 44 for more information about IDN support.

The format for values such as dates, times and phone/fax numbers in the Whois output conforms to the mappings specified in the EPP RFCs 5730-5734, since the SRS enforces compliant values for requests from registrars, stores them as received and feeds them to the Whois instances unmodified.

Overall, this means that the response formats for domains, registrars, and name servers, as described in ICANN's Specification 4 of the Registry Agreement, are fully supported by the Whois implementation used by CORE.

#### 2.1.2 Web-based Whois Service

The web Whois service operated at whois.nic.sport shares the same functionality as the port 43 service, but receives query input via an HTML form. The output format is the same as for the port 43 service.

To prevent the Web interface from being abused for data mining, a CAPTCHA test ("Completely Automated Public Turing test to tell Computers and Humans Apart") must be passed upon each web Whois query before any response data is displayed.



## 2.2 Searchable Whois

CORE's Whois implementation offers search capabilities in accordance with Specification 2, Section 1.8. They allow complex searches for Whois database records based on the content of various data fields, thereby considerably exceeding common Whois query functionality.

This provides powerful means of information retrieval, such as finding all domain names registered by a certain person or company. When made available to unauthorised parties, this data may be abused for undesirable activities such as data mining (e.g. for advertising purposes) or social profiling. Restrictions must be imposed to prevent such abuse.

Consequently, this feature is offered exclusively on the web-based Whois interface (not the port 43 Whois), and is only available to authenticated users after they logged in by supplying proper credentials (i.e., user name and password). The .sport Registry will issue such credentials exclusively to eligible users and institutions that supply sufficient proof of their legitimate interest in extended Whois searches, like e.g. law enforcement agencies. Authorisation policies and procedures are established in close collaboration with ICANN, and in compliance with any privacy laws and policies that may apply.

The search capabilities offered meet and exceed the requirements of Specification 2:

- \* Searches using the wildcards '%' and '\_' (with semantics as described above) are possible on the following fields (thus allowing partial matches):

- \*\* domain name

- \*\* contact data (across all contact types, including the registrant):

- \*\*\* name

- \*\*\* organisation

- \*\*\* address fields (street, city, state/province, postal code, country code)

- \* Exact match searches are possible on the following fields:

- \*\* registrar ID

- \*\* name server name

- \*\* name server IPv4 or IPv6 address (if stored in the registry for glue records)

- \* Multiple such search criteria may be joined by the logical operators (listed in descending precedence):

- \*\* NOT

- \*\* AND

- \*\* OR

The web interface offers a graphical editor for convenient creation of complex searches, allowing to group sets of search criteria in order to override the defined precedence of operators (thus providing the equivalent of parentheses in classic boolean expressions).

The search results are presented as a list of domain names matching the criteria. If more than 50 results are found, only the first 50 matches are presented on the initial result page, along with an indication of the total number of matches. Links allow the user to navigate through pages of search results.

## 2.3 Whois Data Distribution

The Whois implementation used by CORE is written as an autonomous system component running in its own server instance, i.e. it is not part of the server running the SRS component. Multiple Whois instances, all serving the same SRS data, are run in parallel; these instances may be located in diverse locations (both geographically and in terms of network topology).

All instances of the Whois service operate on their own databases. This ensures a load decoupling between the SRS and the Whois servers - high request rates on the Whois

servers will not affect the main registry system's performance, and vice versa.

The database of a Whois server is continuously synchronised with the registry's database via a VPN connection. A special communication protocol ("Whois feed") is used to supply information about objects that have been created, modified or deleted in the SRS to all connected Whois servers.

As soon as changes to the registry's database have been made persistent, these changes are forwarded to all Whois servers. The Whois servers update their own databases with the data and publish the new information. This way, changes to the registry will become visible on the Whois server typically in less than a minute, resulting in an RDDS update time well under the 60 minutes permitted by Specification 10.

The Whois feed protocol has been carefully designed to allow a graceful recovery from temporary SRS/Whois disconnections. In case of a communication problem or a maintenance of the Whois instance, changes that occurred since the last successful update are automatically identified and transferred.

## 2.4 Network Structure

The Whois network structure (for queries and the feed) is depicted in Figure Q26-F1.

The green path shows how a Whois instance is continuously fed with data from the SRS. To obtain updates, a Whois server instance (D) in the Demilitarised Zone (DMZ) maintains a TCP connection to the EPP backend (B) in the Trust zone through a firewall (C) which separates the two zones. The EPP backend fetches the required data from the primary SRS database (A) and sends a corresponding feed data stream to the Whois instance.

The yellow path illustrates the data flow of Whois queries. A port 43/web query coming in from the Internet enters the Untrust zone via a network router (1) and passes a firewall (2) into the DMZ. A load balancer (3) dispatches the request to one of the available Whois instances (4), which processes the requests and sends the response back to the Whois client or web browser.

As the server hardware and network setup planned for the Whois subsystem is part of the overall registry infrastructure, it shares its design principles and implementation. Please see the answers to Questions 31 and 32 for further details.

## 2.5 Inner Workings of a Whois Server Instance

The inner structure of a Whois server instance is depicted in Figure Q26-F2. It shows how incoming port 43 or web traffic from a load balancer (at the top) is processed internally.

Port 43 queries are handled by the RFC 3912 protocol implementation. A rate limiter component ensures that query limits are enforced for connections not originating from whitelisted IP addresses. Non-blocked requests are passed on to a query evaluator component, which parses the request, fetches required data from the instance's local database engine and prepares the response based on the configured output templates. A separate statistics collector module gathers query statistics (such as query type and response time) in dedicated database tables; this data is used to create monthly ICANN reports.

Web-based queries are handled in a similar fashion. Clients connect to the Whois web frontend; if both the CAPTCHA and the rate limiter component are passed, the query from the web form is processed and answered (as well as included in statistics) just like port 43 requests. For this purpose, the web application container hosting the web Whois has direct access to the local database engine, i.e. it does not utilise the port 43 implementation, but processes requests autonomously. In contrast to the port 43 server, the web Whois also contains an LDAP authentication component; it is used to validate the credentials of users logging in for accessing the extended search features described

above.

The bottom of the diagram shows the Whois feed client component, which is responsible for maintaining a connection to the Whois feed service of the EPP backend, processing the feed data and updating the local Whois database.

## 2.6 Whois Data Privacy Measures

The Whois server implementation used by CORE is designed to support various levels of privacy regarding the content of query responses.

### 2.6.1 Consideration of EPP Data Disclosure Preferences

The EPP 1.0 standard, particularly its contact mapping as described in RFC 5733, provides means for registrars to specify their preferences concerning the handling of contact data submitted to the registry. Using optional "contact:disclose" elements when creating or modifying contacts, the registrar is able to identify contact fields that require special handling regarding their disclosure to third parties.

The Whois service is designed to respect the data disclosure preferences specified by registrars using these mechanisms. Unless registry policy dictates otherwise, contact fields will be included in or excluded from the Whois output according to the respective disclosure setting. The governing registry policy will be carefully tuned to be in line with applicable data protection laws.

### 2.6.2 Web Whois

The Whois server's web interface uses the same output restrictions as the port 43 interface.

The CAPTCHA mechanism used to let only humans (as opposed to machines) access the Web whois provides protection against Whois data abuses like data mining or spam. As an additional guard against spam, any e-mail addresses within the Whois output can optionally be displayed as images only (instead of HTML text).

## 2.7 Support for Emerging Technologies

CORE is aware of the shortcomings in today's RDDS technology. The Whois protocol, as defined in RFC 3912, only defines the basic exchange between client and server, without any specification of input and output formats. This has led to a large number of different output formats among registries, posing problems for automated Whois clients.

In September 2011, ICANN's Security and Stability Advisory Committee (SSAC) published SAC 051, a Report on Domain Name Whois Terminology and Structure. It contains recommendations for a domain name registration data access protocol suitable for replacing the current Whois technology. In February 2012, ICANN published a draft roadmap for the implementation of these recommendations. CORE is committed to participate in this process, and to comply with and fully support any future RDDS technologies (such as an XML-based, RESTful Whois) emerging from it.

## 2.8 Whois Resiliency and Performance

Thanks to the Whois subsystem's intrinsic ability to run an arbitrary number of Whois instances in geographically diverse locations (all fed from the same data source in a near-realtime fashion), it offers considerable resiliency. In such a setup, the outage of a single Whois instance will not disrupt Whois services for Internet users.

The same feature also guarantees a high level of scalability and performance. Should the monitoring system operated by CORE suggest an increased demand for Whois queries for names in the .sport TLD, additional Whois servers can quickly be added to the existing setup. The decoupling of SRS and Whois services described above ensures that bursts in Whois usage will not impact SRS performance. Using such scaling measures if need be, even unusual peak volumes can be handled.

Please see the answer to question 34 (Geographic Diversity) for details about the locations planned for .sport Whois instances.

In the initial setup, each Whois instance is capable of handling up to 500 queries per second. It is assumed that the average load will be at most 100 queries per second, so there is sufficient headroom for future load increases and bursts.

## 2.9 Compliance with Specification 10 of the Registry Agreement

The technical features described above ensure that the RDDS (Whois) implementation provided by the CORE Registration System for .sport will be in full compliance with Specification 10 of the Registry Agreement. RDDS availability, query round trip time (RTT) and update time will be maintained well within the permissible limits.

Due to the unpredictable complexity of searches conducted using wildcards or boolean operators, it is assumed that they are not used in queries for measuring RDDS availability and query RTT. Also, the service levels for these two metrics are only guaranteed for queries returning a maximum of 10 results.

## 3. Zone File Access

CORE will enter into standardised agreement with Internet users seeking access to .sport zone file data by following the procedures laid out in Specification 2, Section 2. For this purpose, the SRS prepares a .sport zone data file compliant with the specified File Format Standard, which is made available at the ICANN-specified and managed URL (i.e. ftp://sport.zda.icann.org). Through facilitation of the CZDA provider, users presenting sufficient credentials will be granted access to this data. Full cooperation and assistance will be provided to ICANN and the CZDA provider in this context.

In addition, bulk access to the zone files for .sport will also be provided to ICANN or its designee, as well as to the Emergency Operators on a continuous basis.

## 4. Bulk Registration Data Access

As described in the answer to question 38 (Data Escrow), the Escrow module of the CORE Registration System is capable of creating files containing Thin Registration Data, as well as Thick Registration Data restricted to the domain names of a single registrar. Using this facility, CORE will grant ICANN periodic access to Thin Registration Data, as well as exceptional access to a failing registrar's Thick Registration Data, in a format and on a schedule fully compliant with Specification 2, Section 3.

## 5. Experience in providing ICANN-compliant Whois services

CORE has been operating Shared Registry Systems (SRS) since 1997, which all require a connected port 43 Whois server. In its role as the registry backend operator for .cat and .museum, CORE has continuously provided (and still provides) reliable Whois services for these registries, being in full compliance with RFC 3912 and ICANN registry agreements.

The experience gathered from these previous Whois related activities enables CORE to develop and operate a Whois subsystem for the .sport Registry that is fully compliant with all ICANN requirements.

## 6. Resourcing Plans

The CORE Registration System already supports the Whois services as described above at the time of writing. Since the system is designed to be highly configurable, the realisation of different privacy policies merely requires changing the respective settings within the system configuration.

This means that no development resources will be needed for the Whois service during the initial setup of the system. However, the staff on duty at CORE will need to define the related policies and configure the system accordingly.

### 6.1 Initial implementation

For the initial setup, the following resources are allotted:

- \* Registry Policy Officer: finalising policies, creating documentation: 1.5 man days
- \* System Administrator: configuring system for policies: 4 man hours
- \* First Level Support: training: 2 man hours per person

### 6.2 Ongoing maintenance

For the ongoing system maintenance, the following resources are allotted:

- \* System Administrator: system maintenance: 0.5 man days per month
- \* First Level Support: support: 6 man hours per month
- \* Second Level Support: access authorisation: 5 man hours per month

Employees already working for CORE Internet Council of Registrars will be handling these tasks. The numbers above were determined by averaging the effort required for comparable tasks conducted by CORE in the past over the course of 12 months.

## 27. Registration Life Cycle

### Q27 - Registration Life Cycle

The CORE Registration System used by CORE Internet Council of Registrars to operate the .sport TLD implements a registration life cycle that conforms with best practices and procedures widely used by existing top level domain registries. While the life cycle fully complies with all relevant EPP RFCs, it also simplifies the processing of automatic domain renewals in order to ease domain data management for registrars.

The attached state diagram (Figure Q27-F1) depicts the typical life cycle of a .sport domain during the General Availability phase, from its creation to its release. In the following, the various triggers, states and transitions involved in the registration life cycle (denoted by capital letters in parentheses) are described in detail. Blue boxes denote domain states, yellow boxes denote actions caused by registrar commands, grey boxes denote automatic actions by the system, white boxes denote timed conditions reached at some point in the life cycle.

#### 1. Domain Creation

(A) After receiving a "domain:create" command from the registrar's EPP client, the specified domain name is checked for availability and compliance with the registry's rules and policies. If these checks are passed, a corresponding domain object is created

in the repository. Its expiration date is set according to the registration period specified in the "domain:create" command (1-10 years) and the EPP command's time stamp.

With its creation, the domain also enters the Add Grace Period (AGP), which lasts 5 days; during this time frame, the registrar may delete the domain for a full refund of the registration fee (as long as the limits specified by the AGP Limits Policy are not exceeded). Also, a domain deleted during the AGP will not enter the Redemption Grace Period (RGP), but will instead be released immediately. To indicate the AGP, the domain's Grace Period (GP) status according to RFC 3915 is set to "addPeriod"; this status is automatically removed after the end of the AGP.

(B) The domain is registered. Provided that at least two name servers are present in the domain and the domain has not been put into status "clientHold" or "serverHold", it is published in the TLD zone and carries the EPP status "ok". If no name servers are associated with the domain, the domain carries the EPP status "inactive" to indicate that no delegation information is present. Note that a .sport domain may either have zero name servers or 2-13 name servers; the case of exactly one name server is prohibited by server policy. In any case, the domain's current data is published on the Whois server (according to the disclosure settings set by the registrar).

## 2. Domain Update

(C) After receiving an EPP "domain:update" command, the domain is modified in the repository according to the data specified in the command. The domain returns to the registered state (B). Should the update change the domain's name servers or its "clientHold" status, its publication in the TLD zone is affected according to the condition described in state (B). An update command may set other domain status values, such as "clientDeleteProhibited"; see below for a full list of all supported status values. The TLD name servers and Whois servers are updated to reflect the domain's new data.

## 3. Domain Renewal (Automatic or Explicit)

(D) If a domain reaches its expiration date, it is automatically renewed; it will not be deleted, but remains in the registered state. Note that, in order to avoid unduly disruption of the domain's operation, this automatic renewal will even take place if the domain carries the status "clientRenewProhibited"; this status will only disallow the explicit renewal of domains.

(E) With reaching its expiration date, the domain enters the so-called "Auto Renew Grace Period" (ARGP), which lasts 45 days. During this time period, the registrar has the opportunity of deleting the domain name without being charged for the renewal. In order to avoid the necessity of a refund in this case, the CORE Registration System only charges the registrar with the renewal fee after the end of the ARGP (i.e., when the renewal is final). If the registrar deletes the domain during the Auto Renew Grace Period, nothing has been charged yet, so no refund is required either. Note that this differs from the commonly used practice of charging the renewal fee already at the beginning of the Auto Renew Grace Period, which requires complicated refunds in case the domain is deleted or transferred in this period. During the Auto Renew Grace Period, the domain carries the "autoRenewPeriod" GP status, which is also displayed in the Whois along with the previous expiration date (now in the past). Only after the end of the Auto Renew Grace Period, the expiration date is increased.

(F) If the end of the ARGP is reached before the registrar deletes the domain, the registrar is charged with the renewal fee. The domain's "autoRenewPeriod" GP status is removed.

(G) After explicit renewal (or final automatic renewal), the domain's expiration date is increased. The domain's Whois output is changed to reflect this.

(H) If the registrar explicitly renews a domain by sending a "domain:renew" EPP command, the CORE Registration System increases the domain's expiration date according to the period value specified in the command. Note that a domain's remaining registration period may not last more than 10 years; renewal requests that would make a domain exceed this limit are rejected. The registrar is charged with the corresponding renewal fee. The domain's "Renew Grace Period" is started, which lasts 5 days; during this period, the domain may be deleted for a full refund of the renewal fee. This is indicated via the "renewPeriod" GP status, which is automatically removed when the Renew Grace Period ends.

#### 4. Domain Deletion

(I) After receiving an EPP "domain:delete" command, the deletion of the domain from the repository is initiated.

(J) If the domain is in its AGP when the delete command is received, it will be released immediately, i.e. it will be available for new registrations right away. The domain will not enter the Redemption Grace Period (RGP) in this case, and the registrar receives a refund of the registration fee (as long as the limits specified by the AGP Limits Policy are not exceeded).

(K) The domain is released (i.e., purged from the repository) and available for new registrations. This marks the end of the domain's life cycle. If the domain was in its Add, Auto Renew, Renew or Transfer Grace Period when the delete command was received, the related charges are refunded to the sponsoring registrar.

#### 5. Domain Restore After Deletion - the Redemption Grace Period (RGP)

(L) If the domain is not in its AGP when the delete command is received, it enters the Redemption Grace Period (RGP), which lasts 30 days. This means that the domain is not released immediately, but is only put into the EPP status "pendingDelete" (which is also displayed in the domain's Whois output) and withheld from DNS publication.

The CORE Registration System fully supports the Redemption Grace Period procedures and protocols, as defined by RFC 3915. During the RGP, the domain may be restored by the previous registrar by sending a "domain:update" command carrying an EPP RGP extension according to the RFC.

(M) The domain is in the Redemption Grace Period (RGP). During this phase, it is not present in the TLD zone. The domain carries the EPP status "pendingDelete" and the RGP status "redemptionPeriod" according to RFC 3915.

(N) If the domain is not restored by the previous registrar before the end of the RGP, the domain will be scheduled for release. The EPP status "pendingDelete" is retained, the domain's RGP status is changed to "pendingDelete".

(O) The domain is no longer restorable by the registrar and due for release. It will remain in this state for a time period defined by registry policy; this could, for example, be a variable time period with a random offset in order to make the release date and time less predictable for domain snipers. Once this time period ends, the domain is released and put into the final state (K).

(P) If the previous registrar restores the domain before the end of the RGP (by sending a "domain:update" command carrying an EPP RGP extension according to RFC 3915), the domain's RGP status is changed to "pendingRestore". If the registrar also sends the RGP restore report within 5 days (or along with the update command), the "pendingDelete" status value is removed from the domain and the domain will be put back into the registered state (B). If the conditions described under (B) are met, the domain will be re-added to the TLD zone. If, however, the restore report is not received within 5 days, the domain goes back into the RGP (RGP status "redemptionPeriod"), i.e. into state (M); the RGP is not restarted in this case, but is resumed at the point when the restoration

was initiated by the registrar.

## 6. Domain Transfer

(Q) Upon request by a domain's registrant, a registrar (called "gaining" registrar in this case) may request to transfer a domain name currently sponsored by a different registrar (the so-called "losing" registrar) into its own domain portfolio. This is done by sending an EPP "domain:transfer" command with operation "request". After receiving such a command, the domain is marked with a "pendingTransfer" EPP status value. "domain:trnData" EPP poll messages are placed in the message queues of both gaining and losing registrar to inform them about the transfer request. The gaining registrar is charged with the transfer fee.

A request for a domain transfer will only succeed if certain conditions are met. In particular, the provided authorisation information must be correct, and the domain must not have the "clientTransferProhibited" or "serverTransferProhibited" status values set. Note that the status "serverTransferProhibited" is automatically set and maintained for 60 days by the SRS after a domain is first created, as well as after each successful registrar transfer. This is common practice among registries and avoids the problem of "registrar hopping", i.e. frequent registrar changes (after e.g. hijacking a domain name) in order obstruct takedown procedures.

(R) The domain transfer is pending. The CORE Registration System waits for either the transfer to time out (after 5 days), or for the reception of an approval, rejection or cancellation before the time-out. The losing registrar may approve or reject the transfer by sending an EPP "domain:transfer" command with operation "approve" or "reject", respectively. The gaining registrar may cancel the transfer by sending an EPP "domain:transfer" command with operation "cancel".

(S) The transfer was completed successfully, either by approval of the losing registrar or by time-out (which by default automatically approves the transfer; this behaviour is configurable). The "pendingTransfer" EPP status value is removed from the domain. The domain is assigned to the gaining registrar and removed from the losing registrar's portfolio. "domain:trnData" poll messages are placed in the message queues of both gaining and losing registrar. The domain returns to status (B). A successful transfer starts the domain's "Transfer Grace Period" (TGP) which lasts 5 days; during the TGP (which is indicated by the "transferPeriod" GP status), the domain may be deleted by the gaining registrar for a full refund of the transfer fee.

(T) The transfer was unsuccessful, i.e. it was rejected by the losing registrar or cancelled by the gaining registrar. The EPP status "pendingTransfer" is removed from the domain. "domain:trnData" poll messages are placed in the message queues of both gaining and losing registrar. The domain returns to status (B). The transfer fee previously charged to the gaining registrar is refunded.

## 7. EPP and Grace Period Status Values

As described above, the .sport domain life cycle involves various EPP Domain and Grace Period status values and uses them in compliance with RFCs 5730-5733 and 3915 (note that RFC 5910 does not specify any status values). This section provides an overview of the status values and describes whether and how they are used in the life cycle.

In general, status values starting with "client" may only be set or removed by the registrar, while all other status values (including those starting with "server") may only be set or removed by the registry, either automatically or manually by registry staff.

### 7.1 EPP Domain Status Values (from RFC 5731)



- \* `clientDeleteProhibited`: Indicates that the domain cannot be deleted by a `"domain:delete"` command.
- \* `clientHold`: Indicates that the domain is not published in the `.sport` zone.
- \* `clientRenewProhibited`: Indicates that the domain cannot be renewed by an explicit `"domain:renew"` command; the status does not prevent automatic renewal.
- \* `clientTransferProhibited`: Indicates that the domain cannot be transferred.
- \* `clientUpdateProhibited`: Indicates that the domain cannot be modified.
- \* `inactive`: The domain has no delegation information, i.e. no name servers are associated. The domain is not published in the `.sport` zone.
- \* `ok`: The domain is active, i.e. it resolves, has no pending operations or prohibitions, and carries no other status values.
- \* `pendingCreate`: Indicates that the domain's creation is pending, i.e. that an asynchronous process is in progress to finish the domain's creation. This status is supported, e.g. for use during launch phases such as Sunrise and Landrush (to indicate that a domain application's asynchronous review is pending); please refer to the answer to question 29 (Rights Protection Mechanisms) for more information about the special life cycle support offered by the CORE Registration System for launch phases.
- \* `pendingDelete`: Indicates that the domain is being deleted; depending on its RGP status (see below), it may be restorable or not.
- \* `pendingRenew`: Indicates that the domain is pending a renewal. While supported by the CORE Registration System, this status not used in the designated `.sport` domain life cycle.
- \* `pendingTransfer`: Indicates that the domain is in the process of being transferred from one registrar to another registrar.
- \* `pendingUpdate`: Indicates that an update to the domain is pending, i.e. that an asynchronous process is in progress to finish the domain's modification. While supported by the CORE Registration System, this status not used in the designated `.sport` domain life cycle.
- \* `serverDeleteProhibited`: Indicates that the domain cannot be deleted.
- \* `serverHold`: Indicates that the domain is not published in the `.sport` zone.
- \* `serverRenewProhibited`: Indicates that the domain cannot be renewed by an explicit `"domain:renew"` command; the status does not prevent auto-renewal.
- \* `serverTransferProhibited`: Indicates that the domain cannot be transferred. This status is automatically set and maintained for 60 days by the SRS after a domain is first created, as well as after each successful registrar transfer.
- \* `serverUpdateProhibited`: Indicates that the domain cannot be modified.

## 7.2 EPP Grace Period Status Values (from RFC 3915)

- \* `addPeriod`: Indicates that the domain is in the Add Grace Period.
- \* `autoRenewPeriod`: Indicates that the domain is in the Auto Renew Grace Period.
- \* `renewPeriod`: Indicates that the domain is in the Renew Grace Period.
- \* `transferPeriod`: Indicates that the domain is in the Transfer Grace Period.
- \* `pendingDelete`: Indicates that a deleted domain is scheduled for release, i.e. it can no longer be restored by the registrar.
- \* `pendingRestore`: Indicates that a request to restore a deleted domain has been received, and that the registry awaits the restore report from the registrar.
- \* `redemptionPeriod`: Indicates that a deleted domain is in its Redemption Grace Period, i.e. it may be restored by the registrar.

## 8. Consistence with Commitments to Registrants

The registration life cycle described above is consistent with the registry's commitments to registrants, as laid out in the answer to Question 30a. In particular, the handling of auto-renewals and the Redemption Grace Period ensures the "Protection of Investment" part of that commitment, since it protects the domain from vanishing unintendedly.

## 9. Resourcing Plans

The CORE Registration System already supports the life cycle described above at the time

of writing. Since the system is highly configurable, the adjustment of any variables and flags defining the process (such as name validity policies, or the durations of involved grace periods and time-outs) merely requires changing the respective settings within the system configuration. No coding is required for this, which means that no special developing resources will be needed. However, the staff on duty at CORE Internet Council of Registrars will need to define the related policies and set up the system to support and maintain the desired registration life cycle.

For the initial setup, the following resources are allotted:

- \* Registry Policy Officer: finalising policies, creating documentation: 3 man days
- \* System Administrator: configuring system for policies: 4 man hours
- \* First Level Support: training: 3 man hours per person

For the ongoing maintenance, the following resources are allotted:

- \* System Administrator: 4 man hours per month

Employees already working for CORE Internet Council of Registrars will be handling these tasks. The numbers above were determined by averaging the effort required for comparable tasks conducted by CORE in the past over the course of 12 months.

## 28. Abuse Prevention and Mitigation

Q28 : Abuse Prevention and Mitigation

The .sport Registry, with the assistance of its backend registry provider CORE Internet Council of Registrars, will establish, thorough and effective methods to prevent abuse of .sport domain names, .sport registrant data or the associated infrastructure, as well as to mitigate any impact from such abuse (should it occur despite the preventive measures). In order to achieve this, the .sport Registry is committed to deploying extensive organizational and technical measures. The most salient examples of these measures are described below.

### ~1. Rapid Takedown Policy for Cases of General Malicious Activity

The .sport Registry has committed to closely collaborate with law enforcement authorities and security agencies in order to take quick action in case a .sport name is reported to be involved in malicious activity. For this purpose, a Rapid Takedown Policy is established that:

- \* identifies cases of malicious activity,
- \* defines ways for the registry to be notified of such activity (e.g. via a dedicated website, e-mail address or phone hotline),
- \* defines clear and consistent procedures to quickly stop the malicious activity (after the activity was confirmed and impact of the measures has been assessed),
- \* defines related service levels (e.g. with respect to the maximum time the registry may take to respond to takedown requests). This time limit will never exceed 15 business days in the case of less urgent cases, and not exceed 24 hours in the most urgent cases such as phishing,
- \* defines rules regarding the notification of involved parties (registrant, administrative contact, technical contact, registrar, informant),
- \* defines ways to appeal against any measures taken (through the general Eligibility Restrictions Dispute Resolution Procedure as is the case for all appeals against Registry decisions, but with panelists that are specialized in Security and Malicious Conducts).
- \* defines how cases covered by the policy need to be documented and reported. In this context, cases of malicious activity may include (but are not limited to):
  - \*\* wrong, invalid or harmful DNS setup (e.g. pointers to false IP addresses),
  - \*\* use of trademarked or otherwise reserved names without proper rights,

- \*\* use of the domain in actions that affect the stability and security of the Internet (e.g. in Denial of Service (DoS), Distributed Denial of Service (DDoS) attacks or botnets),
- \*\* use of the domain for the distribution of malware (such as computer viruses, worms, Trojan horses, spyware or rootkits),
- \*\* use of the domain for phishing or scamming,
- \*\* use of the domain for spamming (affecting e-mail or other forms of electronic messaging).
- \*\* maintaining invalid registrant contact data in the domain.

Where applicable, the policy includes metrics and thresholds for finding quantitative indications of malicious conduct.

Procedures to stop malicious activity may include (but are not limited to):

- \* notifying the domain's sponsoring registrar, specifying a deadline until which the activity needs to have ceased,
- \* notifying the domain's registrant, administrative or technical contact directly (again specifying a deadline until which the activity needs to have ceased),
- \* locking the domain and putting it on hold in order to prevent changes to the domain and remove it from the .sport zone ("takedown"),
- \* deleting the domain name and blocking it from further registration if need be.

Escalation rules (defining which steps are to be taken in which order and conditions for moving on to the next, more drastic measure) are part of the policy.

Since removing a domain name from the .sport zone usually has serious consequences (such as rendering websites and e-mail addresses utilizing the domain name unusable), the .sport Registry will, in accordance with the policy, exercise extreme caution with regard to any takedown decision.

At the same time, the .sport Registry is aware that malicious activity potentially affects a large number of Internet users, which sometimes warrants drastic measures. The Rapid Takedown Policy aims at finding appropriate measures, taking the interests of all involved parties into consideration. The Rapid Takedown Policy will be announced to both .sport registrars and .sport registrants and be part of the Registry-Registrar Agreement (RRA) and the .sport registration terms.

## 2. Rapid Takedown Policy for Cases of Phishing

The .sport Registry will work closely with all relevant CERTs and CSIRTs to develop an Anti-Phishing-specific simplified procedure. The goals will be to:

- \* get all five Swiss CERTs and CSIRTs (at least, but open to other CERTs) accredited as Authorized Intervenors),
- \* develop criteria and checklist for domain names eligible for Rapid Suspension,
- \* develop secured communications method between Authorized Intervenor and Registry, including an Affidavit form.

Names reported by Authorized Intervenors will be suspended in less than 4 hours. This system should expand to a global Authorized Intervenors list. In this regard, the .sport Registry will work with the Antiphishing Working Group and other initiatives in order to develop and complete their proposed Accelerated Takedown proposal, which is still in beta stage.

## 3. Single Point of Contact for Abuse

To ensure that the .sport Registry gets notified of any cases of abuse as quickly and as easily as possible, an area of the public website operated by the .sport Registry for the .sport TLD will be dedicated to the reporting of such cases.

The respective web pages establish a single point of contact where abuse cases can be reported via a simple web form. An e-mail address and a phone number will also be provided as alternative means of communication.

Every case reported will raise a high-priority ticket within the .sport support staff's ticket system, to be examined immediately and treated in accordance with the Rapid Takedown Policy (and the other Compliance Procedures related to Eligibility and Use, and Trademark Claims).

#### 4. Prevention of Domain Name Tasting or Domain Name Front Running

The life cycle of a .sport domain name includes a 5-day Add Grace Period (AGP) during which a newly created domain name may be deleted with a refund of the domain fee. This is common practice and corresponds to the policies of almost all existing generic top level domains.

However, in the past the Add Grace Period has been abused for practices such as domain name tasting and domain name front running.

Domain name tasting means that domains were created simply for the purpose of testing whether revenue can be generated by e.g. creating a web page with advertisements for the domain; if this was found feasible within the first few days, the domain was retained, otherwise it was deleted within the add grace period for a full refund, i.e. the domain was "tasted" for potential revenue without any payment to the registry.

Domain name front running refers to the practice of pre-registering domain names somebody has merely expressed interest in (e.g. by searching for them on the Whois web front-end of a registrar) with the purpose of reselling the domain to that person (at an inflated price) afterwards; again, the Add Grace Period has been abused for this purpose since a registrar could do that without any cost (if the unsold domain was deleted before the end of the add grace period).

In 2008, ICANN introduced the so-called "AGP Limits Policy" (<http://www.icann.org/en/tlds/agp-policy-17dec08-en.htm>) which addresses these and other issues resulting from the Add Grace Period. The .sport Registry will fully implement this policy by restricting Add Grace Period refunds to registrars according to the limits specified by the policy. At the end of every month, the registration system's billing module will determine every registrar's net domain adds and check whether the add grace period refunds granted during that month exceed the permissible number according to the policy; if this is the case, additional charges to the registrar's account will be initiated to effectively revert the excessive refunds.

Any exemption requests by registrars, whether they were granted (as permitted by the policy) or rejected, are documented, and such documentation will be maintained and made available for review by ICANN on request. The registry's monthly report to ICANN will contain per-registrar information on the granted add-deletes, as well as additional columns regarding the exemption requests.

The related report columns are (with column header names in parentheses):

- \* number of AGP deletes ("domains-deleted-grace")
- \* number of exemption requests ("agp-exemption-requests")
- \* number of exemptions granted ("agp-exemptions-granted")
- \* number of names affected by granted exemption request ("agp-exempted-domains")

#### 5. Prevention of Domain Name Sniping (Grabbing)

Domain name sniping (also known as "grabbing") is another common abuse pattern; the name refers to the practice of trying to re-register potentially interesting domain names

immediately after they are deleted (sometimes by accident, or because a registrant failed to renew the domain with his registrar in time).

Since .sport domains are (per registry policy) automatically renewed when they reach their expiration date, no explicit renewals by registrars are required to prevent a domain name from being deleted when they expire. Registrars need to explicitly delete domains in order to release them for re-registration. This substantially reduces opportunities for domain name sniping.

However, registrars may still send unintended domain deletions, i.e. due to clerical errors or miscommunication with the registrants. Even for these cases, measures against domain sniping are in place. Starting in 2002, registries have started to implement an ICANN proposal, the so-called "Redemption Grace Period" (RGP, <http://www.icann.org/en/registrars/redemption-proposal-14feb02.htm>).

The proposal recommends introducing a 30-day period after a name's deletion during which the name is removed from the TLD zone (in order to give the registrant the chance to take notice of his name's deletion) but is still eligible for being restored by the previous registrar/registrant.

Supporting the RGP significantly reduces chances for domain grabbers to obtain inadvertently deleted domains, since a registrant gets 30 days to notice the mistake and restore the domain before it becomes available for re-registration.

The .sport Registry supports the Redemption Grace Period as proposed by ICANN and implements it in full compliance with RFC 3915 ("Domain Registry Grace Period Mapping for the Extensible Provisioning Protocol (EPP)").

## 6. Prevention of Orphaned Glue Records

According to the definition found in the "SSAC Comment on the Orphan Glue Records in the Draft Applicant Guidebook" (<http://www.icann.org/en/committees/security/sac048.pdf>), a glue record becomes an "orphan" when the delegation point NS record (the "parent NS record") that references it is removed while retaining the glue record itself in the zone. Consequently, the glue record becomes "orphaned" since it no longer has a parent NS record. In such a situation, registrars and registrants usually lose administrative control over the record, and the record's attribution to a certain registrar may become unclear, which makes it a potential vector for abuse.

The glue record policy in effect for the .sport TLD avoids this situation entirely by disallowing orphan glue records altogether. This corresponds to policy #3 mentioned in section 4.3 (page 6) of the SSAC document mentioned above. The technical implementation within the Registry and its associated zone generation process ensures this by the following measures:

- \* As a general principle, glue records are only created if they are really necessary, i.e. only in the case where a name server (e.g. "ns.example.sport") is used for the delegation of a superdomain of its own name, e.g. "example.sport" in this example. If the same name server is used for e.g. "example2.sport", no glue record is created.

- \* A host object within the .sport TLD (e.g. "ns.example.sport") cannot exist without its parent domain ("example.sport"). Any attempt to create the host "ns.example.sport" will be rejected by the SRS if the domain "example.sport" does not already exist or is not sponsored by the registrar creating the host. Likewise, the domain "example.sport" cannot be deleted by the registrar if subordinate hosts like "ns.example.sport" still exist. These subordinate hosts have to be deleted before the domain may be deleted; if such hosts are used in delegations for other .sport names, these delegations in turn have to be removed before the host may be deleted.

- \* If a domain name is put on hold (e.g. as a consequence of the Rapid Takedown Policy described above), this not only means that the delegation for the name itself is removed

from the zone; it also means that any occurrences of NS records referencing a name server that is subordinate to the domain are also removed from other .sport domains, along with any accompanying glue records. The same of course holds true should the domain name have to be deleted entirely by the registry.

Consequently, no glue records can exist for a certain domain in the .sport zone after that domain is put on hold or deleted as part of abuse prevention or mitigation procedures.

It should be noted that this policy may lead to other domains (not directly involved in the abuse case) being affected by the takedown if they were delegated to a name server subordinate to the offending domain. Depending on their overall DNS architecture, such domains may become unreachable or less reachable after the delegation point is removed. While this could in theory be avoided by a less rigid orphan glue record policy, the overall benefit of adopting the strict policy described above is deemed higher than the potential damage to domains using a DNS infrastructure depending on an offending domain name.

#### 7. Preventing Use of Trademarked, Reserved, Invalid, Illegal or Otherwise Unsuitable .sport Names

As laid out in the answer to Question 29 (Rights Protection Mechanisms), the .sport Registry takes extensive measures to protect the legal rights of others (such as trademark holders) with regard to .sport domain names. This includes

- \* conducting a Sunrise phase to allow trademark holders to secure names related to their trademarks prior to GA,
- \* accessing a Trademark Clearinghouse to validate trademarks presented by registrants,
- \* offering a Trademark Claims Service, at least during the first 60 days of general availability,
- \* taking precautions against phishing and pharming and
- \* committing to full compliance with established Dispute Resolution and Suspension Procedures, including the Uniform Rapid Suspension (URS), the Trademark Post-Delegation Dispute Resolution Procedure (Trademark PDDRP), and the Uniform Domain Name Dispute Resolution Policy (URDP).

Please refer to the answer to Question 29 for more detailed information on these measures.

In addition to these specific rights protection measures, CORE Registration System provides the following general means to make sure that no .sport names are registered which are for other reasons deemed invalid, reserved, illegal, offensive or unsuitable.

##### 7.1 Rule Engine

For the most part, this is achieved by the deployment of a complex rule engine that checks each registered name at the time of registration for compliance with a configurable set of rules. Among other things, these rules will include:

- \* a test to ensure that the domain name has the proper number of labels (which is two for a traditional registry that allows only second level domains to be registered),
- \* a test to ensure that no hyphens occur in position 3 and 4 of any of the domain's U-labels (to protect "xn--" and future ACE prefixes),--
- \* a test to disallow hyphens at the beginning or end of the name,
- \* a test to find ASCII characters which are neither a letter, nor a digit, nor a hyphen,

- \* a test to find invalid IDN characters, i.e. characters not contained in any of the support IDN character tables,
- \* a test to disallow reserved geopolitical names,
- \* a test to disallow registry reserved names,
- \* a test to disallow ICANN reserved names,
- \* a test to disallow otherwise reserved or unsuitable names.

Please refer to the answer to Question 44 (Internationalised Domain Names) for more information on the rules governing valid IDNs in the .sport TLD.

For the tests checking for reserved names, custom lists of labels can be conveniently maintained by the .sport Registry to define the disallowed names for each category. Additional categories can also be added as required for enforcing specific policies of the .sport TLD.

The rules are stored in database tables (rather than static configuration files), which means rules can be added, deleted or altered by authorised registry personnel without requiring a shutdown or restart of the .sport SRS.

## 7.2 Compliance with Specification 5 of the Registry Agreement

The rule engine is the central system component ensuring that the .sport Registry will operate the .sport TLD in full compliance with Specification 5 ("SCHEDULE OF RESERVED NAMES AT THE SECOND LEVEL IN GTLD REGISTRIES") of the Registry Agreement. Unless the .sport Registry is otherwise authorised by ICANN and the Government Advisory Committee (GAC) in writing, the rule engine for .sport will be set up to prohibit the registration of the labels and label types listed in Specification 5 by registrars.

## 7.3 Pattern Matching and Fuzzy String Comparison

In addition to the pre-registration checks described above, the rule engine also supports testing registered domain names against a set of configurable string patterns, as well as for their similarity to a set of disallowed strings. The former is implemented by matching names against regular expressions, the latter by calculating the so-called "Levenshtein distance" between the registered name and a given disallowed string (which is a measure for their similarity). Prior to performing any of these checks, the registered name is subjected to a number of normalisations in order to maximise its comparability; this includes the mapping of IDN characters with accents to their ASCII counterparts where feasible, the removal of hyphens and the removal of digits.

If a name matches a regular expression, or if the calculated Levenshtein distance falls below a certain threshold, the name is still normally registered, however it is also internally flagged for review. Due to the fuzzy nature of the pattern and Levenshtein matching, a name flagged via these checks may not necessarily be invalid or illegal; this is why the flagged names need to be reviewed manually by the .sport support staff. Flagged names automatically create tickets within the support team's issue system, which starts a workflow that ultimately decides whether the name is permissible (in which case the flag is removed) or invalid/illegal (in which case the name is deleted and the registrar gets notified).

## 7.4 Handling of IDNs

In the context of abuse prevention, the proper handling of Internationalised Domain Names (IDNs) becomes an important aspect.

If different IDN scripts were allowed to be mixed within one domain name, so-called homographs could be used to make users believe they are looking at a certain web site while it is actually a different one which name just has an identical or very similar

visual representation. For example, since the Cyrillic letter "Er" ("p" in Cyrillic script) in lower case has the same visual appearance as the Latin lower case letter "p", mixing Latin and Cyrillic scripts would allow the creation of a domain name like "paypal.sport", a homograph of the Latin-only name "paypal.sport" which, despite being a different word, looks exactly the same. Such a domain name could thus e.g. be used for spoofing or phishing attacks. The .sport Registry prevents such abuse by implementing an IDN policy that disallows the mixing of scripts; within each label of a registered .sport, only characters from a single script may be used.

Likewise, the Cyrillic-only second level domain "pop.sport" looks identical to its Latin-only counterpart "pop.sport". If only the rule described above (no mixing of scripts) would apply, these two names could coexist for different registrants, and could thus be abused to confuse users. However, the special way the .sport Registry handles such IDN variants while considering respective IDN tables and canonical forms of domain names, as described in detail in the answer to Question 44 (Support for Registering IDN Domains), prevents this situation; only one of these two domains may exist at the same time. In short, one single table, Latin script, will be allowed.

The .sport Registry is aware that even within the same script (e.g., Latin), the use of diacritics may potentially cause similar confusion among users, e.g. if the ASCII-only name "paypal.sport" and a very similar one with diacritics (like "páypàl.sport") are coexisting as completely separate registrations. Hence, the .sport Registry has decided to treat such names as false variants and only allow their registration by the same registrant. Please see response to Question 44 below, and specially the IDN Table attached there, for further details.

## 8. Domain Data Access Control

One important point of attack that may lead to abuse of .sport domains and their associated data is the unauthorized or excessive access to data stored within the .sport repository. This applies to both read access (e.g. via public interfaces such as the port 43/port 80 Whois) and write access (such as registrar interfaces like EPP or the[8] web-based Control Panel). The measures taken in the .sport TLD to properly restrict access are laid out in the following sub-sections.

### 8.1 Prevention of Whois Data Mining

The port 43/port 80 Whois interfaces grant public access to domain, host and contact data. As such they are a potential target for data mining, i.e. the retrieval of large numbers of postal or e-mail addresses for e.g. the purpose of advertising.

As explained in detail in the answer to question 26 (Whois), the Whois implementation provided by the .sport Registration System prevents such data mining attempts, most importantly by:

- \* Access to all Whois interfaces is rate-limited (when accessed from IP addresses not whitelisted for unlimited access).
- \* Web interface users are required to pass a CAPTCHA before access is granted.
- \* Web interface users seeking access to extended Whois search capabilities are required to authenticate by entering login credentials (which are only issued to eligible parties).
- \* For improved spam protection, E-mail addresses may be displayed as images only in the web-based Whois.
- \* Contact disclosure flags as specified in RFC 5733, the Extensible Provisioning Protocol (EPP) Contact Mapping, are fully supported. This gives registrants enhanced control over the contact fields they want to disclose in the Whois. In this respect, the system is configurable and allows restricting the use of EPP contact disclosure settings via rules defined by specific registry policies or legal requirements.



## 8.2 Prevention of Unauthorized Data Modifications

Domain data within the .sport Registry is exclusively provisioned by registrars, i.e. registrants have no direct write access to their data within the repository; all their modifications have to be done via the registrar sponsoring the respective domain. In this constellation, registrants need to trust their registrar and will expect that the management of domain is conducted in a diligent and correct manner. This means that the registry's interfaces used by registrars need to be secured in order to only allow the sponsoring registrar of a domain (and nobody else) to modify domain data.

The EPP interface provided by the .sport Registration System does this by:

- \* requiring SSL/TLS on the transport layer,
- \* requiring a strong EPP password (minimum length, mandatory digits and non-alphanumeric characters),
- \* requiring changing the EPP password on a regular basis,
- \* requiring registrars to supply lists of IP addresses or subnets from which exclusive access will be granted,
- \* requiring registrars to use SSL client certificates known to and trusted by the registry, thus providing an additional means of authentication beyond the EPP password.

Likewise, the web-based Control Panel:

- \* requires SSL/TLS on the transport layer,
- \* requires registrars to log in with a user name and password (for which the same rules regarding minimum length, mandatory digits and non-alphanumeric characters apply),
- \* requires changing the password on a regular basis,
- \* requires registrars to supply lists of IP addresses or subnets from which exclusive access will be granted,
- \* requires registrars to install SSL client certificates known to and trusted by the registry in their web browsers, thus providing an additional means of authentication beyond the web password.

## 9. Whois Accuracy

Since .sport is operated as a so-called "thick registry", the .sport Whois displays information about the registrant, as well as the administrative, technical and billing contacts of every .sport domain. In cases of malicious or abusive activity involving a .sport domain, this Whois contact information usually is the first and most important source of information, e.g. for law enforcement authorities, to determine in a timely manner the people or organizations responsible for the domain. Consequently, it is deemed very important to maximize the accuracy of contact information stored in the registry repository.

The .sport Registry is therefore committed to taking diligent measures to promote Whois accuracy, including (but not limited to) the following:

- \* **Contact data completeness policy:** While RFC 5733, the Extensible Provisioning Protocol (EPP) Contact Mapping, merely requires contact data to contain a name, a city, a country code and an e-mail address for a syntactically complete EPP request, the .sport TLD policy for contact data mandates the specification of at least one address line (street), a voice phone number and a postal code in addition. This means that, in addition to the XML schema validation conducted by the .sport SRS for every EPP request received from the registrar (which ensures the presence of all RFC-mandated contact data), the SRS also

requires these essential fields to be present and will reject requests lacking them with a "parameter value policy error" message. The validation done by the SRS also goes beyond validating against the EPP XSDs with respect to field content. For instance, contact e-mail addresses are required to contain an '@' character and a valid domain name; this is not mandated by the XSDs specified in RFC 5733.

Contact data monitoring: On a regular basis, the registry will run automated plausibility audits on the contact data submitted by registrars. Using publicly available databases, contact address lines will e.g. be mapped to cities and zip codes, which are then compared to the ones provided by the registrant. Likewise, phone and fax numbers will be checked for plausibility.

\* Domain data change notifications: [15] The .sport Registration System can be configured (on a per-registrar basis) to automatically notify certain contacts of a domain (e.g. both the registrant and the administrative contact in order to reach multiple people concerned with the domain) after every change made to the domain (i.e. alterations of associated contacts or name servers). When enabled, this feature allows unauthorized or unintended changes to domain and contact data to be detected immediately. This functionality will however need to be deployed after consultation with .sport registrars, since many registrars do not endorse direct communication between the registry and registrants, i.e. their customers.

\* WDRP auditing: In 2003, ICANN adopted the so-called "Whois Data Reminder Policy" (WDRP, <http://www.icann.org/en/registrars/wdrp.htm>) which obliges ICANN-accredited registrars to send yearly Whois data reminder notices to registrants. These notices contain the Whois data currently on file for the respective domain, as well as instructions for the registrant about ways to correct the data if required. While the .sport Registry does not intend to replicate this reminder procedure on the registry level, it will establish an auditing process that monitors the WDRP activities of .sport registrars to make sure that WDRP responsibilities are honored.

## 10. Resourcing Plans

The CORE Registration System already supports the technical abuse prevention and mitigation measures above at the time of writing. No additional coding is required for this, which means that no special developing resources will be needed. Continuous audits and monitoring, as well as timely reactions to reports of malicious activity will be provided by the staff on duty at CORE Internet Council of Registrars.

For the initial setup, the following resources are allotted:

- \* Registry Policy Officer: finalising policies, creating documentation: 7 man days
- \* System Administrator: monitoring setup: 3 man days
- \* First Level Support: training: 1 man day per person
- \* Second Level Support: training: 1 man day per person

For the ongoing maintenance, the following resources are allotted:

- \* First Level Support: 10 man hours per month
- \* Second Level Support: 20 man hours per month
- \* System Administrator: 3 man hours per month

Employees already working for CORE Internet Council of Registrars will be handling these tasks. The numbers above were determined by averaging the effort required for comparable tasks conducted by CORE in the past over the course of 12 months.

## 29. Rights Protection Mechanisms

### Q-29 : Rights Protection Mechanisms

Whenever a new top level domain is introduced, the protection of intellectual property, legal rights and trademarks is an important objective. Using suitable technical means and appropriate policies and procedures, rights owners and trademark holders must be protected from abusive domain registrations throughout a TLD's launch phase(s), as well as during the period of general availability (GA) which follows these launch phase(s).

The .sport Registry is fully committed to preventing abusive uses of its namespace, regarding legal rights of third parties, and beyond. It is fully committed to an orderly and trusted namespace with clear and effective policies guaranteeing that domain names are used according to the principles of the .sport TLD by the relevant community, as explained in more detail in questions 18 and 20 above.

In this regard, below is an outline of the Enforcement Policies that will be applied in the .sport TLD having an effect on Rights Protection :

1. Launch Phase (Sunrise; Landrush)
2. Compliance Procedures: General Availability
3. Dispute Resolution Mechanisms/Rights Protection
4. Technical Implementation
5. Human Resources

1. Launch phase: Criteria; Conflict Resolution; Mechanisms

As explained in answers to questions 18 and 20, the .sport TLD Launch phase will consist of a long (well over the minimum 30 days as required), orderly Sunrise period during which multiple applications will be accepted and published, and then validated, prioritized and eventually accepted or rejected according to their relative priority.

The Launch phase includes several categories for registrants with prior rights:

1. Federations and Other Governing Bodies
  - 1.1 International, Continental, Regional, National, Local Federations
  - 1.2 Other International Sports-related Governing Bodies
  - 1.3 Public Authorities for their geographic names in relation to sports events.
2. Sports Clubs affiliated to Sports Federations
  - 2.1 Sports Clubs taking part in international-level championships
  - 2.2 Other Sports Clubs
3. Corporate Partners
  - 3.1 Recognised Sports Events Organizers
  - 3.2 Sponsors
  - 3.3 Rights-holders, sports-related media, and other sports-related Corporate Partners.
4. Athletes
  - 4.1 Athletes with participation in World Championships or Olympic Games
  - 4.2 Other eligible athletes.
5. Defensive Trademark Registrations (when not sports-related, as then they would fit in 3. above)
6. Same Categories as 1-3 above, but with extended Name Selection criteria.

Each application will be individually and thoroughly validated against both the general requirements of .sport registration policies and the specific requirements of each Category or Sub-Category. Priority will be differentiated by Category (and Sub-category) each one having priority over the next one.

Within the same category all conflicting validated applications will be sent through a largely automated, multi-step contention resolution process, including, Mediation, Arbitration, Random Selection and Auction options available to the applicants.

Upon rejection of an application the applicant will have one week to notify their intention to appeal the decision (before an independent Mediation and Arbitration Center). In that case, no application for the same name from the same or lower rank in Sunrise priority will be approved, pending the Appeal. If the Appeal finds that the Registry failed to apply the .sport TLD Launch Registration Policies in an adequate manner, this will result in the restoration of the domain name, for which processing will then resume according to the .sport TLD Launch Registration Policies (within the category or lower priority categories)

The Registry will also offer the TM Claims mechanism as provided by the TM Clearinghouse. This service will be provided not just for the Sunrise period, but also afterwards, during the General Availability Phase.

## 2. Compliance Mechanisms. General Availability

As explained in questions 18 and 20, once in Ongoing (live) Registration mode, the .sport Registry will perform ex-post validation based on Whois data and use of the domain name, both against the Registrations Policies and the Intended Use Statement provided by the registrant at registration time (or updated afterwards).

### 2.1 Ex-officio random checks

Checks will be performed by compliance agents both based on complaints and ex-officio, through statistically targeted random checks. The .sport Registry will start with 50 such random cases per day, and will adapt the practices according to the experience gained (it is expected that the number will decrease over time, as reputation and enforcement will make compliance easier over time).

Checks will be carried out both on compliance with the .sport TLD policy and, at the same time, on registrant data accuracy.

In case the compliance agents discover any problem, they will forward the issue to the Compliance Officers, and the registrant will be contacted to clarify/correct the situation. If not solved in due time (15 or 30 days, according to the specific cases), the name may be put on registry hold.

### 2.2 Complaints, Rights Protection

Similarly, in case of a third party complaint for infringement of rights of others, the Compliance Officers will request the complainant to compile a specific form including such information as :

- \* identification of complainant,
- \* identification of infringed right,
- \* declaration of good faith belief that the domain name is used to violate said right,
- \* indemnification of the Registry in case of action based on false, inaccurate or otherwise non-applicable claims,
- \* acceptance of jurisdiction of the courts of Edinburgh and Registrant's domicile, in case the name is blocked and the registrant wants to sue the complainant for damages.

Then the registrant will be contacted. In case the registrant provides within the following 15 business days a counter-statement with some specific content (identification; signed declaration of non-infringement of rights, with explanation of

reasons) the domain name will not be blocked, and the complainant shall use the Uniform Rapid Suspension procedure, the UDRP, the .sport TLD Charter Compliance Dispute Resolution Procedure (CCDRP) or file a lawsuit in a competent court. In case the registrant fails to provide all the elements (which will often be the case in blatant violations) the domain name could be put on registry hold.

Against these decisions (not just for Rights Protections, but also in cases of Compliance decisions for Eligibility or use breaches and malicious conduct) the parties may appeal to an independent Mediation and Arbitration Authority according to the .sport TLD CCDRP.

### 3. Dispute Resolution (and Prevention) Mechanisms involving Rights Protection

#### 3.1 Compliance with ICANN-mandated Dispute Resolution Mechanisms

The .sport Registry will fully comply with all procedures established in Specification 7 of the draft TLD Registry Agreement. The .sport Registry agrees to adhere to any remedies ICANN imposes on Registry Restrictions Dispute Resolution Procedure and Post-Delegation Dispute Resolution Procedure, as implemented and amended in the future.

The .sport Registry further agrees to implement Uniform Trademark Dispute Resolution Procedure (UDRP) and Uniform Rapid Suspension Procedures (URS) in the manner established in the .sport TLD Agreement and the Consensus Policies.

#### 3.2 Additional compliance measures related to ICANN-mandated policies

##### \* UDRP

While compliance with the UDRP as it is now lies on registrars' side, the .sport Registry is not willing to accept non-compliant registrars preventing its implementation. Besides ICANN-applied sanctions, the Registry will suspend the ability to register new domain names under the .sport TLD for those registrars failing to implement UDRP decisions.

In order to do this, the .sport Registry will implement a specific complaints form for successful UDRP complainants facing non-cooperative registrars for .sport names. Upon evidence of non-compliance, the offending registrar would be prevented from registering any new .sport name for three months after effective compliance the first time, and six months in case of repeated failures to comply. This measure is more effective and less harmful for the end users than termination, and will be included in the .sport TLD RRA.

##### \* URS

The .sport Registry will immediately comply with URS decisions upon notification from the URS Service provider, through its Compliance Team.

Furthermore, the .sport TLD will offer the successful complainant, if the name becomes available for registration at any given time, a Notification Service for any future attempt to register such a name. This service will be free of charge to the successful URS complainant.

##### \* Trademark Claims

As noted above, the .sport Registry intends to extend the TM Claims services beyond the mandatory Sunrise period and the first 60 days of General Availability, on an ongoing basis.

### 4. Technical Implementation

#### 4.1 Launch phase

Technically, Sunrise phases differ from the general availability period in some important aspects:

\* In addition to the usual domain data (contacts, name servers), registrars need to collect trademark information (such as trademark name, trademark number, trademark type, trademark application and trademark registration dates) from the registrants and submit this data to the registry when applying for domain names.

\* The specified trademark information needs to be validated. This involves verifying the data with the help of a so-called "Trademark Clearinghouse", a central repository authenticating, storing and disseminating trademark information (providers for this service are to be designated by ICANN). In addition, manual reviews may be part of the validation process, for which appropriate tools should be in place.

\* The results of the trademark validation need to be received and properly processed. This includes notifying all involved parties (such as the registrar and registrant).

\* It is possible that multiple applications for the same domain name are received. To distinguish these applications, a unique "application ID" is assigned to each of them in order to clearly identify them in future references, notifications and queries. If more than one of the applications for a domain name carry valid trademark data, contention resolution measures need to be taken in order to determine the registrant to whom the domain is awarded.

The CORE Registration System used by CORE Internet Council of Registrars to operate the .sport TLD fully supports these and other requirements of Sunrise phases via features described in the following.

#### 4.1.1 Sunrise EPP Extension Support

The system supports an EPP extension for submission of trademark data along with domain applications during launch phases such as Sunrise. For multi-phase Sunrise periods, the extension also supports the specification of the phase for which an application is submitted.

Moreover, the extension offers the possibility to submit additional textual information along with an application, such as e.g. the intended use for the domain name, or a URL demonstrating the previous use of the domain name under other top level domains. The registry's Sunrise policy governs whether specifying this information is required, which kind of data this information needs to provide, and how this information affects the decision about whether or not a domain name is awarded.

Please refer to the answer to Question 25 (Extensible Provisioning Protocol) for more information about the launch phase EPP extension.

#### 4.1.2 Sunrise Whois Support

CORE provides special Whois services during launch phases like Sunrise. This allows registrants to check the status of their applications independently from information they may obtain from their registrars.

However, the Whois search options and the information returned during Sunrise differs from General Availability (as described in the answer to Question 26). Only the search for application IDs is enabled, without any support for wildcards. If an application ID exactly matches the Whois client's query string, the application's data (domain name, registrar, application date, contact data and trademark information) is returned, along with information about the application's status (such as "approved" or "under review"). See the Sunrise/Landrush life cycle specification below for details about possible application states.

#### 4.1.3 Registration Life Cycle Support for Sunrise (and Other Launch Phases)

The system supports the special steps of the registration life cycle that occur during Sunrise, i.e. the initial asynchronous trademark validation and/or selection processes.

The registration life cycle described in the answer to Question 27 (Registration Life Cycle) applies to the "General Availability" (GA) phase of the .sport TLD, i.e. the normal "First-Come, First-Served" (FCFS) period that usually starts after a TLD has

finished its initial launch phase(s). Launch phases like Sunrise and Landrush usually involve a special life cycle that adds some complexity to the initial domain creation step.

During Sunrise phases, this step comprises the validation of trademark data and the determination of the winning application if multiple ones were received. Depending on the concrete registry policy in place, one or multiple Sunrise phases may be conducted.

So-called "Landrush" phases are usually conducted after (or in parallel to) Sunrise phases in order to limit the load on the Shared Registration System (SRS) that usually occurs during the initial run on popular, generic names. Their goal is to replace the brute-force FCFS approach of the GA by a fair, controlled domain assignment process that does not encourage registrars to flood the SRS with requests when GA starts. Similar to Sunrise, most Landrush approaches let registrars submit multiple applications for the same domain name, among which a winner is determined by asynchronous contention resolution measures as defined by the registry's policies. In contrast to Sunrise, usually no special proof of eligibility needs to be supplied by registrars or validated by the registry during Landrush.

#### 4.1.3.1 Life Cycle Support for Sunrise

During both Sunrise and Landrush, the first step of the normal domain life cycle ("create domain", position (A) in the GA life cycle diagram Q27-F1 from the answer to Question 27) consists itself of a number of individual steps representing the registry's rights protection workflow. The steps during Sunrise are depicted in Figure Q29-F1:

(A1) Registrars are required to submit Sunrise applications for domain names by sending EPP "domain:create" commands containing a special EPP extension for the specification of relevant trademark data. In addition, a second EPP extension may be used to specify data required to resolve a potential contention with regard to the domain name, such as the registrant's bid for the case that an auction should be held to decide the final assignment of the domain name (if the registry's policy utilises auctions to resolve contention during Sunrise).

Application data is stored in the registry database. Checking this data for validity may involve manual evaluation that needs to be done asynchronously. Also, multiple valid applications for the same domain name may be submitted during Sunrise, which is why applications are collected until the end of the Sunrise submission period, after which evaluations (and, if required, contention resolution) take place to determine the final outcome. The final result of the application is later communicated to the registrar via an EPP poll message. A unique application ID is assigned to the application and returned to the registrar for future reference and queries.

(A2) The registry system accesses the API of the connected Trademark Clearinghouse in an attempt to validate the submitted trademark information in relation to the desired domain name.

(A3) If the check with the Trademark Clearinghouse fails, i.e. the provided trademark information is found to be evidently invalid, the application is rejected immediately without further manual review. An EPP poll message is placed in the registrar's message queue to inform the registrar about the negative outcome of the application. The application's status is now "invalid", which is also displayed in the special launch phase Whois output when the application ID is queried.

This step in the life cycle may also be reached later in the validation process, i.e. after the application was found invalid during a manual review, or when a contention resolution for a name with multiple valid applications was lost by the registrant. In the latter case, the application's status is "rejected", which is also displayed in the Whois output when the application ID is queried.

(A4) If the check with the Trademark Clearinghouse succeeds, i.e. the provided trademark information is found to be (at least tentatively) valid, the application is added to the

pool of automatically validated applications for the given name. Such applications are collected in the registry database until the end of the Sunrise submission period. The registrar may withdraw the application by sending an EPP `''domain:delete''` before the Sunrise submission period ends.

The application's status is now `"pending"`, which is also displayed in the Whois output when the application ID is queried.

(A5) At the end of the Sunrise submission period, the application may be further evaluated, potentially involving manual checks. If the outcome of this evaluation is that the application is invalid, the application is rejected by going to step (A3).

(A6) All remaining, valid applications for the given name are examined. If there is only one valid application (left) for the given name, this application may be approved in step (A7). Otherwise, a contention resolution needs to be conducted to determine the final assignee for the application, which is done in step (A8).

(A7) The application is approved, the domain is allocated and assigned to the registrar. An EPP poll message is placed in the registrar's message queue to inform the registrar about the positive outcome of the application. The domain proceeds into the registered state.

The application's status is now `"allocated"`, which is also displayed in the Whois output when the application ID is queried.

(A8) Since multiple valid applications for the same name were submitted, a contention resolution is required to determine the registrant to which the domain is awarded (the actual contention resolution used for `.sport` TLD is described below). If the resolution is won, the next step is (A7); if it is lost, the next step is (A3).

During the contention resolution, the application's status is `"validated"`, which is also displayed in the Whois output when the application ID is queried.

#### 4.1.3.2 Life Cycle Support for Landrush

The steps during a Landrush phase are quite similar to the ones for Sunrise. As depicted in Figure Q29-F2, the basic approach is the same, except that no trademark information is submitted or reviewed in the process; the only aspects governing the assignment of the domain name during Landrush are

- \* whether more than one application was received for the name and
- \* if this should be the case, which of these applications wins the contention resolution.

The availability of Landrush support in the CORE Registration System does not imply that dedicated Landrush phases must be held. While they are technically feasible, registry policy may also dictate that Sunrise and Landrush are conducted in a single phase, or in overlapping phases. The CORE Registration System is prepared for such cases. A combined Sunrise/Landrush phase is e.g. possible by allowing applications during Sunrise to be submitted without carrying any trademark data (which marks them as Landrush applications). During the selection process, applications carrying trademark data (i.e. proper Sunrise applications) then always take precedence over ones that were submitted without such data; only if no valid Sunrise applications are received for a name, the Landrush applications for the name are considered, and the winning one is determined in accordance with the registry's contention resolution policies.

Another alternative to a dedicated Landrush phase is the use of a FCFS approach for GA with staggered pricing; in this approach, a domain's initial registration price is relatively high when GA starts, but is decreased over time. Registrants willing to pay the high price may register the domain early on, others will try waiting until the price goes down. Despite the FCFS principle, such staggered pricing will usually prevent a flood of requests from registrars at the beginning of GA. The CORE Registration System supports this approach by its flexible billing module, which allows the definition of



prices for all billable operations for specific time periods, i.e. different prices may be defined for e.g. the first day after the start of GA, the second day, the third day and so forth. It is even possible to use a formula-based approach to express the domain price as a function of the elapsed time since the start of GA.

The billing module, in conjunction with the rule engine described in the answer to Question 28, may also be used to charge individual, higher prices for attractive, generic names ("premium" domains). If a registry chooses this approach, domains affected by this special pricing are configured in the rule engine, along with a so-called "price model" identifier that determines the tariff used for each of these domains.

See below for more information on the GA approach designated for the .sport TLD.

#### 4.1.4 Trademark Clearinghouse Support

The CORE Registration System is prepared for accessing APIs of the Trademark Clearinghouse in order to validate the trademark information submitted by the registrar during Sunrise. In addition, the system also contains provisions to make use of the Trademark Clearinghouse APIs for providing a Trademark Claims Service as soon as the .sport TLD enters a period of general availability (see below for more information on this service).

Since Trademark Clearinghouse Service Providers have not been assigned by ICANN at the time of writing, the full technical specifications for these APIs are not yet known. While basic provisions have been made in the CORE Registration System to connect to these providers, the details will therefore have to be finalised once the service providers have been announced and API specifications are available. As described below, appropriate developer resources are allocated to perform this task.

#### 4.1.5 Support for Multiple Applications for the Same Domain Name

The CORE Registration System is designed to maintain multiple domain objects representing the same domain name at a given point in time. This feature is required to store multiple applications for the same name during launch phases like Sunrise.

To distinguish between the various applications for the name in the database (as well as in external APIs), each application is assigned a unique application ID. These application IDs are returned to registrars in the responses to domain applications via EPP and may subsequently be used, among other things, to enquire an application's review status. Also, review results are reported back to registrars via poll messages carrying the unique application ID. Registrars can utilise the ID to clearly associate results with their various applications. Registrants may query the status of their applications from the .sport Whois server using the ID.

#### 4.1.6 Issue System

When manual reviews of Sunrise applications are required, this typically involves a specific support team workflow that, among other things, consists of

- \* storing application data in a database,
- \* making application data available to the support staff via a web interface,
- \* assigning the task of reviewing applications for a certain domain name to a specific support member (for the purpose of clear responsibilities),
- \* having the application reviewed by the assigned person, who in the process may
  - \*\* request additional information or documentation from the registrant,
  - \*\* add such documentation, as well as comments concerning the review, to the application,
  - \*\* make a decision about the application's outcome or
  - \*\* forward the task to a different support person with better insight or higher decision privileges (who may then make the final decision).

To support this workflow, the CORE Registration System is equipped with a built-in Issue System that offers registry personnel a convenient web interface to review domain name

applications and approve or reject them accordingly.

#### The Issue System

- \* offers an SSL-secured web interface accessible by the .sport Registry staff only;
- \* allows searching for applications by various criteria (e.g. domain name or current workflow/approval state);
- \* allows a registry support person to find newly submitted or otherwise unassigned applications and to take responsibility for them;
- \* offers a two-level review workflow that allows the delegation of pre-selection tasks to the first level support staff, after which a final decision - if still required - can be made by second level personnel;
- \* conveniently displays all application details, including registrant information, the supplied trademark information, as well as the results of the verification of that trademark data with the Trademark Clearinghouse;
- \* fully tracks and documents application status and history, allowing for a complete audit in case of disputes or legal enquiries and
- \* is fully integrated with the registry backend, i.e. it automatically notifies the SRS about the reviewers' decisions and immediately activates the respective domain in case of an approval. The Issue System also triggers the creation of appropriate EPP poll messages in order to keep registrars informed about the outcome of their applications.

The Issue System was first employed using puntCAT's elaborate multi-phase Sunrise period in 2006 and proved to be an invaluable tool for efficiently organising a TLD roll-out process. It ensures that the registry staff reviewing Sunrise applications finds all information relevant to a domain name in one place and comes to well-founded decisions in a timely manner. The experience gathered from developing and operating the Issue System in that context helped to develop a second-generation version that is now part of the CORE Registration System.

#### 4.1.7 Support for Resolving Contention

If multiple valid and eligible applications for a domain name are received, a well-defined and deterministic process is required to nominate the winning application. The details of this contention resolution procedure highly depend on a specific top level domain's policies; for example, a top level domain that represents a certain geographic region may have a policy that prefers trademark holding companies based in that region over other eligible trademark holders.

However, even after such policy-based considerations, multiple candidates for the winner of an application may be left in contention. In such a situation, different tie-breaker rules can be applied to make a decision.

##### 4.1.7.1 First-Come, First-Served

The obvious tie-breaker rule is to simply award the domain to the first application submitted, i.e. the one that carries the earliest time stamp among the ones in the contention set. Since the CORE Registration System assigns a unique time stamp to each received application in a fair, unbiased manner and makes it available to the review staff of the .sport Registry, this "first-come, first-served" strategy is a viable, technically supported way to resolve contentions.

##### 4.1.7.2 Auctions

However, first-come, first-served selection processes based on application submission times have the drawback of potentially encouraging registrants and registrars to submit all their requests as soon as the registry starts accepting applications, which imposes time pressure on the involved parties, puts a considerable load on the involved systems and may cause an unfair advantage for registrars with better connectivity to the SRS.

Therefore, the CORE Registration System also supports a simple auction-based tie-breaker approach out-of-the-box. It allows the registrar to submit a single, blind bid amount

along with the Sunrise or Landrush application (via a special EPP extension). To avoid the submission of more than one bid, multiple applications for the same domain name carrying identical trademark data (during Sunrise) are rejected.

In the case of a contention, the application that was submitted with the highest bid wins. In the unlikely event that two applications were submitted with the exact same bid amount, the one with the earlier time stamp wins; this also applies to the corner case that multiple applications were received but none of them carried a bid, which is treated as if all were submitted with a bid of zero. Only the winning applicant pays his bid, i.e. there is no extra fee for placing a bid; this ensures that the process cannot be regarded as a lottery. If no contention should arise (i.e. there is only one applicant left before bids would be considered as a tie-breaker), the bid amount is irrelevant and only the standard application fee (which is always due) is paid.

#### 4.1.8 Trademark Claims

When a match of a registered name is found via the API provided by the Trademark Clearinghouse, the Trademark Claims Service is supposed to provide clear notice to a prospective registrant of the scope of the mark holder's rights. The registrant will in turn be required to provide statement that

- \* he received notification that the mark is included in the Trademark Clearinghouse,
- \* he received and understood the notice and
- \* his registration and use of the requested domain name will not infringe on the rights that are subject of the notice.

The registrant will be directed to the Trademark Clearinghouse Database information referenced in the Trademark Claims Notice to enhance understanding of the Trademark rights being claimed by the trademark holder.

Also, if a domain name is registered in the Trademark Clearinghouse, the registry will, through an interface with the Clearinghouse, promptly notify the mark holders(s) of the registration after it becomes effective.

#### 4.2 Reducing opportunities for noncompliance

As laid out in that answer, the underlying set of checks can be tuned to block registrations of .sport names based on various syntactic rules, multiple reserved names lists, and patterns. Prior to the launch of the .sport TLD, the rule engine will be configured in accordance with the policies of the .sport Registry. Reserved names lists will be populated as governed by all eligibility restrictions that need to be enforced, which means that such names are not available for registration by registrars.

However, should eligible parties approach the .sport Registry (via a registrar) providing sufficient evidence of their eligibility for a specific reserved domain name, the .sport Registry can enable the chosen registrar to register the domain name for that specific registrant only (circumventing the rule engine check that would otherwise prevent the registration).

##### 4.2.1 Reducing Opportunities for Phishing and Pharming

In most cases, the abusive behaviors of phishing and pharming constitute, among other things, a severe violation of the legal rights of others. Both practices are usually applied to make users enter confidential or otherwise exploitable information on fake web sites pretending to be operated by a certain company or institution. In the case of phishing, the attack is usually done by trying to conceal the real domain name in the URL, or by using a domain name very similar to the one the user originally meant to visit. In the case of pharming, the attack happens on the DNS level, i.e. while the user still sees the correct domain name of the site he meant to visit, the IP address his resolver determined for the domain name somehow gets manipulated to point to the fake web site; in many instances, this manipulation happens on a node close to the user, e.g. by altering a desktop computer's local hosts file (overriding normal DNS resolution), or by

modifying the DNS lookup facilities of an Internet router at the user's home.

Due to the way these attacks are conducted, neither phishing nor pharming can be entirely prevented on the registry level. However, the registry can put mechanisms and policies in place that will make such exploits harder or limit their duration and impact.

#### 4.2.1.1 Phishing

One important tool to rapidly address phishing activities shown by a web site operated under the .sport TLD is the Rapid Takedown Policy described in the answer to Question 28 (Abuse Prevention and Mitigation). It allows a fast takedown of an offending site after respective activities were reported and confirmed.

In addition, the flexible rule engine used by the CORE Registration System to validate permissible .sport domain names can be utilised in the context of phishing. Should a certain .sport domain name (or a pattern of such names) be repeatedly involved in attempts to mimic a rights holder's legitimate .sport name for phishing purposes, the set of registration validation rules can be easily augmented to prevent the offending domain name (and, if need be, even an entire pattern of names deemed too similar to a rights holder's legitimate domain name) from being registered again after takedown. Of course, this practise will be exercised in close collaboration with ICANN and other parties potentially involved in the definition of names deemed not eligible for registration within the .sport TLD.

As described in the answer to Question 28 (Abuse Prevention and Mitigation), the sophisticated IDN handling implemented by the CORE Registration System is designed to provide protection against the most common cases of IDN-based phishing attempts, such as IDN homograph attacks. Please refer to the answers to Question 28, as well as Question 44 (Support for Registering IDN Domains), for more information on this topic.

#### 4.2.1.2 Pharming

With regard to pharming, neither the quick takedown of offending domain names nor the blocking of such names are suitable as countermeasures. Due to the nature of the attack, the registry's approach needs to aim at a robust DNS infrastructure for the .sport TLD, which ideally should guarantee the integrity and authenticity of DNS lookup results all the way from the registry-operated TLD name servers to the user's local resolver.

As described in detail in the answer to Question 35 (DNS service, configuration and operation of name servers), the .sport Registry will deploy a highly reliable and secure DNS subsystem for the .sport TLD, which is powered by the elaborate DNSSEC setup laid out in the answer to Question 43 (DNSSEC). The .sport Registry is therefore able to safeguard against any attempts to perform DNS manipulation on the level of the name servers operating the .sport TLD zone.

However, due to the way the domain name system (and DNSSEC in particular) works, preventing manipulations of the .sport TLD name servers alone is not sufficient to avoid pharming attacks. In order to provide complete protection, DNSSEC support is required on every level of the domain resolution process, from the root zone via the TLD name servers and the delegated name servers down to a user's resolver. This means that registrars need to sign the zones they host on their name servers (and offer this service to their registrants), and resolvers (or other clients looking up .sport domain names) need to verify the signatures and notify their users when inconsistencies are detected. Consequently, the .sport Registry will encourage and advertise the widespread support and use of DNSSEC among registrars, registrants and end users. Once DNSSEC has been widely adopted, web browsers, e-mail clients and similar applications will increasingly support the verification of the related signatures out-of-the-box (rather than via the extensions available today), which will drastically diminish opportunities for pharming. In this ideal setup, even a local hosts file placed by a virus on a desktop computer to override its DNS lookups would not remain undetected, since the user aware of DNSSEC would instantly get notified about wrong or lacking DNSSEC signatures.

## 5. Resourcing Plans

The CORE Registration System already supports the rights protection features described above at the time of writing. No coding is required for this, which means that no special developing resources will be needed. The staff on duty at CORE Internet Council of Registrars will be in charge of performing manual reviews of trademark data where required.

One aspect to be considered for resource planning is the registry system's connection to the Trademark Clearinghouse; since the involved API is not fully defined at the time of writing, some software development will have to be done in order to integrate the Clearinghouse into the Sunrise workflow, as well as to incorporate it into the designated Trademark Claims Service.

For the initial setup, the following resources are allotted:

- \* Registry Policy Officer: finalising policies, creating documentation: 5 man days
- \* System Administrator: configuring system for policies: 1 man day
- \* First Level Support: training: 4 man hours per person
- \* Software Developer: integration of Trademark Clearinghouse API: 10 man days

For the Sunrise phase, the following resources are allotted:

- \* First Level Support: 30 man days per month
- \* Second Level Support: 30 man days per month

For the ongoing maintenance, the following resources are allotted:

- \* System Administrator: 1 man day per month

Employees already working for CORE Internet Council of Registrars will be handling these tasks. The numbers above were determined by averaging the effort required for comparable tasks.

## **30(a). Security Policy: Summary of the security policy for the proposed registry**

### Q30 a) - External Technical & Operational Capability

This chapter presents an abstract, high-level description of the security principles governing the operation of the .sport TLD by the .sport Registry. Since this part of the response is published, detailed information is not included in this part of the answer, however an exhaustive description of the employed security measures is presented in the answer to Question 30 b).

Knipp Medien und Kommunikation GmbH, the technical provider for CORE Internet Council of Registrars, is currently in the process of being certified according to the ISO 27001 standard. The completion of the certification process is estimated for Q4/2012.

### 1. Security Policy

As .sport Registry does not perform the technical operation of the registry itself, but has contracted CORE Internet Council of Registrars for that purpose, .sport Registry defines a general security policy framework that is imposed on itself, CORE and all further contractors and subcontractors. All participating entities have to ensure that their security policies meet the requirements of the framework.

The security policy framework has the following key objectives:

- \* confidentiality
- \* access
- \* accountability
- \* availability

These objectives are further explained in the following.

### 1.1 Confidentiality

Confidentiality means the protection of private, proprietary and other sensitive information from entities that neither have a right or a need to gain access to it. Information includes, but is not limited to, registration data, registrar data, financial data, contracts, human resources data, and other business and technical data. To achieve this, all managed data are categorised into the classes "highly sensitive", "confidential" and "public", which then define the base levels for the respective protective measures. With respect to the determined classification, for each set of data it is defined

- \* where the data is stored,
- \* how it is backed up,
- \* what protective measures are taken both for the data itself and its backups,
- \* how long the data is retained and how it is safely destroyed once the information is no longer required,
- \* how it is protected from illicit access,
- \* how legitimate access and modification is controlled,
- \* to which extent the data has to be auditable and
- \* which regular audits are performed.

### 1.2 Access

Access defines the rights, privileges and the mechanisms by which assets of the .sport Registry are being protected. Assets may refer to physical items like desktop computers, notebooks, servers, network devices and other equipment, or to logical items like registration data, e-mails and communication logs, passwords or cryptographic key material. For each entity (i.e., person or machine) that is granted access, it is clearly defined

- \* for which purpose the access is granted,
- \* to which level the entity can view or change the data, partially or in whole,
- \* which obligations are imposed on the holder of the access rights,
- \* at which frequency the grant is revisited, i.e. checked whether it is still required to uphold the grant.

### 1.3 Accountability

Accountability defines the responsibilities of staff members and management with respect to security aspects. This includes

- \* handling of passwords and security tokens,
- \* reviewing audit logs and identifying potential security violations,
- \* management of security and access control and
- \* reporting of potential security breaches.

Staff members are made aware of their responsibilities on the assignment of duties and on a regular basis.

### 1.4 Availability

For each facet of the registry operation, beyond the requirements of ICANN, it is determined which service level is required, i.e.

- \* the availability requirements, defining the desired relative availability over a period of time (typically one month), including the allowed maximum planned and unplanned outage times,
- \* the recovery time objective and
- \* the recovery point objective, if applicable.

## 1.5 Security Role Concept

For the .sport Registry, the considerations above manifest themselves in an exhaustive security role concept, which defines roles carrying certain access privileges and responsibilities. Employees at the .sport Registry are assigned one or multiple roles identified by this concept, which clearly defines their duties and access rights.

## 2. Security Commitments to Users of the .sport TLD

### 2.1 Abuse Prevention and Mitigation

As discussed in detail in the answer to Question 28, the registry has taken various precautions to reduce the probability that the domain names within .sport are being used in connection with abusive or criminal activities.

### 2.2 Reliability and Availability of DNS

Various technical measures ensure a 100% availability of the DNS, as well as reliable, accurate and fast responses. A highly protected DNSSEC infrastructure ensures that the digital signatures contained in the DNS are trustworthy.

### 2.3 Technical Progress

The .sport Registry is committed to employ state-of-the-art security measures on an ongoing basis. This includes, for example, the use of current and secure software, fast patches of security affecting bugs, and the adoption of new security related technologies as they become available.

## 3. Security Commitments to Registrants

### 3.1 Protection of Investment

With the commercialisation of the Internet, domain names have become valuable assets. Domain names are no longer simply a more or less convenient handle for cryptic IP addresses, but as brands they have become the base for whole businesses worth millions to billions. Also, with domain names, lifestyles ("twitter", "facebook" generations) and communities are associated. Therefore, the loss, abuse or unavailability of a domain name, be it temporary or permanently, may cause significant damage to the domain name registrant.

The .sport Registry fully recognises this. With its highly developed technical and administrative security framework, .sport Registry has taken the necessary measures to protect the investments of registrants in their names. Due to the domain auto-renew mechanism, a valid domain is never deleted by the registry itself. In addition, the Redemption Grace Period provides extra protection if a request to delete the domain is

inadvertently issued by the registrant himself or by the entrusted registrar. Also, if it can be proven that a domain has been illegally moved to a different registrant, this is reverted by the registry to original state.

### 3.2 Adherence to Registration Policy

The registration policy clearly defines the conditions by which potential registrants may register domain names. The registrants can rest assured that the registry strictly adheres to these rules. In detail,

- \* The registry guarantees equal opportunity if multiple registrants meet the registration conditions in the same way.

- \* The registry applies a clear procedure for handling violations of the registration policy. The registrant has the ability to correct the violations before further actions are taken by the registry; he has also the right to appeal if he believes that the grounds for the registry's decisions are invalid.

- \* The registry maintains its neutrality in conflicts, unless forced by ICANN's Uniform Dispute Resolution Policy (UDRP), Uniform Rapid Suspension (URS) and Registry Restrictions Dispute Resolution Procedure (RRDRP).

### 3.3 Privacy of Registrant Data

While the registry is strongly committed to data protection and privacy, only limited commitments can be made with respect to registrant data. This is owed to various requirements imposed by ICANN for the right to operate the registry.

First, the registry is required to provide so-called Registration Data Directory Services (RDDS). On the one hand, this allows the anonymous public to retrieve information on the registrant of a domain name. The registry tries to mitigate the impact by taking measures against data mining and by fully supporting EPP's disclosure settings, which allow the registrant (via the registrar) to restrict the exposure of specific data fields (within the limits of ICANN requirements).

On the other hand, as part of the RDDS, the registry is also required to grant access to the data to eligible users and institutions with legitimate interest, not limited to law enforcement agencies. The registry will monitor the activities of these entities and will withdraw the access if there are indications of excessive or abusive use.

Second, the registry has to give access to the registrant data to ICANN as part of the escrow requirement. While the data is encrypted by a public key of ICANN and thus safe from access by third parties, no guarantees can be given about the data handling by ICANN.

The registry adds a declaration about the data handling to the registration agreement in order to make a potential registrant aware of the limited privacy.

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## **Annex 3.**

**THE INTERNATIONAL CENTRE FOR EXPERTISE OF THE  
INTERNATIONAL CHAMBER OF COMMERCE**

CASE No. EXP/471/ICANN/88

SPORTACCORD

(SWITZERLAND)

vs/

DOT SPORT LIMITED

(GIBRALTAR)

This document is an original of the Expert Determination rendered in conformity with the New gTLD Dispute Resolution Procedure as provided in Module 3 of the gTLD Applicant Guidebook from ICANN and the ICC Rules for Expertise.

**INTERNATIONAL CENTRE FOR EXPERTISE  
INTERNATIONAL CHAMBER OF COMMERCE**

**SPORTACCORD  
(Switzerland)**

**v.**

**DOT SPORT LIMITED  
(Gibraltar)**

**EXP/471/ICANN/88**

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**EXPERT DETERMINATION**

By

Prof. Dr. Guido Santiago Tawil

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This document is an original of the Expert Determination rendered in conformity with Article 21 of the ICANN New gTLD Dispute Resolution Procedure

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## **TABLE OF ABBREVIATIONS**

Applicant	dot Sport Limited
Appointed Expert	The Appointed Expert as defined in Section II of this Expert Determination
DRSP	Dispute Resolution Service Provider
GNSO	ICANN Generic Names Supporting Organization
gTLD	generic Top-Level Domain
ICANN	The Internet Corporation for Assigned Names and Numbers
ICANN Guidebook	Module 3 of the ICANN's gTLD Applicant Guidebook, version dated June 4, 2012.
ICC	The International Chamber of Commerce
ICC Centre	The International Centre for Expertise of the International Chamber of Commerce
ICC Practice Note	ICC Practice Note on the Administration of Cases
ICC Rules for Expertise	The Rules for Expertise of the International Chamber of Commerce in force as from January 1 <sup>st</sup> , 2003
Objector	SportAccord
Parties	SportAccord and dot Sport Limited
Rules of Procedure	The ICANN's Attachment to Module 3 – New gTLD Dispute Resolution Procedure

## **EXPERT DETERMINATION**

1. In accordance with Article 21 of the New gTLD Dispute Resolution Procedure (“Rules of Procedure”), the Appointed Expert renders this Expert Determination.

### **I. The Parties**

#### **A. Objector**

2. Objector in these proceedings is SPORTACCORD (“SportAccord” or “Objector”), an association established according to the laws of Switzerland, domiciled at

Contact Information Redacted

3. In these proceedings, Objector is represented by:

Mr. Pierre Germeau  
SportAccord  
Contact Information Redacted

4. Notifications and communications arising in the course of these proceedings were made to the aforementioned e-mail address.

#### **B. Applicant**

5. Applicant in these proceedings is DOT SPORT LIMITED (“dot Sport Limited” or “Applicant”), a company established according to the laws of Gibraltar, domiciled at :

Contact Information Redacted

6. In these proceedings, Applicant is represented by:

Mr. Peter Young  
Famous Four Media Limited  
Contact Information Redacted

Contact Information Redacted

7. Notifications and communications arising in the course of these proceedings were made to the aforementioned e-mail address.

## **II. The Appointed Expert**

8. On July 29, 2013, the Chairman of the Standing Committee of the International Centre for Expertise of the International Chamber of Commerce (the "ICC Centre") appointed Prof. Dr. Guido Santiago Tawil as Expert in accordance with Articles 7 and 11(5) of the the Rules for Expertise of the International Chamber of Commerce in force as from January 1<sup>st</sup>, 2003 (the "ICC Rules for Expertise"). The Appointed Expert contact details are:

Guido Santiago Tawil  
M. & M. Bomchil  
Contact Information Redacted

9. Managers of the ICC Centre who are in charge of the file are:

Hannah Tümpel (Manager)  
Spela Kosak (Deputy Manager)  
ICC International Centre for Expertise  
Contact Information Redacted

## **III. Summary of the Procedural History**

10. On March 13, 2013, SportAccord filed an Objection pursuant to Module 3 of the gTLD Applicant Guidebook, version dated June 4, 2012 ("ICANN Guidebook"), the Attachment to Module 3 – New gTLD Dispute Resolution Procedure ("Rules of Procedure") and the Rules for Expertise of the International Chamber of Commerce in force as from January 1<sup>st</sup>, 2003 ("ICC Rules for Expertise") supplemented by the ICC Practice Note on the Administration of Cases ("ICC Practice

Note”).

11. On March 16, 2013, the ICC Centre acknowledged receipt of the Objection and conducted the administrative review of it in accordance with Article 9 of the Rules of Procedure for the purpose of verifying compliance with the requirements set forth in Articles 5 to 8 of the Rules of Procedure.

12. On April 5, 2013, the ICC Centre informed the Parties that the Objection was in compliance with Articles 5 to 8 of the Rules of Procedure. Accordingly, the Objection was registered for processing.

13. On April 12, 2013, the Internet Corporation for Assigned Names and Numbers (“ICANN”) published its Dispute Announcement pursuant to Article 10(a) of the Rules of Procedure.

14. On the same date, the ICC Centre informed the Parties that it was considering the consolidation of the present case with the case No. EXP/486/ICANN/103 (SportAccord v. Steel Edge LLC; gTLD: “.sports”) in accordance with Article 12 of the Rules of Procedure. Therefore, the ICC Centre invited the Parties to provide their comments regarding the possible consolidation no later than April 16, 2013.

15. On April 15, 2013, Applicant filed its comments on the possible consolidation by e-mail to the ICC Centre, a copy of which was sent directly to Objector.

16. On April 16, 2013, Objector filed its comments on the possible consolidation by e-mail to the ICC Centre, a copy of which was sent directly to Applicant.

17. On April 22, 2013, the ICC Centre informed the Parties that it decided not to proceed with the consolidation. It further invited Applicant to file a Response to the Objection within 30 days of the ICC Centre’s transmission of such letter in accordance with Article 11(b) of the Rules of Procedure.

18. On May 21, 2013, dot Sport Limited filed its Response to SportAccord’s Objection.

19. On May 22, 2013, the ICC Centre acknowledged receipt of Applicant’s Response. It further informed the Parties that the Response was in compliance with the Rules of Procedure.

20. On June 21, 2013, the ICC Centre appointed Mr. Jonathan P. Taylor as expert in accordance with Article 13 of the Rules of Procedure and Article 9(5)(d) of the Rules for Expertise.

21. On July 16, 2013, the ICC Centre acknowledged receipt of Applicant’s objection to Mr. Taylor’s appointment.

22. On July 25, 2013, the ICC Centre informed the Parties that it had decided not to confirm the appointment of Mr. Taylor as Expert in the present case and, there-



fore, it would proceed with the appointment of another Expert.

23. On July 29, 2013, the Chairman of the Standing Committee of the ICC Centre appointed Prof. Dr. Guido Santiago Tawil as Expert in accordance with Article 7 of the ICC Rules for Expertise and Article 3(3) of its Appendix I. On July 30, 2013, the ICC Centre notified the Parties of the Expert's appointment. It further sent the Parties the Expert's *curriculum vitae* as well as his Declaration of Acceptance and Availability, Statement of Impartiality and Independence.

24. On August 2, 2013, the ICC Centre reminded the Parties that the estimated costs had been paid in full by each party and confirmed the constitution of the expert panel.

25. On the same day, the electronic file was transferred by the ICC Centre to the Appointed Expert.

26. On August 5, 2013, the Appointed Expert issued Communication E-1 by means of which it informed the Parties that (i) based on their submissions and pursuant to Article 21 of the Rules of Procedure, it would render its Expert Determination, and (ii) at that stage, it did not consider necessary to request the Parties to submit any written statement in addition to the Objection and the Response, including their respective exhibits.

27. In accordance with point 6 of the ICC Practice Note on the Administration of Cases ("ICC Practice Note"), the requirement for the Expert Mission contained in Article 12(1) of the ICC Rules for Expertise has been waived.

28. Pursuant to Article 21(a) of the Rules of Procedure, the time-limit for rendering this Expert Determination expires on September 16, 2013.

29. The Expert Determination was submitted in draft form to the ICC Centre on August 23, 2013, within the 45 day time limit in accordance with Article 21(a) of the Procedure.

#### **IV. Procedural Issues and Applicable Rules**

30. SportAccord filed a "Community Objection", defined as "*a substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted*" according to Article 3.2.1. of the ICANN Guidebook, against dot Sport Limited's application for the gTLD ".sport".

31. Pursuant to Article 5(a) of the Rules of Procedure, all submissions –including this Expert Determination– have been made in English. Further, all submissions and communications between the Parties, the Appointed Expert and the ICC Centre were filed electronically as stated in Article 6(a) of the Rules of Procedure.

32. In accordance with Article 4(d) of the Rules of Procedure, the seat of these proceedings is the location of the ICC Centre in Paris, France.

33. For the purpose of rendering this Expert Determination, the applicable rules are: the ICC Rules for Expertise, supplemented by the ICC Practice Note, the ICANN Guidebook and the Rules of Procedure.

## **V. Summary of the Parties' Positions**

34. The issues to be addressed by the Appointed Expert shall be those resulting from the Parties' submissions and those which the Appointed Expert considers to be relevant to make a determination on the Parties' respective positions.

35. Based on the Parties' written submissions (SportAccord's Objection, dot Sport Limited Response and their respective exhibits), the main issues and claims under determination can be summarised as follows.

### **A. Objector's Position**

36. SportAccord claims that it has standing to object to applications for the gTLD ".sport" on the grounds that it is an established international representative institution of the Sport Community,<sup>1</sup> which has been impacted by such gTLD application. Further, Objector states that it is a not-for-profit association constituted in accordance with the Swiss Civil Code and comprises several autonomous and independent international sports federations and other international organizations<sup>2</sup> which contribute to sport in various fields.<sup>3</sup>

37. Regarding the description of the basis for the Objection as established in Article 3.3.1 of the ICANN Guidebook, SportAccord states that the Sport Community

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<sup>1</sup> According to Objector, the Sport Community is organized on local, national and international levels and is clearly delineated by way of its organizational structures and its values. See: Objection, page 6.

<sup>2</sup> SportAccord has 91 full members: international sports federations governing specific sports worldwide and 16 associate members: organizations which conduct activities related to the international sports federations. See: Exhibit Ap-2.

<sup>3</sup> Indeed, Objector claimed that "*SportAccord is the umbrella organisation for both Olympic and non-Olympic international sports federations as well as organisers of international sporting events*". See: Objection, page 6. Article 2 of SportAccord Statutes establishes several purposes of this association which, among others, include: "*a) to promote sport at all levels, as a means to contribute to the positive development of society; b) to assist its Full Members in strengthening their position as world leaders in their respective sports... d) to increase the level of recognition of SportAccord and its Members by the Olympic Movement stakeholders as well as by other entities involved in sport... j) to coordinate and protect the common interests of its Members... k) to collaborate with organisations having as their objective the promotion of sport on a world-wide basis*". See: Exhibit Ap-1. Objector states that its programs include, among others, "*International Federation (IF) recognition, IF relations, doping-free sport, fighting illegal betting, governance, sports' social responsibility, multi-sports games, the '.sport' initiative, the sports hub, the annual SportAccord Convention and the annual IF Forum*". See: Objection, page 7.

is organized, delineated, of long-standing establishment and impacted by sport-related domain names. In light of this statement, Objector expresses its substantial opposition to the application, claiming representation of a significant portion of the Sport Community. It further argues that there is no evidence of community support for any of the non-community-based applications.<sup>4</sup>

38. According to SportAccord, the Sport Community is both targeted implicitly and explicitly by the application for the “.sport” gTLD.<sup>5</sup>

39. Finally, Objector elaborates on the material “*detriment*” to the rights and legitimate interests of the Sport Community –and to users in general– if dot Sport Limited’s application is allowed to proceed or even finally approved.<sup>6</sup>

40. Based on these allegations, Objector requests that the Appointed Expert acknowledges that (i) the “.sport” gTLD string targets the Sport Community, (ii) there is a substantial opposition to such application from a significant portion of the Sport Community, and (iii) therefore, the application for the “.sport” gTLD is to be rejected.

#### B. Applicant’s Position

41. Applicant rejects SportAccord’s Objection. From the outset of its Response, Applicant alleges that the “.sport” gTLD is intended and designed to increase availability and access to create, produce and disseminate informative, creative and innovative sport-related content. It further alleges that mechanisms have been established to ensure that the gTLD “*operates and grows in a manner that is responsible, protects consumers and promotes consumer and industry trust and confidence*”.<sup>7</sup>

42. In addition, dot Sport Limited alleges that SportAccord has no standing to object on the ground that it fails to prove that it has “*an on-going relationship*” with a clearly delineated Sport Community as a whole.<sup>8</sup>

43. In relation to the “Community” argument, dot Sport Limited explains that the Sport Community is not “*clearly delineated*” because it is comprised of a significant number of stakeholders who do not necessarily share similar goals, values or interests. It also emphasizes that such “Community” lacks formal boundaries, which is also proved by the fact that there is a disagreement about the entities that make up such “Community”.<sup>9</sup>

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<sup>4</sup> See: Objection, page 8.

<sup>5</sup> See: Objection, page 10.

<sup>6</sup> See: Objection, page 11.

<sup>7</sup> See: Response, page 4. In particular, Applicant claims that the objection process “*is not a substitute for Community Evaluation and was not envisaged to be a mechanism by which one applicant could gain a competitive advantage over another*”.

<sup>8</sup> See: Response, pages 4 and 5.

<sup>9</sup> See: Response, page 5.

44. Further, Applicant rejects Objector's argument that the substantial opposition to the application comes from a significant portion of the Sport Community. Indeed, it is Applicant's position that Objector represents a subset of the alleged Community and does not represent the interests, goals, or values of numerous stakeholders in such "Community".<sup>10</sup>

45. In any event, dot Sport Limited states that *"there is not a strong association between the "Community" represented by Objector and the applied for ".sport" TLD" string.*<sup>11</sup>

46. Finally, concerning the material *"detriment"* to the rights and legitimate interests of the Sport Community –as alleged by Objector–, Applicant argues that SportAccord failed to prove a likelihood of material detriment. It further states that the damages alleged by SportAccord are speculative in nature and there is no evidence that such alleged detrimental outcomes would occur.<sup>12</sup>

47. Based on these arguments, dot Sport Limited requests the Appointed Expert to hold that SportAccord's objection is invalid and, therefore, deny the Objection.

## **VI. Findings of the Appointed Expert**

48. In order to make its determination, the Appointed Expert will address the following issues, in accordance with the criteria listed in the ICANN Guidebook :

(1) *Does SportAccord have standing to put forward a Community Objection against the application made by dot Sport Limited?*

(2) *Is the Sport Community clearly delineated?*

(3) *Is there a substantial opposition to the application ".sport" gTLD on behalf of a significant part of the Sport Community?*

(4) *Is the Sport Community explicitly or implicitly targeted by the application ".sport" gTLD?*

(5) *Is there any material detriment to the rights or legitimate interests of the Sport Community if the application ".sport" gTLD is allowed to proceed?*

49. In the following Sections, the Appointed Expert sets out and summarises his understanding of the Parties' positions concerning each of these issues, as elaborated by the Parties in their written pleadings, followed by the Appointed Expert's own analysis and determination concerning such issues.

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<sup>10</sup> See: Response, page 8.

<sup>11</sup> See: Response, page 10.

<sup>12</sup> See: Response, page 11.

A. Objector's Standing

(1) *Does SportAccord have standing to put forward a Community Objection against the application made by dot Sport Limited?*

50. The Appointed Expert is of the view that prior to considering the grounds of the Objection, it is necessary to address this preliminary issue, namely the question of whether SportAccord has standing to put forward a "Community Objection" against the application ".sport" gTLD made by dot Sport Limited.

51. The Appointed Expert will start by deciding this preliminary question in the understanding that if the Appointed Expert finds that the Objector lacks *ius standi* to object, it will become unnecessary to enter into the analysis of the grounds of the Objection.

(i) *Positions of the Parties*

52. Applicant has challenged Objector's standing to file an objection against the application for the ".sport" gTLD. In its Response, Applicant argues that Objector failed to prove that it has "*an on-going relationship*" with a "*clearly delineated Sport Community*" as a whole, failing to meet the standard established in Article 3.2.2.4 of the ICANN Guidebook.<sup>13</sup>

53. While dot Sport Limited recognizes that Objector is an "established institution", it affirms that SportAccord only has an on-going relationship "*with a particular subset of stakeholders*".<sup>14</sup>

54. Applicant goes further and states that, in fact, there is no Sport Community since there are so many activities which can be legitimately identified as "sports". Based on this statement, dot Sport Limited reaffirms its position by stating that the alleged Sport Community is not "*clearly delineated*", because "*just about anyone could claim to have an interest in sport*".<sup>15</sup> Additionally, Applicant criticizes Objector's policies for creating obstacles to free and open participation in its activities, membership and leadership.

55. Although Objector has not dealt directly with these arguments, which were put forward once SportAccord had submitted its Objection, it claims that it has standing to object to the application for the ".sport" gTLD since it is an established international representative institution of the Sport Community, which has been impacted by the mentioned string application.

56. Objector states that it is a not-for-profit association established since 1967,

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<sup>13</sup> See: Response, page 4.

<sup>14</sup> See: Response, page 5. According to Applicant, "*Objector's mission statement clearly shows that Objector only represents a particular subset of the alleged community, organized sports, failing to represent other stakeholders such as: unorganized sports...; sports equipment manufacturers and retailers; media outlets such as newspapers, TV, bloggers... Objector cannot speak for them*".

<sup>15</sup> See: Response, page 5.

which has an ongoing relationship with the Sport Community due to the fact that it comprises autonomous and independent international sports federations and other international organizations.

57. In particular, SportAccord alleges that it has (i) 91 full members: international sports federations governing specific sports worldwide, and (ii) 16 associate members: organizations which conduct activities closely related to the international sports federations. In Objector's words, "*SportAccord is the umbrella organisation for both Olympic and non-Olympic international sports federations as well as organisers of international sporting events*".<sup>16</sup>

58. Finally, in the Objector's view, the Sport Community is highly organized on local, national and international levels and, thus it is clearly delineated by way of its organizational structures and values.

(ii) *Considerations of the Appointed Expert*

59. Pursuant to Article 3.2.2 of the ICANN Guidebook, it is for the Appointed Expert to determine whether the Objector has standing to object.

60. In accordance with the ICANN Guidebook, objectors must satisfy certain standing requirements to have their objections considered by the expert panel. In the case of a "Community Objection", "*established institutions associated with clearly delineated communities are eligible to file a community objection. The community named by the objector must be a community strongly associated with the applied-for gTLD string in the application that is the subject of the objection...*".<sup>17</sup>

61. Therefore, to qualify for standing for a "Community Objection", the Objector shall fulfill two conditions, namely that (i) it is an established institution, and (ii) it has an ongoing relationship with a clearly delineated community.

62. The ICANN Guidebook provides useful guidelines so as to determine whether these two requirements should be considered as satisfied by the Objector.

63. Regarding the first condition to be met (i.e.: "*established institution*"), Article 3.2.2.4 of the ICANN Guidebook lists some key factors which may be considered by the expert panel in making its determination. These factors are: (i) the level of global recognition of the institution, (ii) the length of time the institution has been in existence; and (iii) the public historical evidence of its existence, such as the presence of a formal charter or national or international registration, or validation by a government, inter-governmental organization, or treaty.

64. In order to evaluate its standing "*the institution must not have been estab-*

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<sup>16</sup> See: Objection, page 6.

<sup>17</sup> Article 3.2.2.4 of the ICANN Guidebook.

*lished solely in conjunction with the gTLD application process*".<sup>18</sup>

65. SportAccord (previously known as "GAISF", the General Association of International Sports Federations) is a not-for-profit association established in 1967.<sup>19</sup> The length of time that SportAccord has been in existence –almost half a century– is sufficient, in the Appointed Expert's view, to consider Objector as a long-established institution and clearly evidences that such association was not created with the sole intention to participate in the gTLD application process.

66. Additionally, the Appointed Expert notes that Objector also meets the standard of "global recognition", as mentioned in the ICANN Guidebook, since it has a very large membership, comprising of 91 international sports federations and 16 organizations related to sports. In the Appointed Expert's opinion, this is also indicative of Objector's public historical evidence of its existence.

67. Even though Applicant has relied on a survey according to which Objector is hardly known to the majority of the public surveyed,<sup>20</sup> it is the Appointed Expert's view that the level of global recognition of any institution should be analysed within the context of the community that such institution is claiming to be a part of, not the public in general.

68. Although the facts described above would be enough to confirm Objector's compliance with the first condition, the Appointed Expert notes that the very same Applicant has recognized that Objector is an "*established institution*";<sup>21</sup> focussing its challenge on the second condition required to file an objection (i.e.: an on-going relationship with a clearly delineated community).

69. Based on these reasons, the Appointed Expert concludes that Objector is an "*established institution*" in the terms of Article 3.2.2.4 of the ICANN Guidebook.

70. Having decided that Objector meets the first standard contained in the ICANN Guidebook, the Appointed Expert now turns to the issue of whether Objector has an on-going relationship with a clearly delineated community.

71. To make a determination on this issue, the Appointed Expert should take into account the guidelines provided in Article 3.2.2.4 of the ICANN Guidebook. To this end, such provision sets out the following elements to be considered: (i) the presence of mechanisms for participation in activities, membership, and leadership, (ii) the institutional purpose related to the benefit of the associated community, (iii) the performance of regular activities that benefit the associated community; and (iv) the level of formal boundaries around the community.

72. Referring to these factors, the ICANN Guidebook states that "*the panel will*

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<sup>18</sup> See: Article 3.2.2.4 of the ICANN Guidebook.

<sup>19</sup> See: Exhibit Ap-1.

<sup>20</sup> Response, page 8 and Annex A-1.

<sup>21</sup> Response, page 4.

*perform a balancing of the factors listed above, as well as other relevant information, in making its determination. It is not expected that an objector must demonstrate satisfaction of each and every factor considered in order to satisfy the standing requirements”.*<sup>22</sup>

73. Applicant has challenged Objector’s standing on the grounds that it only has an on-going relationship “*with a particular subset of stakeholders*” and not the community as a whole.<sup>23</sup>

74. In the Appointed Expert’s view, Applicant’s argument is not convincing. First, because even though Objector may not represent the “entire” Sport Community, it acts for a preponderant part of such community.

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

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

77. Furthermore, Objector’s declared purposes are closely associated with the benefits of the community members it represents<sup>24</sup> and its regular activities are naturally intended to benefit its members.

78. In addition, the Appointed Expert notes that Objector, as an institution that represents multiple sports federations, has explicitly foreseen –through its statutes– different mechanisms for participation in activities, membership and leadership among the sport federations and organizations. For instance, SportAccord’s statutes regulate in detail the procedure to become a member of the institution and participate accordingly.<sup>25</sup>

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<sup>22</sup> Article 3.2.2.4 of the ICANN Guidebook.

<sup>23</sup> Response, page 4.

<sup>24</sup> According to Objector’s statutes (See: Exhibit Ap-1): “*The objectives of SportAccord are: a) to promote sport at all levels, as a means to contribute to the positive development of society; b) to assist its Full Members in strengthening their position as world leaders in their respective sports; c) to develop specific services for its Members, and provide them with assistance, training and support; d) to increase the level of recognition of SportAccord and its Members by the Olympic Movement stakeholders as well as by other entities involved in sport; e) to organise multi-sports games and actively support the organisation of multi-sports games by its Members; f) to be a modern, flexible, transparent and accountable organisation; g) to organise, at least once a year, a gathering of all of its Members, and of other stakeholders of the sport movement, preferably on the occasion of its General Assembly; h) to recognise the autonomy of its Members and their authority within their respective sports and organisation; i) to promote closer links among its Members, and between its Members and any other sport organisation; j) to coordinate and protect the common interests of its Members; k) to collaborate with organisations having as their objective the promotion of sport on a world-wide basis; l) to collect, collate and circulate information to and among its Members”.*

<sup>25</sup> See: Exhibit Ap-1, SportAccord’s Statutes, Articles 5 to 15.



79. Regarding Applicant's argument that Objector's policies create obstacles to free and open participation in its activities, membership and leadership (for instance, by excluding some sports activities, such as card games), in the Appointed Expert's view such "obstacles" are simply the conditions that any organization has to meet to become a member of the institution, as occurs in any other field.<sup>26</sup>

80. In analysing Objector's statutes, membership is open to "*any sport organisation... which groups together the majority of the National Federations (or organisations) throughout the world practising its sport and regularly holding international competitions...*" and "*any sport organisation which groups together the activities of several members... for the purpose of organising competitions*";<sup>27</sup> which shows that membership, far from being closed and exclusive, is accessible to any organization which complies with these minimum standards.

81. Finally, although the issue of the existence of a "Sport Community" is related to the merits of the Objection –and will be analysed in section B–, the Appointed Expert is of the view that Objector's "community", which includes multiple organizations associated with sports, is "*clearly delineated*" for the purpose of objecting to the application for ".sport" gTLD made by dot Sport Limited.

82. Therefore, in the Appointed Expert's view, SportAccord is an established institution which has an ongoing relationship with a clearly delineated community and, consequently, has standing to object to Applicant's application in the present case.

## B. The "Sport Community"

### (2) *Is the Sport Community clearly delineated?*

83. Having decided that SportAccord has standing to object to the application for ".sport" gTLD made by dot Sport Limited, the Appointed Expert will now focus on the issue of whether the Sport Community is clearly delineated.

84. The Parties have discussed at length the independent existence of a "Sport Community" and diverging positions were advanced on this issue.

#### (i) *Positions of the Parties*

85. In its Objection, SportAccord defines the Sport Community as "*the community of individuals and organizations who associate themselves with Sport*".<sup>28</sup> According to Objector, Sport is an activity done by individuals or teams of individuals, aiming at healthy exertion, improvement in performance, perfection of skill, fair

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<sup>26</sup> It should be also noted that not all game cards –as claimed by Applicant– are excluded from Objector's membership. The World Bridge Federation is, for instance, a member of SportAccord.

<sup>27</sup> See: Exhibit Ap-1, SportAccord's Statutes, Article 6.

<sup>28</sup> See: Objection, page 8.

competition and desirable shared experience between practitioners as well as organizers, supporters and audience.

86. Objector's position is that the Sport Community "*is highly organized*" both at a local level (local clubs, etc.) and a higher level (Sport Community governance is exercised by regional, national, and international Sport Federations, which collaborate at the local, national and international levels in sport events or with event organizers, governments, the various bodies of the Olympic Movement, associations or federations).

87. Even though Objector states that it represents 107 International Sport Federations, individual practitioners of sport, sport spectators, sport fans and sport sponsors are also part of the Sport Community and share their values and objectives.<sup>29</sup>

88. Finally, Objector explains that the Sport Community "*is clearly delineated*" since it has formal lines of accountability on all levels. In Objector's view, the keyword "*delineated*" should not imply a focus on rigid edges of a community, like card-carrying membership organizations.<sup>30</sup>

89. Applicant rejects Objector's assertion that the Sport Community is "*clearly delineated*". Indeed, dot Sport Limited contends that the Sport Community lacks this characteristic since "*it is comprised of a significant number of stakeholders who do not necessarily share similar goals, values or interests, thus the community lacks formal boundaries, evidenced by disagreement as to which stakeholders are considered members of the Sport community*".<sup>31</sup>

90. According to Applicant, the alleged Sport Community is associated with a "generic" string (".sport") and, therefore, it cannot meet the "*clearly delineated*" criteria due to its broad definition and the nature of the generic term ("sport"), which is by definition used by a significant number of people, who do not necessarily share similar goals, values or interests.

91. Further, Applicant criticizes Objector's assertion that the Sport Community is "*highly organized*" when there is no organization, for instance, for viewers, the media or amateur sportspeople who play sport for fun in their spare time. In Applicant's view, "*there is therefore confusion as to who actually comprises the sport community. This is simply because there is no clearly delineated community*".<sup>32</sup>

92. In addition, dot Sport Limited states that, according to a survey undertaken by itself, there is a low level of public recognition of a Sport Community since 74% of participants surveyed did not see formal organization or registration as a requirement to participate in sports.<sup>33</sup>

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<sup>29</sup> See: Objection, page 9.

<sup>30</sup> See: Objection, page 9.

<sup>31</sup> See: Response, page 5.

<sup>32</sup> See: Response, page 6.

<sup>33</sup> See: Response, Annex 1.

93. Applicant also argues that there is no agreement among experts as to the definition of “sport”, giving examples of different accepted definitions. In analyzing Objector’s definition of “sport”, Applicant concludes that such concept fails to recognize other community stakeholders, for example, non-federation sport organizations (such as, community recreational leagues), media outlets that cover sports, equipment producers and retailers, video game industry, etc.

94. Finally, it is not Sport Limited’s position that the Sport Community is not clearly delineated because there is no agreement as to the entities that make up the alleged community. Applicant explains that, for instance, Objector’s membership criteria exclude legitimate sport activities from membership such as poker, electronic gaming and hunting.<sup>34</sup>

95. To conclude, Applicant states that Objector acknowledged that the Sport Community is comprised of “billions of members” and, consequently, a community comprising the majority of the human race is not clearly, or even slightly, delineated.<sup>35</sup>

(ii) *Considerations of the Appointed Expert*

96. The Appointed Expert has to decide whether the “Sport Community” is clearly delineated.

97. In accordance with Article 3.5.4 of the ICANN Guidebook, “...for an objection to be successful... the objector must prove that the community expressing opposition can be regarded as a clearly delineated community”.

98. As mentioned before, the ICANN Guidebook offers useful guidelines in order to determine whether a community is clearly delineated. “A panel could balance a number of factors to determine this, including but not limited to: (i) the level of public recognition of the group as a community at a local and/or global level; (ii) the level of formal boundaries around the community and what persons or entities are considered to form the community; (iii) the length of time the community has been in existence; (iv) the global distribution of the community (this may not apply if the community is territorial); and (v) the number of people or entities that make up the community”.<sup>36</sup>

99. Having set out the factors to be considered, the ICANN Guidebook further provides that “...if opposition by a number of people/entities is found, but the group represented by the objector is not determined to be a clearly delineated community, the objection will fail”.

100. The concept of “community” is not defined by the ICANN Guidebook. The

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<sup>34</sup> See: Response, page 7.

<sup>35</sup> See: Response, page 7.

<sup>36</sup> Article 3.5.4 of the ICANN Guidebook.

word “community” is broad and allows more than one interpretation. Besides the political (nationality), religious or ethnic meanings or implications that the term may have, it generally refers to a “group of people” that may be considered as a “unit” that share similar interests, goals or values.<sup>37</sup>

101. Furthermore, the word “sport” is also a generic term. If someone mentions the word “sport” without any specificity, it is highly probable that different listeners will imagine different aspects, ideas or own preconceptions about what the speaker does want to refer. The same occurs with other generic terms such as “health”, “law”, “government”, “commercial”, etc.

102. Nevertheless, the generic nature of these words does not constitute an obstacle for a community to identify itself with them. For instance, the word “lawyer” (or, more precisely, the “.lawyer” gTLD) may identify the community of lawyers around the world, even though it would be difficult (or impossible) to find that all lawyers share the same goals, values or interests.

103. In the case at hand, it is the Appointed Expert’s view that the community represented by Objector (international sports federations and organization) enjoys a high level of public recognition in its field and has existed for decades. Further, since it was established in 1947, it has succeeded in increasing the number of its members, rather than becoming smaller or less representative.

104. Further, regarding the *“number of... entities that make up the community”*, an aspect that the ICANN Guidebook highlights as relevant, the Appointed Expert notes that Objector is comprised of 91 well-known international sports federations and 16 organizations related to sports. If SportAccord had not obtained a high level of recognition in the sport field since it had been established, some of the well-known federations included in such association would not have remained part of it.

105. In any event, the Appointed Expert understands that this is not a case in which a single sport association or organization claims for the priority use of the “.sport” gTLD –irrespective of other federations or organization which could claim for the same right or interest–, but the whole community of sports federations and organization (or, at least, the most part of it) represented by Objector.

106. Finally, the Appointed Expert cannot accept Applicant’s argument that the Sport Community is not organized when Objector has proved that it has its own mechanism of participation, programs and organization through its statutes and government bodies. The fact that the media (which may constitute a different community) or viewers are unable to be part of this association is irrelevant to consider Objector as a delineated community. Otherwise, no community could be

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<sup>37</sup> According to the British English Dictionary, the word “community” has three different meanings “1) the people living in one particular area or people who are considered as a unit because of their common interests, social group, or nationality, 2) a group of animals or plants that live or grow together, 3) the general public”. See British English Dictionary, Cambridge Ed., 2013.

recognized under the ICANN gTLD proceedings since it would be easy for any Applicant to find secondary or not closed-related members outside of it.

107. The “Sport Community”, in the Appointed Expert’s view, is a community that clearly distinguishes itself from other communities by its characteristics, objectives and values.

108. Therefore, the Appointed Expert concludes that the Sport Community is clearly delineated for the purpose of these proceedings and, consequently, Applicant’s objections in this respect must also fail.

C. *The “Substantial Opposition” to the Application*

*(3) Is there a substantial opposition to the application for the “.sport” gTLD on behalf of a significant part of the Sport Community?*

109. Having decided that the Sport Community is clearly delineated, the Appointed Expert now turns to determine whether there is a substantial opposition of a significant part of the Sport Community.

*(i) Positions of the Parties*

110. Objector highlights that it expresses opposition on behalf of the 107 International Federations encompassed in such association, as listed in Appendix A-2 of the Objection. Objector has proffered more than 50 letters of opposition from different federations and also points to other individual oppositions.<sup>38</sup>

111. SportAccord notes that while many international sport bodies, international sport federations and specialized agencies have already expressed their opposition, there is no evidence, by contrast, of community support in favour of the application “.sport” gTLD made by dot Sport Limited.

112. According to SportAccord, *“the portion of the community expressing opposition through its representative organization is not just significant, but overwhelming”*.<sup>39</sup> It also argues that Applicant’s application targets the most visible and highly organized segments of the Sport Community, represented by national and international sport federations.

113. Finally, Objector elaborates on the argument that although individual practitioners of the Sport Community (who do not need organization to practise sports) have not made opposition to the application, it is natural that the organized segment of such Community reacts and raises objections on behalf of their stakeholders.

114. In turn, Applicant claims that SportAccord has failed to prove “substantial

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<sup>38</sup> See: Objection, page 9.

<sup>39</sup> See: Objection, page 10.

opposition” to the application, since Objector represents a subset of the alleged community and does not represent the interests, goals, or values of numerous stakeholders in the alleged community (for instance, sports excluded from membership and the other stakeholders not represented by Objector).<sup>40</sup>

115. Applicant insists on the “relative” low number of oppositions compared with the composition of the alleged community. In Applicant’s own words, “*expressions of opposition from Objector are small compared to the large composition of the alleged ‘sport’ community*”.<sup>41</sup>

116. Further, dot Sport Limited also claims that Objector did not provide examples of support from members of the alleged community that do not comprise its membership. Based on this argument, Applicant states that Objector does not encompass all sport activities by any means.

117. Applicant also alleges that Objector organized a campaign among its members to support its Objection by using a standard template letter that requires no thought or effort to sign it.<sup>42</sup> Notwithstanding so, Applicant notes that only half of SportAccord’s members have actually shown support to the Objection. Further, Applicant states that Objector has offered no proof that its membership as a whole signed on to the opposition.

118. Regarding the counter-argument related to individual sport practitioners (not organized) advanced by Objector, dot Sport Limited answers that such assertion “*totally ignores the fact that the sports industry includes a great number of professional organisations such as media outlets, who could easily have objected*” but did not do so.<sup>43</sup>

(ii) *Considerations of the Appointed Expert*

119. The Appointed Expert has to decide whether there is a substantial opposition to the application for the “.sport” gTLD on behalf of a significant part of the Sport Community.

120. To this end, the Appointed Expert will focus on Article 3.5.4 of the ICANN Guidebook, which establishes the standards to be analysed in order to make a determination on this issue.<sup>44</sup>

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<sup>40</sup> See: Response, page 8. Moreover, dot Sport Limited states that, according to the sports survey undertaken by itself, the vast majority of the public are not even aware of the existence of SportAccord.

<sup>41</sup> See: Response, page 8.

<sup>42</sup> See: Response, page 9.

<sup>43</sup> See: Response, page 9.

<sup>44</sup> According to such provision, “*a panel could balance a number of factors to determine whether there is substantial opposition, including but not limited to: (i) number of expressions of opposition relative to the composition of the community; (ii) representative nature of entities expressing opposition; (iii) level of recognized stature or weight among sources of opposition; (iv) distribution or diversity among sources of expressions of opposition, including: (a) regional (b) subsectors of community, (c) the leadership of community, (d) membership of community; (v) historical defense of the*

121. In order to determine the appropriate standard to evaluate the Objection, it should be noted that Article 3.5.4 of the ICANN Guidebook does not require that the “entire” community expresses its opposition. Rather, it requires that Objector proves a “substantial” opposition within the community it has identified itself as representing.

122. Therefore, the Appointed Expert is of the view that the argument on the “relative low number” of oppositions compared to the composition of the Sport Community, as put forward by Applicant, should be balanced with the relevance and representative nature of each opposition within the community. For instance, in the present case, the opposition made by an individual rugby player or fan will not have the same weight in order to determine if an objection represents substantial opposition as the one made by the International Rugby Board.<sup>45</sup>

123. In this respect, the Appointed Expert is satisfied with the evidence produced by Objector, which includes 55 letters of opposition submitted by different recognized sport federations,<sup>46</sup> together with other statements from different reputable sport organizations and specialized agencies, such as the International Olympic Committee (IOC), the World Anti-Doping Agency (WADA) or the United Nations Office on Sport for Development and Peace (UNOSDP).<sup>47</sup>

124. Aside from this, the Appointed Expert notes that Objector represents all its members in these proceedings. Indeed, in accordance with its internal organization, the fact that SportAccord’s Executive Council has decided to object to dot Sport Limited’s application implies that all members of the association are deemed to have agreed to such decision to object.<sup>48</sup>

125. Therefore, to require individual letters from all SportAccord’s members –as Applicant has suggested– is simply redundant. The fact that other sport federations represented by Objector did not explicitly object to dot Sport Limited application should not be seen, in the Appointed Expert’s view, as an opposition to SportAccord’s claim.

126. Consequently, based on the representative nature of the Objector for the Sport Community, the relevance of the entities which have expressed their opposition (either individually or through the Objector) and the global recognition of the entities which are represented by Objector in these proceedings, the Appointed Expert concludes that there is a substantial opposition to the application “.sport” gTLD on behalf of a significant part of the Sport Community as established in Article 3.5.4 of the ICANN Guidebook.

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*community in other contexts; and (vi) costs incurred by objector in expressing opposition, including other channels the objector may have used to convey opposition”.*

<sup>45</sup> See: Objection, Appendix A-3, tab 34.

<sup>46</sup> See: Objection, Appendix A-2.

<sup>47</sup> See: Objection, Appendix A-3.

<sup>48</sup> SportAccord’s Statutes, Article 33.3 “...the Council represents and commits SportAccord with regard to third parties”. See Exhibit Ap-1.

D. Targeting

(4) *Is the Sport Community explicitly or implicitly targeted by the application “.sport” gTLD?*

127. The next issue to be decided by the Appointed Expert is whether the Sport Community has been explicitly or implicitly targeted by the application for the “.sport” gTLD made by Applicant.

(i) *Positions of the Parties*

128. Due to the fact that word “sport” is almost exclusively associated with organized sport, sport for leisure and sport for health, Objector states that the Sport Community is “*explicitly*” targeted by the application for the “.sport” gTLD. In any event, SportAccord also argues that the “.sport” gTLD string “*implicitly*” targets the Sport Community.

129. Therefore, Objector concludes that the criterion of “*strong association*” between the Sport Community and the gTLD string “.sport” is, in its view, completely satisfied.<sup>49</sup>

130. Conversely, Applicant alleges that Objector failed to prove a “*strong association*” between the applied-for gTLD string and the alleged community since SportAccord does not represent the community as a whole. According to dot Sport Limited, “*whereas Applicant’s use of the TLD would target the entire sports industry, Objector plans to restrict the TLD at launch to persons of their choosing, beginning with Federations and other governing sports bodies, before later opening up the TLD to persons of its choosing outside the restricted definitions, using vague and unspecified post validation procedures and unspecified eligibility requirements*”.<sup>50</sup>

131. Applicant considers that it has a broader target than the alleged Sport Community, and the “*strong association*” alleged by Objector is purely ancillary or derivative.

(ii) *Considerations of the Appointed Expert*

132. It is for the Appointed Expert to decide whether the Sport Community is explicitly or implicitly targeted by the application for the “.sport” gTLD.

133. Pursuant to Article 3.5.4 of the ICANN Guidebook, “*the objector must prove a strong association between the applied-for gTLD string and the community represented by the objector. Factors that could be balanced by a panel to determine this include but are not limited to: (i) Statements contained in application; (ii) other*

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<sup>49</sup> See: Objection, page 10.

<sup>50</sup> See: Response, page 10.



*public statements by the applicant; (iii) associations by the public”.*

134. In the Appointed Expert’s opinion, since the community represented by Objector is the “Sport Community”, it is evident that the application for “.sport” gTLD made by Applicant explicitly targets such community.

135. Having recognized that the Sport Community is clearly delineated, it cannot be denied that there is a strong (or even identical) association between the applied-for gTLD string “.sport” and the community represented by Objector.

136. Therefore, the Appointed Expert concludes that the Sport Community has been explicitly targeted by the “.sport” gTLD.

#### E. Detriment

*(5) Is there any material detriment to the rights or legitimate interests of the Sport Community if the application for the “.sport” gTLD is allowed to proceed?*

137. Finally, the Appointed Expert has to address the issue of whether the application for the “.sport” gTLD causes any material detriment to the rights or legitimate interests of the Sport Community.

#### *(i) Positions of the Parties*

138. Objector states that the “.sport” gTLD application made by dot Sport Limited lacks accountability to the Sport Community. Regarding the detriment that such application may generate, SportAccord points to ambush marketing, cybersquatting, typo-squatting, brand-jacking, misuse of sport themes for pornography, the systematic exacerbation of naming conflicts and the massive utilization of name-defensive registrations, giving examples on how each situation (in any given scenario) may affect the rights or legitimate interests of the Sport Community.<sup>51</sup>

139. In its Objection, SportAccord describes other possible detriments, such as the false sense of official sanction that consumers may have if an unaccountable registry operator manages such domain.<sup>52</sup>

140. Further, according to Objector, *“Under the United States Department of Commerce’s agreement with ICANN, the Affirmation of Commitments, ICANN must demonstrate that the new gTLD program contributes, in part, to consumer trust. Delegating “.sport” to an unaccountable registry operator, which lends a false sense of official sanction to the .sport domain name space, would inevitably erode consumer trust by misleading individuals through unofficial content”.*<sup>53</sup>

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<sup>51</sup> See: Objection, page 11.

<sup>52</sup> See: Objection, page 13. SportAccord says that, for example, “Rugby.Sport” domain will lead internet users to believe that the International Rugby Board sanctions such a website.

<sup>53</sup> See: Objection, page 13.

141. Objector also notes that if the “.sport” gTLD application is allowed to proceed, the Sport Community would suffer a loss in its image and prestige by the misappropriated use of community-specific keywords. *“The very reason why there is a community-based objection (as opposed to a rights infringement objection) is the fact that keywords targeting a sub-community are a commons and that each member of the sub-community has the right to expect that community institutions ensure the responsible management of those keywords.”*<sup>54</sup>

142. According to Objector, while in many cases there is no concept of individual ownership in terms of intellectual property, each community has a natural concept of collective ownership of keywords essential to it or to its sub-communities. Based on this argument, SportAccord considers that the uncontrolled or unaccountable operation of the “.sport” registry would constitute the *“tragedy of the commons”*, a material detriment which cannot be measured in monetary units.

143. Objector expands on the disruption of Sport Community efforts and achievements. It provides examples of the loss of credibility of community-based governance models and states that community-based communication policies for anti-doping, anti-drug, anti-racism, ticket scalping, illegal or undesirable gambling, etc., will be disrupted if key domain names related to them are used without adherence to those policies. This can only be avoided, in Objector’s view, if the gTLD registry is directly accountable to the Sport Community.<sup>55</sup>

144. Further, SportAccord focuses on the actual and certain damages that the Sport Community would suffer in case the “.sport” gTLD is operated by a registry without appropriate community-based accountability. In Objector’s view, not only would this situation generate an economic damage, but also a detriment of the reputation, the values and the governance of the Sport Community as a whole.<sup>56</sup>

145. Finally, Objector points to the loss of benefits for not operating the “.sport” TLD by the Sport Community itself, the loss of opportunity to create a community-based organizational tool and, most important, the irreversible damage caused by the forfeiture of the opportunity for the Sport Community to build the right image through the operation of the gTLD.<sup>57</sup>

146. Applicant contends that, in fact, Objector failed to prove a likelihood of material detriment to the rights or legitimate interests of the alleged community. In its opinion, Objector speculates that the alleged detriments would befall the alleged Sport Community should the gTLD be delegated to Applicant, but *“most of the alleged detriments are detriments inherent in the nature of the Internet and not attributable to Applicant’s plans for operating the gTLD.”*<sup>58</sup>

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<sup>54</sup> See: Objection, page 14.

<sup>55</sup> See: Objection, page 15.

<sup>56</sup> See: Objection, page 17.

<sup>57</sup> See: Objection, page 18.

<sup>58</sup> See: Response, page 11.

147. Applicant claims that it has taken measures to address the detriments inherent in the nature of the Internet. *“Thus, Objector’s alleged detriment seems to purely stem from the fact that Applicant would be delegated the gTLD instead of Objector”*.<sup>59</sup>

148. Further, it is dot Sport Limited’s position that Objector proves no kind or amount of damage to the reputation of the Sport Community that would result from Applicant’s operation of the applied-for gTLD string. In Applicant’s words, *“Consumer trust will be a core operating principle: abusive registrations and abuse of the gTLD will result in rapid sanctions”*.<sup>60</sup>

149. In addition, dot Sport Limited accuses Objector of not offering evidence (i) that Applicant is not acting or does not intend to act in accordance with the interests of the Sport Community or of users more widely; (ii) that Applicant’s operation of the “.sport” gTLD string will interfere with the core activities of the alleged community; and (iii) much less that the Objector’s core activities depend on the domain name system.<sup>61</sup>

150. Applicant also states that the alleged economic damage to the Sport Community has not been proved by Objector. In any case, abusive behaviour or Objector’s speculative detriments, if they occur, may be easily corrected or penalized. In addition, dot Sport Limited criticizes some evidence advanced by Objector which, in its view, does not show any actual damage to the alleged Sport Community.<sup>62</sup>

151. To conclude, it is Applicant’s position that the Objector’s alleged damages are hypothetical and would not result from Applicant’s operation of the applied-for gTLD string.<sup>63</sup>

(ii) *Considerations of the Appointed Expert*

152. The Appointed Expert has to decide on the likelihood of material detriment to the rights or legitimate interests of the Sport Community in the event that the application process ends with the adjudication of the string (“.sport”) to Applicant.

153. The Appointed Expert first notes that, in accordance with Article 3.5.4 of the ICANN Guidebook, *“the objector must prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant por-*

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<sup>59</sup> See: Response, page 11.

<sup>60</sup> See: Response, page 11. Applicant further believes that there are benefits to rights and legitimate interests of the sports industry created by operation of a free and open TLD by a commercial entity. *“Given that there is no special regulated definition of the word “sport” or any restriction on the use of the word worldwide, combined with the fact that consumers understand that a domain name registration in a particular gTLD does not confer or even define special status for the holder worldwide and for every purpose, there will not be any loss of trust in the sports industry...”*

<sup>61</sup> See: Response, page 12.

<sup>62</sup> See: Response, page 13.

<sup>63</sup> See: Response, page 13.

*tion of the community to which the string may be explicitly or implicitly targeted. An allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment”.*

154. Such Article also provides the factors that could be used by an expert panel in making this determination. These elements include, but are not limited to, “(i) *nature and extent of damage to the reputation of the community represented by the objector that would result from the applicant’s operation of the applied-for gTLD string; (ii) evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely, including evidence that the applicant has not proposed or does not intend to institute effective security protection for user interests; (iii) interference with the core activities of the community that would result from the applicant’s operation of the applied-for gTLD string; (iv) dependence of the community represented by the objector on the DNS for its core activities; (v) nature and extent of concrete or economic damage to the community represented by the objector that would result from the applicant’s operation of the applied-for gTLD string; and (vi) level of certainty that alleged detrimental outcomes would occur*”.<sup>64</sup>

155. First, the Appointed Expert finds that the ICANN Guidebook does not call for “actual damage” for an objection to be accepted. It establishes a lower bar, namely a “*likelihood of material detriment*”, logical consequence of the impossibility of assessing any damage when the Applicant has yet to start operating the gTLD string.

156. Therefore, the standard that the Appointed Expert should apply to this issue is the “chance” that detriment will occur, which differs from the standard of “actual damage” invariably applied in litigation or arbitration. In other words, the standard of a “*likelihood of material detriment*” is, in the Appointed Expert’s opinion, equivalent to future “possible” damage.

157. In this regard, the Appointed Expert agrees with Applicant that many detriments alleged by Objector are purely hypothetical, such as the risk of cybersquatting, ambush marketing or the misuse of sport themes for purposes foreign to sport values.

158. Notwithstanding so, the Appointed Expert is of the opinion that Objector has proved several links between potential detriments that the Sport Community may suffer and the operation of the gTLD by an unaccountable registry, such as the sense of official sanction or the disruption of some community efforts.

159. Further, the Appointed Expert shares Objector’s argument that all domain registrations in a community-based “.sport” gTLD will assure sports acceptable use policies. On the other hand, this cannot be warranted by Applicant in the same way in the event that the application for the “.sport” gTLD is approved by

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<sup>64</sup> Article 3.5.4 of ICANN Guidebook.

ICANN.

160. Regarding the economic damage that SportAccord may suffer, the Appointed Expert is of the view that although the figures and calculations on negative externalities provided by Objector may have been exaggerated,<sup>65</sup> the risk of economic damages which would be inflicted to Objector due to the operation of the gTLD by an unaccountable registry shows a reasonable level of certainty and could not be avoided if the application is allowed to proceed.

161. Therefore, the Appointed Expert is not in a position to accept Applicant's argument that Objector's alleged detriment only relies on the fact that Applicant would be delegated the ".sport" gTLD instead of Objector.

162. Finally, even though SportAccord has not proved that dot Sport Limited will not act (or will not intend to act) in accordance with the interests of the Sport Community, the Appointed Expert considers that this is only one factor, among others, that may be taken into account in making this determination. Conversely, the Appointed Expert sees a strong dependence of the Sport Community on such domain name.

163. For these reasons, the Appointed Expert concludes that there is a strong likelihood of material detriment to the rights or legitimate interests of the Sport Community if the application ".sport" gTLD is allowed to proceed.

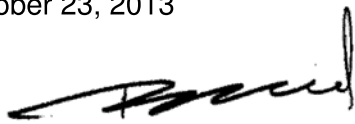
## VII. Decision

164. Having read all the submissions and evidence provided by the Parties, for the reasons set out above and in accordance with Article 21(d) of the Rules of Procedure, I hereby render the following Expert Determination:

- I. The "Community Objection" which has been put forward by SportAccord in these proceedings is successful.
- II. Objector SportAccord prevails.
- III. The ICC Centre will refund SportAccord the advance payment of costs it made in connection with these proceedings.

Date: October 23, 2013

Signature: \_\_\_\_\_



Prof. Dr. Guido Santiago Tawil  
Expert

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<sup>65</sup> See: Objection, Appendix A-13.

## **Annex 4.**


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burst of  
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domains

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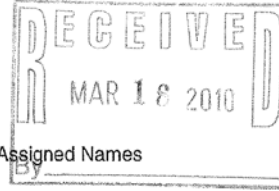
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## **Annex 5.**



INTERNATIONAL  
OLYMPIC  
COMMITTEE



Internet Corporation for Assigned Names  
and Numbers (ICANN)  
Mr. Rod Beckstrom  
President/CEO  
4676 Admiralty Way, Suite 330  
Marina del Rey, CA 90292-6601  
United States

Lausanne, 16 March 2010  
Ref 0109/HMS/mcs  
By mail and email

### ICANN-IOC meeting

Dear President,

The International Olympic Committee (IOC) is closely following the various ICANN projects currently being developed by ICANN, in particular the proposed expansion of generic Top Level Domains (gTLD).

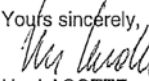
Since the activities of ICANN have a material effect upon the activities of the IOC and other constituents of the Olympic Movement, such as the National Olympic Committees and the International Federations, the IOC believes that it would be of benefit to ICANN and the IOC that a meeting be held between the appropriate representatives from each of our organisations.

In particular, the IOC would like to address the following points in such a meeting:

1. ICANN's structure and operations: The IOC would like to better understand ICANN's structure and how ICANN operates. Of course, the IOC would be happy to provide ICANN with further information on its own structure and operations, should ICANN so wish.
2. Protection of the Olympic Properties : The ICANN gTLD project gives rise to serious concerns for the IOC in terms of intellectual property protection. Please find attached, for your easy reference, a copy of the five letters already sent by the IOC to ICANN in relation to this matter. Due to the unique nature of the Olympic trademarks which are protected around the world in many different ways, measures should be taken by ICANN to have them protected accordingly in the scheme of ICANN's projects. For example, the Olympic properties could be added to the list of reserved trademarks, in the same way that ICANN has done to protect its own trademarks. The IOC understands that ICANN is currently considering the uniqueness of the Olympic properties and the manner in which they are protected internationally. Of course, the IOC strongly welcomes such initiative and wishes to assist ICANN in its endeavour.
3. New extension ".sport" : The IOC would like to discuss with ICANN the status of the development of the new extension ". sport".

In view of the above, the IOC would be grateful if you could provide us with the names and contact information of the appropriate persons that IOC representatives should meet with and propose some dates for a meeting, taking into account that the IOC hopes to convene such meeting in the middle of April.

The IOC thanks you very much for your attention to this correspondence.

Yours sincerely,  
  
Urs LACOTTE  
Director General

  
Howard M STUPP  
Legal Affairs Director

Enc.

INTERNATIONAL OLYMPIC COMMITTEE  
Contact Information Redacted

## **Annex 6.**



INTERNATIONAL  
OLYMPIC  
COMMITTEE

Mr. Kurt Pritz  
Senior Vice President, Services  
Amy Stathos, Esquire  
Deputy General Counsel  
Internet Corporation for Assigned  
Names and Numbers ("ICANN")  
4676 Admiralty Way, Suite 330  
Marina de Rey, CA 90292-6601,  
USA

Legal Affairs Department  
Ref. No. HMS/MCS/shr

Lausanne, 1<sup>st</sup> February 2011

**Re: Reserving "Olympic" And "Olympiad" In The New gTLDs**

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Dear Mr. Pritz and Ms. Stathos:

Thank you for meeting with representatives from Silverberg, Goldman & Bikoff LLP—our outside counsel for intellectual property relating to Internet law—at the recent ICANN meeting in Cartagena, Colombia.

We understand that your discussion was positive and productive, and that you are amenable to reserving the words OLYMPIC and OLYMPIAD across the new generic Top-Level Domains if we provide specific criteria to demonstrate the uniqueness of these words, and to show that their reservation serves the public interest of the international community.

As a follow-up to the discussion in Cartagena, please accept this letter, and the annexed materials, which set forth our proposed criteria for reserving the words OLYMPIC and OLYMPIAD at the top and second levels of all new gTLDs. We believe that reserving these Olympic words is the only practical way of protecting them amidst an unprecedented expansion of the domain name system.

**I. Summary of Proposed Criteria for Reservation of the Olympic Properties.**

The Olympic properties—defined as words or symbols that identify the Olympic movement—enjoy unique international statutory and treaty protection, which reserve their exclusive use to the International Olympic Committee ("IOC"), the National Olympic Committees and the Organising Committees for the Olympic Games, so that we may use them to carry out our mission of promoting the Olympic movement and our philosophy of Olympism—the placing of sports at the service of humanity.

The following proposed criteria are narrowly tailored to reflect this special recognition and protection:

1. The properties are protected by *sui generis* legislation, in effect before 26 June 2008, in over twenty-five (25) countries;
2. The *sui generis* legislation protecting the properties has been upheld or recognized by a national and/or territorial high court;
3. The properties are protected by international treaty, in effect before 26 June 2008 in over forty (40) countries; and





4. Reserving the properties at the top and second level serves the public interest of the international community by assisting the non-profit owner of the properties in fulfilling its humanitarian mission.

We believe that these criteria reflect the unique recognition and protection that have been accorded to the Olympic properties worldwide, enabling us to carry out the mission of the Olympic movement.

## **II. Unique Statutory and Treaty Protection for the Olympic Properties.**

The Olympic properties are protected in well over twenty-five countries around the world by unique legislation reserving their exclusive use to the IOC and its National Olympic Committees.

***The Asia-Pacific Region***—For example, in the ICANN Asia-Pacific Region, Chinese Regulations on Protection of Olympic Symbols proscribes “use [of the] Olympic symbols for commercial purposes (including potential commercial purposes) without authorization ... [including] expressions such as Olympic, Olympiad, Olympic Games  
(中国奥林匹克委员会的名称、徽记、标志) and their abbreviations.”

Similarly, the Australian Olympic Insignia Protection Act of 1987 proscribes use of protected Olympic expression for commercial purposes, including the words Olympic, Olympics, Olympic Games, Olympiad and Olympiads.

***The European Region***—In the ICANN European Region, the Belgian Decree of 30 March 1983 on the Protection of the Symbol, Logo and Motto Olympics proscribes use of the terms Jeux Olympiques, Olympiades, Olympique, Olympische Spelen, Olympiades and Olympische for physical education and sport, or with commercial or advertising purposes, without permission from the Belgian Olympic Committee.

Similarly, the United Kingdom’s Olympic Symbols Protection Act of 1995 reserves exclusive rights to Olympic symbol, the Olympic motto and the words Olympiad, Olympiads, Olympian, Olympians, Olympic and Olympics including any translation into any language.

Indeed, Article 3 of N 2598/1998 in Greece specifically reserves exclusive use of the Olympic properties to the IOC and its National Olympic Committees in “domain names on the Internet.”

***The Latin American and Caribbean Island Region***—In the ICANN Latin America and Caribbean Island Region, the Creation of the Costa Rican Institute of Sports and Recreation and of the Legal Framework for Physical Education, Sports, and Recreation Act grants the National Olympic Committee of Costa Rica the “exclusive right to use, for commercial or publicity purposes, the words Olimpico and Olimpiada.”

Similarly, the Guatemalan National Law for the Development of Physical Culture and Sports provides the Guatemalan Olympic Committee with the “exclusive right to use the ... terms Olympia, Olimpico and Olimpiadas.” Indeed, the Olympic Act of Brazil specifically reserves exclusive use of the Olympic properties to the IOC and its National Olympic Committees in “domains in websites.”

***The North American Region***—Finally, in the ICANN North American Region, the Canadian Olympic and Paralympic Marks Act proscribes adoption or use of the words Olympia, Olympiad, Olympiades, Olympian, Olympic, Olympie, and Olympique—as well as any translations thereof—in connection with a business or otherwise. In addition, the United States Ted Stevens Olympic and Amateur Sports Act provides the United States Olympic Committee with the exclusive right to use the words Olympic and Olympiad.



Importantly, unique legislative protection in more than twenty-five countries is not an exhaustive characterization of the special recognition and protection accorded to the Olympic properties worldwide. Rather, we highlight these materials for illustrative purposes.

For your convenience, we have provided copies of each statute cited herein in Annex B.

**Legislation Upheld By High Courts**—These statutes have been in existence for many years. In the very rare instances where this special legislative protection of the Olympic properties have been legally challenged, national high courts and intellectual property offices have uniformly upheld their validity. In *San Francisco Arts & Athletics, Inc. v. United States Olympic Committee*, the Supreme Court of the United States held that “Congress clearly intended to grant the [United States Olympic Committee] exclusive use of the word OLYMPIC without regard to whether use of the word tends to cause confusion, and [without regard to] defenses available under the Lanham Act.”

The U.S. Supreme Court further explained that Congress—in enacting the Olympic and Amateur Sports Act—had “a broader public interest in promoting, through the activities of the USOC, the participation of amateur athletes from the United States in ... the Olympic Games.” The Act “directly advances these governmental interests by supplying the USOC with the means to raise money to support the Olympics and ... ensuring that it will receive the benefit of its efforts.”

For your convenience, we have included this decision—as well as an illustrative sample of similar rulings from other nations—in Annex C.

**International Treaty Protection**—The Nairobi Treaty on the Protection of the Olympic Symbol obligates all participating nations to protect the Olympic Symbol—the five interlocking rings—against any commercial use without the express authorization of the IOC. The Nairobi Treaty demonstrates that sixty-five signatory nations, including forty-eight contracting parties, are dedicated to protecting the Olympic rings—and also the Olympic properties generally—in recognition of the unique nature of the Olympic movement.

Signatories and contracting parties to the Nairobi Treaty are also truly diverse, including sixteen countries from the ICANN African Region, fourteen countries from the ICANN Asia-Pacific Region, twenty countries from the ICANN European Region, and thirteen countries from the ICANN Latin America and Caribbean Island Region.

### **III. Olympism And The Public Interest.**

Reserving the words OLYMPIC and OLYMPIAD unequivocally serves the public interest by assisting the IOC and its National Olympic Committees in fulfilling the non-profit mission of the Olympic movement.

Olympism is the philosophy of the Olympic movement as codified in the Olympic Charter. It blends sport with culture and education. The goal of Olympism is to place sport at the service of the harmonious development of man with a view toward promoting a peaceful society concerned with the preservation of human dignity. Accordingly, the IOC and all the members of the Olympic family are dedicated to ensuring regular celebration of the Olympic Games, promoting world peace, humanitarian development through sport, environmental sustainability, education of youth, HIV/AIDs prevention and gender equality.

**Peace Through Sport**—The modern Olympic movement has revived the ancient Greek observation of the Olympic Truce, asking those in conflict to stop fighting while athletes from the entire family of nations meet under the Olympic flame. The Olympic Truce has received over ten years of endorsement from the United Nations General Assembly, which has unanimously adopted, every two years, a resolution entitled *Building A Peaceful And Better World Through*



*Sport And The Olympic Ideal.* In addition, every year the National Olympic Committees organize activities to promote the culture of peace and observance of the Olympic Truce in their respective countries.

***Human Development Through Sport***—Many projects have been implemented by the IOC and its international and local partners to place sport at the service of improving people’s well-being, health and physical activity. Indeed, the efforts of ICANN to spread geographic and cultural diversity on the Internet are akin to the efforts of the IOC to provide sport to the world. Just as ICANN strives to close the digital divide, the IOC strives to instill the spirit of Olympism globally and provide sport to the millions of young people around the world who have no access to sports facilities. Recent examples include the inauguration by the IOC President, Dr. Jacques Rogge and the Head of State of Zambia, Mr. Rupiah Banda, of the Olympic Youth Development Centre in Lusaka, Zambia under the Olympic “Sports for Hope” program. In Mozambique, the IOC and its international and local partners have implemented a poverty alleviation and economic development program for the community of Boane, supporting the academic education of children from under-privileged families. In El Salvador, the IOC and its international partners have initiated a “Sport for Peace and Development” project to intervene in some of the most impoverished and violent municipalities in the country. These are but a few of the many examples of the IOC’s efforts in the sector.

***Education Through Sport***—Education is an important pillar of Olympism. Indeed, like ICANN, the IOC was formed to serve charitable and educational purposes, among other beneficent ends. Most recently, the IOC has devised a multi-level strategy—which is widely disseminated via the Internet—aimed at mentoring young people and using sport to instill human values, such as healthy ambition, shared responsibility, self-respect and respect for others. These fundamental principles of Olympism are taught by way of example—such as the perseverance personified by Olympic speed skater Dan Jansen, who, despite serious personal losses and earlier defeats, finally won gold in 1994 at his fourth and final Olympic Games; or the respect personified by African-American track and field legend Jesse Owens and his German counterpart Luz Long during the 1936 Olympic Games in Berlin, Germany, who after a very close competition in the long jump, walked off the field arm in arm, in defiance of pervasive racism and prejudice at that time. These and many similar educational programs have already reached four hundred million young people in China and another ten million young people in India.

***Sport And Sustainable Development***—The environment is another important pillar of Olympism. The IOC continues to play an important role in the greater resources and sustainable development through sport at the national, regional and international level, and particularly at the Olympic Games. The IOC applies considerable financial resources to the “Sport and Environment” program, creating a Sport and Environment Commission and assisting National Olympic Committees and Organizing Committees for the Olympic Games promoting Olympic Games that respect the environment and promoting awareness of the importance of a healthy environment.

***HIV/AIDS Prevention And Gender Equality***—Both health and gender equality are of critical importance to the IOC and the world of sport in general. Accordingly, the IOC has developed a policy and related programs of activities to promote HIV/AIDS awareness and prevention—running special awareness campaigns during the Olympic Games, organizing regional workshops on prevention through sport, gathering international and local partners to discuss how sport can help support further awareness and prevention efforts, and publishing the first Toolkit for HIV/AIDS prevention through sport. In addition, the IOC strives to ensure that women and girls are given equal opportunities to engage in sport and physical activities throughout their lifespan—ensuring that access to sport and physical activity is fully part of the international conventions and documents adopted by the United Nations and other institutions, taking action in the field of advocacy among National Olympic Committees and International Sports Federations, and working with young people to instill values of gender equality.

These examples are not an exhaustive characterization of Olympism in action. Although we have



attached Annex D—including a wealth of materials describing the Olympic movement and our philosophy of Olympism, in addition to our global work toward placing sport at the service of humanity—it is simply not possible to detail all of the beneficent efforts of the modern Olympic movement dating back to the first Olympic Games in 1896.

More importantly, funding for each of these humanitarian pursuits is made possible only through the sale of broadcasting and sponsorship rights to the Olympic Games (which comprises ninety-two percent of our total marketing revenue) in addition to ticket sales and licensing revenue (which comprises eight percent of our marketing revenue). Less than ten percent of the total marketing revenue is retained for the operational and administrative costs of governing the Olympic movement; the rest is distributed to organizations throughout the Olympic movement to support the staging of the Olympic Games and to promote Olympism worldwide.

Each of these revenue sources hinges upon the international and exclusive rights to use the Olympic properties—truly making them crucial to the Olympic movement.

By reserving the words OLYMPIC and OLYMPIAD at the top and second levels, ICANN will adhere to international, special statutory and treaty protection of the Olympic properties. More importantly, ICANN will serve the intent of such laws by preserving the lifeblood of the Olympic movement—allowing the IOC and its National Olympic Committees to maintain and expand efforts to benefit the international community through sport by making the world a better and more stable and peaceful place.

#### **IV. Proposed Amendments Protecting Olympic Properties.**

The IOC's efforts to place sport at the service of humanity depend upon its exclusive rights to use the Olympic properties, and the unique legal recognition and protection afforded to those Olympic properties. To protect these properties in the new gTLDs, we attach Annex A—containing our proposed amendments to reserve the words OLYMPIC and OLYMPIAD at the top and second levels.

The proposal would amend Section 2.2.1.2 of the Applicant Guidebook on reserved names at the top level, and amend Specification Five of the new gTLD Registry Agreement on reserved names at the second level. We are confident that these proposed amendments truly serve the public interest by safeguarding properties vital to the Olympic movement.

In effect, we have proposed a blanket reservation of the words OLYMPIC and OLYMPIAD at the top-level. Thus, for the first round of applications, no one may register dot-Olympic or dot-Olympiad, foreign translations or any confusingly similar strings at the top-level. We have further proposed a blanket reservation of the literal words OLYMPIC and OLYMPIAD at the second-level, with the caveat that Registry Operators may opt reach an agreement with the IOC to register these strings in a manner consistent with any grandfathered rights or fair uses.

We believe that our proposed amendments strike a fair balance between *sui generis* legislation and the original 1996 agreement between the United States National Olympic Committee and Network Solutions, which uniformly “block[ed] domain name registration of the literal words OLYMPIC, OLYMPIAD and CITIUS ALTIUS FORTIUS.” Network Solutions also agreed to accord sympathetic consideration to written requests from the Olympic Committee for removal of registrations making unauthorized use of the Olympic properties. We have included a copy of that agreement in Annex E.

Presently, numerous registrars and auction sites routinely block or remove domain names containing the words OLYMPIC and OLYMPIAD at the request of the IOC, as well as other domain names containing any Olympic property.



**VI. Conclusion.**

Given the ambitious timeline that ICANN has provided for the launch of new gTLDs, we believe that the words OLYMPIC and OLYMPIAD should be placed on the reserved names list as soon as possible. As we move forward to achieve this objective, please keep in mind that funding for all of the beneficent endeavors of the Olympic movement depends upon the exclusive rights of the IOC and other constituents of the Olympic movement that are so authorized by the IOC, to use the Olympic properties.

If you need any further information from us, or if you wish to discuss anything further with either our outside counsel or us, then please let us know.

Yours Sincerely,

A handwritten signature in blue ink, appearing to read "Urs Lacotte".

Urs LACOTTE  
Director General

A handwritten signature in blue ink, appearing to read "Howard M. Stupp".

Howard M. Stupp  
Legal Affairs Director

[pritz@icann.org](mailto:pritz@icann.org)  
[amy.stathos@icann.org](mailto:amy.stathos@icann.org)

cc: Contact Information  
Redacted

# **Annex 7.**



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Internet Corporation for Assigned  
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4676 Admiralty Way, Suite 330  
Marina de Rey, CA 90292-6601,  
USA

Lausanne, 4 April 2011

**Re: Reserving "Olympic" And "Olympiad" In The New gTLDs**

Dear Mr. Pritz and Ms. Stathos,

Thank you for meeting once again with representatives from Silverberg, Goldman & Bikoff LLP—our outside counsel for intellectual property relating to Internet law—at the recent ICANN meeting in San Francisco, California.

We understand that you had another positive and productive discussion, and that you remain amenable to augmenting the ICANN reserved names lists to include the words OLYMPIC and OLYMPIAD if we provide greater detail regarding legislative protection and the public interests served by such reservation.

As a follow-up to the discussion in San Francisco, please accept this letter which provide further evidence of the special protection provided to the Olympic words and symbols and show how reserving OLYMPIC and OLYMPIAD at the top and second levels of all new gTLDs serves the public interest.

**Legislative Protection**—In our letter of 1 February 2011, we explained that the Olympic properties are protected in well over twenty-five countries around the world by unique legislation reserving their exclusive use to the International Olympic Committee ("IOC"). As a representative sample, we annexed *sui generis* legislation from Australia, Belgium, Brazil, Canada, China, Costa Rica, Greece, Guatemala, the United Kingdom and the United States.<sup>1</sup>

<sup>1</sup> See e.g., 36 U.S.C. § 220506 United States Ted Stevens Olympic and Amateur Sports Act (1978); see also 15 U.S.C. § 1125 (d)(1)(A)(ii)(III) United States Anti-Cybersquatting Consumer Protection Act (1999) (incorporating by reference the Ted Stevens Olympic and Amateur Sports Act); see also 18 U.S.C. § 2320 (e)(1)(B) United States Trademark Anti-Counterfeiting Act (1984) (also incorporating by reference the Ted Stevens Olympic and Amateur Sports Act).



**Treaty Protection**—The Nairobi Treaty on the Protection of the Olympic Symbol demonstrates how sixty-six signatory nations are dedicated to protecting the Olympic properties, in recognition of the unique nature of the Olympic Movement.

The Nairobi Treaty protects the Olympic Symbol—the five interlocking rings—rather than the words OLYMPIC or OLYMPIAD. But the Treaty demonstrates the international breadth of legal protection enjoyed by the Olympic movement. We believe that the treaty shows that unique protection for the Olympic words and symbols is an internationally accepted principle of law that should be applied to the domain name system.

**Reservation Serving the Public Interest**— Worldwide legislative and treaty protection provided to the Olympic words and symbols reflects the global consensus that their protection is in the public interest. Reserving the words OLYMPIC and OLYMPIAD at the top and second levels of an expanded domain name system is consistent with this well-established global pattern of unique protection, and will further serve the public interests of the international ICANN community.

First, reserving these Olympic words provides protection for top and second-level domain name applicants. It protects them from applying for Olympic strings that are legally preempted by international *sui generis* legislation. Thus, reservation will protect innocent infringers while also substantially diminishing intentional violations of law.

Second, reserving these Olympic words optimizes top and second level application processes by adding expediency and efficiency. Augmenting the reserved names lists to include a discrete number of Olympic words removes those words from the pool of registrable names. Thus, application processes will not necessitate string contention, legal rights objection, or implementation of rights protection mechanisms in instances where the strings applied for violate international *sui generis* legislation.

Third, reserving these Olympic words helps protect Internet users against intentional infringers who would divert them from officially authorized Olympic websites, or would mislead the public by suggesting that their activities are endorsed by the IOC.

Finally, as we explained in our letter of 1 February 2011, and as you discussed in San Francisco, reserving the words OLYMPIC and OLYMPIAD serves the public interest by enabling the IOC, the National Olympic Committees and the Organizing Committees for the Olympic Games to direct their limited funding toward fulfilling the unique international mission of placing sport at the service of humanity.

In sum, reserving the Olympic words advances the unique international protection afforded the Olympic words, in furtherance of the public good. To better reflect these public interest benefits to the international ICANN community, we have added language under the fourth proposed criterion to create a stronger relationship between the public interest, the ICANN community and *sui generis* legal protection.

**Revised Criteria for Reservation of the Olympic Properties**—Pursuant to your discussion with our outside counsel in San Francisco, we believe that our revised criteria are now more narrowly tailored to reflect the special recognition and protection accorded to the Olympic properties:





1. The properties are protected by *sui generis* legislation, in effect before 26 June 2008, in over thirty (30) countries;
2. The *sui generis* legislation protecting the properties has been upheld or recognized by a national and/or territorial high court;
3. The properties are protected by international treaty, in effect before 26 June 2008 in over forty (40) countries; *and*
4. Reserving the properties at the top and second level of the domain name system:
  - (a) Assists the non-profit owner of the properties in fulfilling its unique international humanitarian mission;
  - (b) Protects domain name applicants in the international community from applying for strings that are legally preempted by international *sui generis* legislation; *and*
  - (c) Optimizes application processes by reserving contentious strings legally preempted by international *sui generis* legislation.

Conclusion—We are pleased to learn that this matter is a priority, and that you are working with our outside counsel toward augmenting the reserved names lists in the final Guidebook, which we understand ICANN intends to publish on or about 30 May 2011.

Given this ambitious timeline, please let us know as soon as possible if you need any further information from us, or if you wish to discuss anything further with either our outside counsel or us.

Yours sincerely,

A handwritten signature in black ink, appearing to read "H. Stupp", written in a cursive style.

Howard M. Stupp  
Director of Legal Affairs

cc: Contact Information  
Redacted

## **Annex 8.**

SILVERBERG  
GOLDMAN &  
BIKOFF, L.L.P. Contact Information Redacted

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ATTORNEYS BY LAW

July 1, 2011

**Via email**

Mr. Kurt Pritz  
Senior Vice President, Services  
Amy Stathos, Esquire  
Deputy General Counsel  
Internet Corporation for Assigned  
Names and Numbers ("ICANN")  
4676 Admiralty Way, Suite 330  
Marina de Rey, CA 90292-6601, USA

**RE: Protecting The Olympic Words In The New gTLDs.**

Dear Kurt and Amy,

Thank you for meeting with us in Singapore to discuss appropriate protection for the words Olympic and Olympiad in the new gTLD Applicant Guidebook. It is our understanding that ICANN will put in place a stay that temporarily preserves and protects these Olympic words against registration at the top level while the Generic Names Supporting Organization and the Governmental Advisory Committee consider the extent of protection to be provided permanently.

As we discussed in Singapore, a stay or suspension of this sort is designed to prevent prejudice or harm while one's substantive rights are determined. Thus, while the GNSO and the GAC consider appropriate protection for the Olympic words in the Guidebook, we request that the stay or suspension apply to multiple languages. Our use of the phrase "multiple languages" mirrors ICANN's use of the phrase in Module 2.2.1.2 of the Guidebook.

To this end, we provide an illustrative list of the words Olympic and Olympiad in multiple languages.<sup>1</sup>

Briefly restating the points we presented in Singapore, the stay or suspension should apply in multiple languages for several reasons: First, speakers of foreign languages, such as French or Spanish, regard iterations of Olympic words such as Olympic and Olimpico as *identical matches* with the Olympic words, not foreign

equivalents. Second, the new gTLDs will be available internationally, in multiple languages. The ICANN mantra of “One World. One Internet” necessarily implicates the multiple languages used on the Internet, and so should top-level protection for identical matches of the Olympic words. Protection of the Olympic words is just as important to Olympic Committees in non-English speaking countries as in English-speaking countries. Third, if unauthorized parties were permitted to register Olympic words in multiple languages, that would prejudice an issue that the ICANN Board has reserved for consideration by the GNSO, and it would prejudice the IOC by creating the opportunity for infringement at the top level of the domain name system.

This third rationale applies with equal force to prevent new gTLD applications for strings that are confusingly similar to the words Olympic and Olympiad, such as “dot-Olympics.” If, for example, someone were allowed to register “dot-Olympics” while the stay is in place, that would prejudice the very issue before the GNSO and prejudice the IOC. That is why the Olympic words should be temporarily protected against confusingly similar strings while the GNSO and GAC consider the proper scope of permanent protection.

The IOC has consistently taken the position that the words Olympic and Olympiad should be protected both in multiple languages and against confusingly similar strings. We have attached and highlighted relevant portions of IOC letters from February 1, 2011 and April 4, 2011 addressed to your attention.

Most notably, Section IV of the February 1, 2011 IOC letter to ICANN specifically stated the IOC’s position on foreign equivalents and confusingly similar strings: “...we have proposed a blanket reservation of the words OLYMPIC and OLYMPIAD at the top-level ... for the first round of applications, no one may register dot-Olympic or dot-Olympiad, *foreign translations* or *any confusingly similar strings*...”

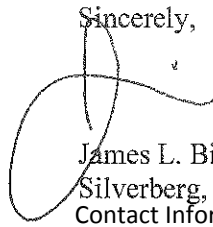
To reflect protection of the Olympic words in multiple languages, and against confusingly similar strings, we propose that ICANN publish the following statement in the Guidebook or any clarifying memoranda:

“ICANN reserves its right to reject any application, and the International Olympic Committee reserves its right to file legal objections against any application, for strings composed of the words Olympic or Olympiad, their foreign equivalents, or any confusingly similar variation.”

Finally, please know that we appreciate ICANN’s willingness to have these important issues, as well as appropriate protection for the Olympic words on the second level of all new gTLDs, considered by the GNSO in an expedient fashion.

Please let us know if you have any further questions or comments. We will be glad to provide whatever additional information you need in order to ensure that the Olympic words are fully and effectively protected while the GNSO considers the issue.

Sincerely,



James L. Bikoff  
Silverberg, Goldman & Bikoff, LLP  
Contact Information Redacted

1

ILLUSTRATIVE LIST OF MULTIPLE LANGUAGES			
Language	Olympic Words		Rationale
<b>English</b>	Olympic	Olympiad	<ul style="list-style-type: none"><li>• English is one of six official United Nations Languages.</li><li>• English is specifically protected by <i>sui generis</i> legislation in Australia, Canada, China, Germany, New Zealand, Russia, the U.K., and the U.S.</li></ul>
<b>French</b>	Olympique	Olympiade	<ul style="list-style-type: none"><li>• French is one of six official United Nations Languages.</li><li>• French is specifically protected by <i>sui generis</i> legislation in Belgium, France, and Luxembourg.</li></ul>
<b>German</b>	Olympisch	Olympiade	<ul style="list-style-type: none"><li>• German is specifically protected by <i>sui generis</i> legislation in Austria, Germany and Luxembourg.</li></ul>
<b>Spanish</b>	Olímpico	Olimpiada	<ul style="list-style-type: none"><li>• Spanish is one of six official United Nations Languages.</li><li>• Spanish is specifically protected by <i>sui generis</i> legislation in Argentina, Chile, Costa Rica, Ecuador, Guatemala, Mexico, Puerto Rico, Spain, and Venezuela.</li></ul>
<b>Arabic</b>	أولمبي	أولمبياد	<ul style="list-style-type: none"><li>• Arabic is one of six official United Nations languages.</li><li>• Arabic is specifically protected by <i>sui generis</i> legislation in Lebanon.</li></ul>
<b>Chinese</b>	奥林匹克 (Simplified)	奥林匹 (Simplified)	<ul style="list-style-type: none"><li>• Chinese is one of six official United Nations Languages.</li><li>• Chinese is specifically protected by <i>sui generis</i> legislation in China.</li></ul>

	奥林匹克 (Traditional)	奧林匹亞 (Traditional)	
<b>Greek</b>	Ολυμπιακοί	Ολυμπιάδα	<ul style="list-style-type: none"> <li>• Greek is specifically protected by <i>sui generis</i> legislation in Greece.</li> </ul>
<b>Korean</b>	올림픽	올림픽아드	<ul style="list-style-type: none"> <li>• Korean is specifically protected by <i>sui generis</i> legislation in Korea.</li> </ul>
<b>Russian</b>	олимпийский	олимпиада	<ul style="list-style-type: none"> <li>• Russian is one of six official United Nations Languages.</li> <li>• Russian is specifically protected by <i>sui generis</i> legislation in the Russian Federation.</li> </ul>



INTERNATIONAL  
OLYMPIC  
COMMITTEE

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Senior Vice President, Services  
Amy Stathos, Esquire  
Deputy General Counsel  
Internet Corporation for Assigned  
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Legal Affairs Department  
Ref. No. HMS/MCS/shr

Lausanne, 1<sup>st</sup> February 2011

**Re: Reserving "Olympic" And "Olympiad" In The New gTLDs**

---

Dear Mr. Pritz and Ms. Stathos:

Thank you for meeting with representatives from Silverberg, Goldman & Bikoff LLP—our outside counsel for intellectual property relating to Internet law—at the recent ICANN meeting in Cartagena, Colombia.

We understand that your discussion was positive and productive, and that you are amenable to reserving the words OLYMPIC and OLYMPIAD across the new generic Top-Level Domains if we provide specific criteria to demonstrate the uniqueness of these words, and to show that their reservation serves the public interest of the international community.

As a follow-up to the discussion in Cartagena, please accept this letter, and the annexed materials, which set forth our proposed criteria for reserving the words OLYMPIC and OLYMPIAD at the top and second levels of all new gTLDs. We believe that reserving these Olympic words is the only practical way of protecting them amidst an unprecedented expansion of the domain name system.

**I. Summary of Proposed Criteria for Reservation of the Olympic Properties.**

The Olympic properties—defined as words or symbols that identify the Olympic movement—enjoy unique international statutory and treaty protection, which reserve their exclusive use to the International Olympic Committee ("IOC"), the National Olympic Committees and the Organising Committees for the Olympic Games, so that we may use them to carry out our mission of promoting the Olympic movement and our philosophy of Olympism—the placing of sports at the service of humanity.

The following proposed criteria are narrowly tailored to reflect this special recognition and protection:

1. The properties are protected by *sui generis* legislation, in effect before 26 June 2008, in over twenty-five (25) countries;
2. The *sui generis* legislation protecting the properties has been upheld or recognized by a national and/or territorial high court;
3. The properties are protected by international treaty, in effect before 26 June 2008 in over forty (40) countries; and



4. Reserving the properties at the top and second level serves the public interest of the international community by assisting the non-profit owner of the properties in fulfilling its humanitarian mission.

We believe that these criteria reflect the unique recognition and protection that have been accorded to the Olympic properties worldwide, enabling us to carry out the mission of the Olympic movement.

## **II. Unique Statutory and Treaty Protection for the Olympic Properties.**

The Olympic properties are protected in well over twenty-five countries around the world by unique legislation reserving their exclusive use to the IOC and its National Olympic Committees.

***The Asia-Pacific Region***—For example, in the ICANN Asia-Pacific Region, **Chinese Regulations on Protection of Olympic Symbols** proscribes “use [of the] Olympic symbols for commercial purposes (including potential commercial purposes) without authorization ... [including] expressions such as Olympic, Olympiad, Olympic Games (中国奥林匹克委员会的名称、徽记、标志) and their abbreviations.”

Similarly, the Australian Olympic Insignia Protection Act of 1987 proscribes use of protected Olympic expression for commercial purposes, including the words Olympic, Olympics, Olympic Games, Olympiad and Olympiads.

***The European Region***—In the ICANN European Region, the **Belgian Decree of 30 March 1983 on the Protection of the Symbol, Logo and Motto Olympics** proscribes use of the terms **Jeux Olympiques, Olympiades, Olympique, Olympische Spelen, Olympiades and Olympische** for physical education and sport, or with commercial or advertising purposes, without permission from the Belgian Olympic Committee.

Similarly, the United Kingdom’s Olympic Symbols Protection Act of 1995 reserves exclusive rights to Olympic symbol, the Olympic motto and the words Olympiad, Olympiads, Olympian, Olympians, Olympic and Olympics including any translation into any language.

Indeed, Article 3 of N 2598/1998 in Greece specifically reserves exclusive use of the Olympic properties to the IOC and its National Olympic Committees in “domain names on the Internet.”

***The Latin American and Caribbean Island Region***—In the ICANN Latin America and Caribbean Island Region, the **Creation of the Costa Rican Institute of Sports and Recreation and of the Legal Framework for Physical Education, Sports, and Recreation Act** grants the National Olympic Committee of Costa Rica the “exclusive right to use, for commercial or publicity purposes, the words **Olimpico and Olimpiada.**”

Similarly, the **Guatemalan National Law for the Development of Physical Culture and Sports** provides the Guatemalan Olympic Committee with the “exclusive right to use the ... terms **Olympia, Olimpico and Olimpiadas.**” Indeed, the Olympic Act of Brazil specifically reserves exclusive use of the Olympic properties to the IOC and its National Olympic Committees in “domains in websites.”

***The North American Region***—Finally, in the ICANN North American Region, the **Canadian Olympic and Paralympic Marks Act** proscribes adoption or use of the words **Olympia, Olympiad, Olympiades, Olympian, Olympic, Olympic, and Olympique**—as well as any translations thereof—in connection with a business or otherwise. In addition, the United States Ted Stevens Olympic and Amateur Sports Act provides the United States Olympic Committee with the exclusive right to use the words Olympic and Olympiad.





Importantly, unique legislative protection in more than twenty-five countries is not an exhaustive characterization of the special recognition and protection accorded to the Olympic properties worldwide. Rather, we highlight these materials for illustrative purposes.

For your convenience, we have provided copies of each statute cited herein in Annex B.

**Legislation Upheld By High Courts**—These statutes have been in existence for many years. In the very rare instances where this special legislative protection of the Olympic properties have been legally challenged, national high courts and intellectual property offices have uniformly upheld their validity. In *San Francisco Arts & Athletics, Inc. v. United States Olympic Committee*, the Supreme Court of the United States held that “Congress clearly intended to grant the [United States Olympic Committee] exclusive use of the word OLYMPIC without regard to whether use of the word tends to cause confusion, and [without regard to] defenses available under the Lanham Act.”

The U.S. Supreme Court further explained that Congress—in enacting the Olympic and Amateur Sports Act—had “a broader public interest in promoting, through the activities of the USOC, the participation of amateur athletes from the United States in ... the Olympic Games.” The Act “directly advances these governmental interests by supplying the USOC with the means to raise money to support the Olympics and ... ensuring that it will receive the benefit of its efforts.”

For your convenience, we have included this decision—as well as an illustrative sample of similar rulings from other nations—in Annex C.

**International Treaty Protection**—The Nairobi Treaty on the Protection of the Olympic Symbol obligates all participating nations to protect the Olympic Symbol—the five interlocking rings—against any commercial use without the express authorization of the IOC. The Nairobi Treaty demonstrates that sixty-five signatory nations, including forty-eight contracting parties, are dedicated to protecting the Olympic rings—and also the Olympic properties generally—in recognition of the unique nature of the Olympic movement.

Signatories and contracting parties to the Nairobi Treaty are also truly diverse, including sixteen countries from the ICANN African Region, fourteen countries from the ICANN Asia-Pacific Region, twenty countries from the ICANN European Region, and thirteen countries from the ICANN Latin America and Caribbean Island Region.

### **III. Olympism And The Public Interest.**

Reserving the words OLYMPIC and OLYMPIAD unequivocally serves the public interest by assisting the IOC and its National Olympic Committees in fulfilling the non-profit mission of the Olympic movement.

Olympism is the philosophy of the Olympic movement as codified in the Olympic Charter. It blends sport with culture and education. The goal of Olympism is to place sport at the service of the harmonious development of man with a view toward promoting a peaceful society concerned with the preservation of human dignity. Accordingly, the IOC and all the members of the Olympic family are dedicated to ensuring regular celebration of the Olympic Games, promoting world peace, humanitarian development through sport, environmental sustainability, education of youth, HIV/AIDS prevention and gender equality.

**Peace Through Sport**—The modern Olympic movement has revived the ancient Greek observation of the Olympic Truce, asking those in conflict to stop fighting while athletes from the entire family of nations meet under the Olympic flame. The Olympic Truce has received over ten years of endorsement from the United Nations General Assembly, which has unanimously adopted, every two years, a resolution entitled *Building A Peaceful And Better World Through*



*Sport And The Olympic Ideal.* In addition, every year the National Olympic Committees organize activities to promote the culture of peace and observance of the Olympic Truce in their respective countries.

***Human Development Through Sport***—Many projects have been implemented by the IOC and its international and local partners to place sport at the service of improving people’s well-being, health and physical activity. Indeed, the efforts of ICANN to spread geographic and cultural diversity on the Internet are akin to the efforts of the IOC to provide sport to the world. Just as ICANN strives to close the digital divide, the IOC strives to instill the spirit of Olympism globally and provide sport to the millions of young people around the world who have no access to sports facilities. Recent examples include the inauguration by the IOC President, Dr. Jacques Rogge and the Head of State of Zambia, Mr. Rupiah Banda, of the Olympic Youth Development Centre in Lusaka, Zambia under the Olympic “Sports for Hope” program. In Mozambique, the IOC and its international and local partners have implemented a poverty alleviation and economic development program for the community of Boane, supporting the academic education of children from under-privileged families. In El Salvador, the IOC and its international partners have initiated a “Sport for Peace and Development” project to intervene in some of the most impoverished and violent municipalities in the country. These are but a few of the many examples of the IOC’s efforts in the sector.

***Education Through Sport***—Education is an important pillar of Olympism. Indeed, like ICANN, the IOC was formed to serve charitable and educational purposes, among other beneficent ends. Most recently, the IOC has devised a multi-level strategy—which is widely disseminated via the Internet—aimed at mentoring young people and using sport to instill human values, such as healthy ambition, shared responsibility, self-respect and respect for others. These fundamental principles of Olympism are taught by way of example—such as the perseverance personified by Olympic speed skater Dan Jansen, who, despite serious personal losses and earlier defeats, finally won gold in 1994 at his fourth and final Olympic Games; or the respect personified by African-American track and field legend Jesse Owens and his German counterpart Luz Long during the 1936 Olympic Games in Berlin, Germany, who after a very close competition in the long jump, walked off the field arm in arm, in defiance of pervasive racism and prejudice at that time. These and many similar educational programs have already reached four hundred million young people in China and another ten million young people in India.

***Sport And Sustainable Development***—The environment is another important pillar of Olympism. The IOC continues to play an important role in the greater resources and sustainable development through sport at the national, regional and international level, and particularly at the Olympic Games. The IOC applies considerable financial resources to the “Sport and Environment” program, creating a Sport and Environment Commission and assisting National Olympic Committees and Organizing Committees for the Olympic Games promoting Olympic Games that respect the environment and promoting awareness of the importance of a healthy environment.

***HIV/AIDS Prevention And Gender Equality***—Both health and gender equality are of critical importance to the IOC and the world of sport in general. Accordingly, the IOC has developed a policy and related programs of activities to promote HIV/AIDS awareness and prevention—running special awareness campaigns during the Olympic Games, organizing regional workshops on prevention through sport, gathering international and local partners to discuss how sport can help support further awareness and prevention efforts, and publishing the first Toolkit for HIV/AIDS prevention through sport. In addition, the IOC strives to ensure that women and girls are given equal opportunities to engage in sport and physical activities throughout their lifespan—ensuring that access to sport and physical activity is fully part of the international conventions and documents adopted by the United Nations and other institutions, taking action in the field of advocacy among National Olympic Committees and International Sports Federations, and working with young people to instill values of gender equality.

These examples are not an exhaustive characterization of Olympism in action. Although we have



attached Annex D—including a wealth of materials describing the Olympic movement and our philosophy of Olympism, in addition to our global work toward placing sport at the service of humanity—it is simply not possible to detail all of the beneficent efforts of the modern Olympic movement dating back to the first Olympic Games in 1896.

More importantly, funding for each of these humanitarian pursuits is made possible only through the sale of broadcasting and sponsorship rights to the Olympic Games (which comprises ninety-two percent of our total marketing revenue) in addition to ticket sales and licensing revenue (which comprises eight percent of our marketing revenue). Less than ten percent of the total marketing revenue is retained for the operational and administrative costs of governing the Olympic movement; the rest is distributed to organizations throughout the Olympic movement to support the staging of the Olympic Games and to promote Olympism worldwide.

Each of these revenue sources hinges upon the international and exclusive rights to use the Olympic properties—truly making them crucial to the Olympic movement.

By reserving the words OLYMPIC and OLYMPIAD at the top and second levels, ICANN will adhere to international, special statutory and treaty protection of the Olympic properties. More importantly, ICANN will serve the intent of such laws by preserving the lifeblood of the Olympic movement—allowing the IOC and its National Olympic Committees to maintain and expand efforts to benefit the international community through sport by making the world a better and more stable and peaceful place.

#### **IV. Proposed Amendments Protecting Olympic Properties.**

The IOC's efforts to place sport at the service of humanity depend upon its exclusive rights to use the Olympic properties, and the unique legal recognition and protection afforded to those Olympic properties. To protect these properties in the new gTLDs, we attach Annex A—containing our proposed amendments to reserve the words OLYMPIC and OLYMPIAD at the top and second levels.

The proposal would amend Section 2.2.1.2 of the Applicant Guidebook on reserved names at the top level, and amend Specification Five of the new gTLD Registry Agreement on reserved names at the second level. We are confident that these proposed amendments truly serve the public interest by safeguarding properties vital to the Olympic movement.

In effect, we have proposed a blanket reservation of the words OLYMPIC and OLYMPIAD at the top-level. Thus, for the first round of applications, no one may register dot-Olympic or dot-Olympiad, foreign translations or any confusingly similar strings at the top-level. We have further proposed a blanket reservation of the literal words OLYMPIC and OLYMPIAD at the second-level, with the caveat that Registry Operators may opt reach an agreement with the IOC to register these strings in a manner consistent with any grandfathered rights or fair uses.

We believe that our proposed amendments strike a fair balance between *sui generis* legislation and the original 1996 agreement between the United States National Olympic Committee and Network Solutions, which uniformly “block[ed] domain name registration of the literal words OLYMPIC, OLYMPIAD and CITIUS ALTIUS FORTIUS.” Network Solutions also agreed to accord sympathetic consideration to written requests from the Olympic Committee for removal of registrations making unauthorized use of the Olympic properties. We have included a copy of that agreement in Annex E.

Presently, numerous registrars and auction sites routinely block or remove domain names containing the words OLYMPIC and OLYMPIAD at the request of the IOC, as well as other domain names containing any Olympic property.



**VI. Conclusion.**

Given the ambitious timeline that ICANN has provided for the launch of new gTLDs, we believe that the words OLYMPIC and OLYMPIAD should be placed on the reserved names list as soon as possible. As we move forward to achieve this objective, please keep in mind that funding for all of the beneficent endeavors of the Olympic movement depends upon the exclusive rights of the IOC and other constituents of the Olympic movement that are so authorized by the IOC, to use the Olympic properties.

If you need any further information from us, or if you wish to discuss anything further with either our outside counsel or us, then please let us know.

Yours Sincerely,

A handwritten signature in blue ink, appearing to read "Urs Lacotte".

Urs LACOTTE  
Director General

A handwritten signature in blue ink, appearing to read "Howard M. Stupp".

Howard M. Stupp  
Legal Affairs Director

[pritz@icann.org](mailto:pritz@icann.org)  
[amy.stathos@icann.org](mailto:amy.stathos@icann.org)

cc: Contact Information  
Redacted

# Annex A

## 2.2.1.2 Reserved Names

All applied-for gTLD strings are compared with the list of top-level Reserved Names to ensure that the applied-for gTLD string does not appear on that list.

### Top-Level Reserved Names List

AFRINIC	IANA-SERVERS	NRO
ALAC	ICANN	RFC-EDITOR
APNIC	IESG	RIPE
ARIN	IETF	ROOT-SERVERS
ASO	INTERNIC	RSSAC
CCNSO	INVALID	SSAC
EXAMPLE*	IRTF	TEST*
GAC	ISTF	TLD
GNSO	LACNIC	WHOIS
GTLD-SERVERS	LOCAL	WWW
IAB	LOCALHOST	OLYMPIC*
IANA	NIC	OLYMPIAD*
*Note that in addition to the above strings, ICANN will reserve translations of the terms “test,” and “example.” “Olympic” and “Olympiad” in multiple languages. The remainder of the strings are only reserved in the form included above.		

If an applicant enters a Reserved Name as its applied-for gTLD string, the application system will recognize the Reserved Name and will not allow the application to be submitted.

In addition, applied-for gTLD strings are reviewed during the String Similarity review to determine whether they are similar to a Reserved Name. An application for a gTLD string that is identified as too similar to a Reserved Name will not pass this review.

Names appearing on the Declared Variants List (see section 1.3.3) will be posted on ICANN's website and will be treated essentially the same as Reserved Names. That is, an application for a gTLD string that is identical or similar to a string on the Declared Variants List will not pass this review.

## SPECIFICATION 5

### SCHEDULE OF RESERVED NAMES AT THE SECOND LEVEL IN GTLD REGISTRIES

Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall reserve (i.e. Registry Operator shall not register, delegate, use or otherwise make available such labels to any third party, but may register such labels in its own name in order to withhold them from delegation or use) names formed with the following labels from initial (i.e. other than renewal) registration within the TLD:

1. **Example. The label “EXAMPLE”** shall be reserved at the second level and at all other levels within the TLD at which Registry Operator makes registrations.
2. **Two-character labels.** All two-character labels shall be initially reserved. The reservation of a two-character label string shall be released to the extent that Registry Operator reaches agreement with the government and country-code manager. The Registry Operator may also propose release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes.
3. **Tagged Domain Names.** Labels may only include hyphens in the third and fourth position if they represent valid internationalized domain names in their ASCII encoding (for example “xn--ndk061n”).
4. **Second-Level Reservations for Registry Operators.** The following names are reserved for use in connection with the operation of the registry for the TLD. Registry Operator may use them, but upon conclusion of Registry Operator's designation as of the registry for the TLD they shall be transferred as specified by ICANN: NIC, WWW, IRIS and WHOIS.
5. **Country and Territory Names.** The country and territory names contained in the following internationally recognized lists shall be initially reserved at the second level and at all other levels within the TLD at which the Registry Operator provides for registrations:
  - 5.1. the short form (in English) of all country code and territory names contained on the ISP 3166-1 list, as updated from time to time;
  - 5.2. the United Nations Group of Experts on Geographic Names, Technical Reference Manual for the Standardization of Geographic Names, Part III Names of Countries of the World; and
  - 5.3. the list of United Nations member states in 6 official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names.
6. **Olympic Designations.** In recognition of legislative and treaty protection for the Olympic designations, the labels “OLYMPIC” and “OLYMPIAD” shall be initially reserved at the second level. The reservation of an Olympic designation label string shall be released to the extent Registry Operator reaches agreement with the International Olympic Committee.

## **Annex 9.**

Organizations have formally expressed their official support for to date for SportAccord's Application for the .sport TLD

1	IOC	INTERNATIONAL OLYMPIC COMMITTEE
2	ASOIF	ASSOCIATION OF SUMMER OLYMPIC INTERNATIONAL FEDERATIONS
3	AIOWF	ASSOCIATION OF WINTER OLYMPIC INTERNATIONAL FEDERATIONS
4	ARISF	ASSOCIATION OF IOC RECOGNISED INTERNATIONAL FEDERATIONS
5	BWF	BADMINTON WORLD FEDERATION
6	CGF	COMMONWEALTH GAMES FEDERATION
7	CIPS	CONFEDERATION INTERNATIONALE DE LA PECHE SPORTIVE
8	CMAS	CONFEDERATION MONDIALE DES ACTIVITES SUBAQUATIQUES
9	CSIT	CONFEDERATION SPORTIVE INTERNATIONALE DU TRAVAIL
10	FAI	FEDERATION AERONAUTIQUE INTERNATIONALE
11	FEI	FEDERATION EQUESTRE INTERNATIONALE
12	FIAS	FEDERATION INTERNATIONALE AMATEUR DE SAMBO
13	FIBA	FEDERATION INTERNATIONALE DE BASKETBALL
14	FIDE	FEDERATION INTERNATIONALE DES ECHECS
15	FIE	FEDERATION INTERNATIONALE D'ESCRIME
16	FIFA	FEDERATION INTERNATIONALE DE FOOTBALL ASSOCIATION
17	FIG	FEDERATION INTERNATIONALE DE GYMNASTIQUE
18	FIH	FEDERATION INTERNATIONALE DE HOCKEY
19	FIM	FEDERATION INTERNATIONALE DE MOTOCYCLISME
20	FIQ	FEDERATION INTERNATIONALE DES QUILLEURS
21	FIS	FEDERATION INTERNATIONALE DE SKI
22	FISA	FEDERATION INTERNATIONALE DES SOCIETES D'AVIRON
23	FISU	FEDERATION INTERNATIONALE DU SPORT UNIVERSITAIRE
24	FIVB	FEDERATION INTERNATIONALE DE VOLLEYBALL
25	FMJD	FEDERATION MONDIALE DU JEU DE DAMES
26	IAAF	INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS
27	IAF	INTERNATIONAL AIKIDO FEDERATION
28	IAKS	INTERNATIONAL ASSOCIATION FOR SPORTS AND LEISURE FACILITIES
29	ICF	INTERNATIONAL CANOE FEDERATION
30	IDBF	INTERNATIONAL DRAGON BOAT FEDERATION
31	IFA	INTERNATIONAL FISTBALL ASSOCIATION
32	IFBB	INTERNATIONAL FEDERATION OF BODYBUILDING & FITNESS
33	IFF	INTERNATIONAL FLOORBALL FEDERATION
34	IFMA	INTERNATIONAL FEDERATION OF MUAYTHAI AMATEUR
35	IFSS	INTERNATIONAL FEDERATION OF SLEDDOG SPORTS
36	IGF	INTERNATIONAL GOLF FEDERATION
37	IJF	INTERNATIONAL JUDO FEDERATION
38	IKF	INTERNATIONAL KORFBALL FEDERATION
39	ILS	INTERNATIONAL LIFE SAVING FEDERATION
40	IOF	INTERNATIONAL ORIENTEERING FEDERATION
41	IPC	INTERNATIONAL PARALYMPIC COMMITTEE
42	IPF	INTERNATIONAL POWERLIFTING FEDERATION
43	IRB	INTERNATIONAL RUGBY LEAGUE
44	IRF	INTERNATIONAL RACQUETBALL FEDERATION
45	ISA	INTERNATIONAL SURFING ASSOCIATION
46	ISAF	INTERNATIONAL SAILING FEDERATION
47	ISSF	INTERNATIONAL SHOOTING SPORT FEDERATION
48	ITTF	THE INTERNATIONAL TABLE TENNIS FEDERATION
49	IWGA	INTERNATIONAL WORLD GAMES ASSOCIATION
50	IWUF	INTERNATIONAL WUSHU FEDERATION
51	JJIF	JU-JITSU INTERNATIONAL FEDERATION
52	TWIF	TUG OF WAR INTERNATIONAL FEDERATION
53	UCI	UNION CYCLISTE INTERNATIONALE
54	WA	WORLD ARCHERY FEDERATION
55	WAKO	WORLD ASSOCIATION OF KICKBOXING ORGANIZATIONS
56	WDF	WORLD DART FEDERATION
57	WKF	WORLD KARATE FEDERATION
58	WMF	WORLD MINIGOLFSPORT FEDERATION
59	WSF	WORLD SQUASH FEDERATION
60	WTF	WORLD TAEKWONDO FEDERATION





Mr. Hein Verbruggen  
President  
SportAccord  
Contact Information Redacted

Lausanne, 19 March 2012

Dear Hein,

Many thanks for the invitation to be part of the first ".sport" Policy Advisory Board conference call which was joined by our Project Manager, Tim Goethals. We would first like to thank SportAccord for continuing to examine the possibilities of this project on behalf of the International Federations and we are happy for ASOIF to accept your invitation to be represented at future Policy Advisory Board meetings and conference calls.

At this stage we would like to confirm our support for SportAccord in their efforts to apply for the acquisition of the TLD ".sport" with a view to safe-guarding the interests and creating opportunities for the sports and International Federations. We will then discuss the project in detail with our members before deciding, together with you, what role we would play on behalf of our members as the project develops.

Kind regards,

Denis Oswald  
President

Andrew Ryan  
Director

cc: ASOIF Council

Contact Information Redacted

Maison du Sport International

e-mail: [info@asoif.com](mailto:info@asoif.com) • [www.asoif.com](http://www.asoif.com)



Mr Hein Verbruggen  
President  
SportAccord  
Contact Information  
Redacted

Zurich, 2 April 2012

**.Sport Internet Domain Name**

Dear Hein,

Thank you for your e-mails dated 29 February and 15 March 2012 and the background information on the .sport initiative.

We are pleased to confirm the AIOWF's general support of your initiative with a view for safeguarding the interests of the International Federations and creating new opportunities for the sports. However, please understand that we would like to discuss this project with our members in more details before taking any final decision, as we would need to better understand what role we would play on behalf of our members. We will therefore discuss this project at our next General Assembly in Quebec in May 2012.

Thank you for your initiative to examine this project on behalf of the International Federations. We look forward to further updates.

Yours sincerely,

**AIOWF**

Rene Fasel  
President

Horst Lichtner  
General Secretary

# **Annex 10.**



International Chamber of Commerce  
The world business organization

International Centre for Expertise Centre international d'expertise

## NEW GENERIC TOP-LEVEL DOMAIN NAMES (“gTLD”) DISPUTE RESOLUTION PROCEDURE

### RESPONSE FORM TO BE COMPLETED BY THE APPLICANT

- Applicant responding to several Objections or Objections based on separate grounds must file separate Responses
- Response Form must be filed in English and submitted by email to [expertise@iccwbo.org](mailto:expertise@iccwbo.org)
- The substantive part is limited to 5000 words or 20 pages, whichever is less

**Disclaimer:** This form is the template to be used by Applicants who wish to file a Response. Applicants must review carefully the Procedural Documents listed below. This form may not be published or used for any purpose other than the proceedings pursuant to the New GTLD Dispute Resolution Procedure from ICANN administered by the ICC International Centre for Expertise (“Centre”).

#### References to use for the Procedural Documents

Name	Abbreviation
Rules for Expertise of the ICC	“Rules”
Appendix III to the ICC Expertise Rules, Schedule of expertise costs for proceedings under the new gTLD dispute resolution procedure	“Appendix III”
ICC Practice Note on the Administration of Cases	“ICC Practice Note”
Attachment to Module 3 - New gTLD Dispute Resolution Procedure	“Procedure”
Module 3 of the gTLD Applicant Guidebook	“Guidebook”

ICC International Centre for ADR Centre international d'ADR de la CCI  
Contact Information Redacted

### Identification of the Parties and their Representatives

#### Applicant

Name	dot Sport Limited
Contact person	Geir Andreas Rasmussen
Address	Contact Information Redacted
City, Country	Contact Information Redacted
Telephone	Contact Information Redacted
Email	Contact Information Redacted

#### Objector

Name	SPORTACCORD
Contact person	Pierre Germeau
Address	Contact Information Redacted
City, Country	Contact Information Redacted
Telephone	Contact Information Redacted
Email	Contact Information Redacted

*Copy the information provided by Objector.*

#### Applicant's Representative(s)

Name	Famous Four Media Limited
Contact person	Peter Young
Address	Contact Information Redacted
City, Country	Contact Information Redacted
Telephone	Contact Information Redacted
Email	Contact Information Redacted

*Add separate tables for any additional representative (for example external counsel or in-house counsel).*

**Applicant's Contact Address**

Name	Famous Four Media Limited
Contact person	Peter Young
Address	Contact Information Redacted
City, Country	Contact Information Redacted
Telephone	Contact Information Redacted
Email	Contact Information Redacted

*This address shall be used for all communication and notifications in the present proceedings. Accordingly, notification to this address shall be deemed as notification to the Applicant. The Contact Address can be the Applicant's address, the Applicant's Representative's address or any other address used for correspondence in these proceedings.*

**Other Related Entities**

Name	
Address	
City, Country	
Telephone	
Email	

*Add separate tables for any additional other related entity.*

## Disputed gTLD

gTLD Applicant has applied to and Objector objects to [.example]

Name	.sport (Application ID 1-1174-59954)
------	--------------------------------------

### Objection

**Objector filed its Objection on the following Ground (Article 3.2.1 of the Guidebook and Article 2 of the Procedure)**

**Limited Public Interest Objection:** the applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.

or

**Community Objection:** there is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

*Copy the information provided by Objector.*

**Point-by-Point Response to the claims made by Objector (Article 3.3.3 of the Guidebook and Article 11 of the Procedure)**

*(Provide an answer for each point raised by Objector.)*

#### **I. COMMUNITY OBJECTION RESPONSE**

##### **A. Summary**

Applicant, dot Sport Limited is a Gibraltar private limited company, the shares of which are partially owned by Domain Venture Partners PCC Limited, a Gibraltar Experienced Investor Fund regulated by the Financial Services Commission of Gibraltar. .SPORT gTLD is intended and designed to increase availability and access to create, produce and disseminate informative, creative and innovative sport related content. Its framework and mechanisms have been established to ensure the TLD operates and grows in a manner that is responsible, protects consumers and promotes consumer and industry trust and confidence. Applicant envisions it will work closely with key global sport stakeholders to further develop policies and best practices to ensure successful operation of the TLD. The objection process is not a substitute for Community Evaluation and was not envisaged to be a mechanism by which one applicant could gain a competitive advantage over another. Moreover, the alleged community is incapable of being clearly delineated, and Applicant targets a much broader user base for the TLD than Objector represents. Thus, the .SPORT objection should be denied.

**B. Standing Argument: Objector fails to prove that that it has “an on-going relationship” with a “clearly delineated Sport community” as a whole (Applicant Guidebook (“AGB”) § 3.2.2.4)**

Whilst Objector is an established institution, they do not have an on-going relationship with a clearly delineated “sport” community; rather their relationship is with a particular subset of stakeholders. In fact, there is no sports “community”, since there are so many activities which are legitimately identified as a “sport” or “sport” related. Objector therefore cannot have “an on-going relationship” with a “sport

community". Furthermore, the alleged community is not "clearly delineated", because just about anyone can claim to have an interest in sport. As such, Objector's relationship is not sufficient to support an objection.

Objector's policies create obstacles to free and open participation in its activities, membership, and leadership. Furthermore, Objector's institutional purpose is related to a particular subset of sport and is not related to/representative of the alleged community. For example, Objector excludes numerous recognized sport activities from membership (i.e. certain board and card games<sup>1</sup> )

Objector's activities do not always benefit the alleged community. For example, in Objector's competing gTLD application, a preference towards corporate partners exists in relation to registering second-level domains, including for non-sport trademarks, which is inconsistent with Objector's community policy that registrations in the TLD "serve the collective interest of all the members of the sports community"<sup>2</sup>

Objector's mission statement clearly shows that Objector only represents a particular subset of the alleged community, organized sports, failing to represent other stakeholders such as: unorganized sports (e.g. community social leagues, company sponsored after-work sports recreational leagues); sports equipment manufacturers and retailers; media outlets such as newspapers, TV, bloggers. Promising to "collaborate" with organisations whose objective is the promotion of sport on a worldwide basis does not equate to "representing" those organisations: Objector cannot speak for them; which is essentially an admission that Objector do not represent everyone involved in sport.<sup>3</sup>

Objector's "What We Do" webpage states "[Objector's] mission is to unite and support the International Sports Federations... [Objector] has developed a standardised procedure for membership applications in order to ensure that each new Member is a well-organised federation"<sup>4</sup> This definition is exclusive, and as demonstrated later, hijacks the real definition of "sport", substituting a rather tightly defined definition of sport<sup>5</sup>.

### **C. Community Argument: Objector fails to prove that the alleged community is "clearly delineated" (AGB § 3.5.4)**

1. *The Sport community is not clearly delineated because it is comprised of a significant number of stakeholders who do not necessarily share similar goals, values or interests, thus the community lacks formal boundaries, evidenced by disagreement as to which stakeholders are considered members of the Sport community.*

- a. In an official statement, the Independent Objector ("IO") explained that alleged communities associated with so-called "generic" strings cannot likely meet the "clearly delineated" criteria due to the broad definition of "community" and the nature of generic terms, which are by definition used by a significant number of people, who do not necessarily share similar goals, values or interests. For example, the IO expressed disbelief about the clear delineation of an alleged community encompassing a large variety of stakeholders who do not always share similar primary interests, because stakeholders are of a very different nature.<sup>6</sup>

The word "sport" is a generic word and Applicant intends to use the TLD as such<sup>7</sup>.

<sup>1</sup> <http://www.sportaccord.com/en/members/>

<sup>2</sup> See [http://www.sportaccord.com/multimedia/docs/2012/08/public\\_portion\\_of\\_sportaccord\\_application1-1012-71460\\_SPORT.html](http://www.sportaccord.com/multimedia/docs/2012/08/public_portion_of_sportaccord_application1-1012-71460_SPORT.html)

<sup>3</sup> (see S2a, Objection)

<sup>4</sup> See <http://www.sportaccord.com/en/what-we-do/if-recognition-and-relations/>

<sup>5</sup> <http://www.sportaccord.com/en/members/definition-of-sport/>

<sup>6</sup> See - <http://www.independent-Objector-newgtlds.org/english-version/the-issue-of-closed-generic-gtlds/> - (indicating clear delineation is doubtful for "book community" potentially encompassing authors, publishers, libraries, retailers, readers, and international organizations because some stakeholders have the promotion of literature as their primary aim but for many others it is one objective among many others)

<sup>7</sup> See dictionary definition of "Sport" is defined in the dictionary at <http://dictionary.reference.com/browse/sport?s=t> : i. an athletic activity requiring skill or physical prowess and often of a competitive nature, as racing, baseball, tennis, golf, bowling, wrestling, boxing, hunting, fishing, etc.; 2. a particular form of this, especially in the out of doors; 3. diversion; recreation; pleasant pastime; 4. jest; fun; mirth; pleasantry: What he said in sport was taken seriously; 5. mockery; ridicule; derision: They made sport of him; 6. an object of derision; laughingstock; 7. something treated lightly or tossed about like a plaything; 8. something or someone subject to the whims or vicissitudes of fate, circumstances, etc.; 9. a sportsman.



- b. However, Objector defines the “Sport” community as *“the community of individuals and organizations who associate themselves with Sport. Sport is activity by individuals or teams of individuals, aiming at healthy exertion, improvement in performance, perfection of skill, fair competition and desirable shared experience between practitioners as well as organizers, supporters and audience.”*<sup>8</sup> Objector further defines the community as “organizers, performers, sponsors and viewers of sport”<sup>9</sup> Objector claims that the Sport community is “highly organised”, but no one organises the viewers or the media, or the amateur sportspeople who play sport for fun in their spare time. There is therefore confusion as to who actually comprises the sport community. This is simply because there is no clearly delineated community.
- c. Further, Objector’s definitions can be read to define the “Sport” community as “organizers, performers, sponsors and viewers of sports that **fall within the Olympic Movement.**”<sup>10</sup> There are legitimately recognized sports that are excluded from the Olympic Movement (e.g. bowling, billiards, baseball, and softball).<sup>11</sup> It would seem from the actions of Objector and its supporters that the “sport community” is in flux, and thus is unable to be clearly delineated.
- d. *There is a low level of public recognition of a sport community:* Objector asserts that the Sport community is “finely structured and strongly organized.”<sup>12</sup> This is a bold, self-serving statement which ignores the many ad hoc participants in sports who have no professional or amateur associations. It also ignores all the other stakeholders and interested parties who we refer to above.

Applicant undertook a survey of general internet users, and 74% of participants surveyed did not see formal organization or registration as a necessity to participate in sports<sup>13</sup>.

- e. Furthermore there is disagreement among experts as to the definition of sport. According to Objector’s definition: “The sport proposed should include an element of competition.”<sup>14</sup> There are opposing views on the necessity of competition as a defining element of a sport:
- i. The Council of Europe in their “European sports charter” includes all forms of physical exercise, including those completed just for fun: *“Sport means all forms of physical activity which, through casual and organised participation, aim at expressing or improving physical fitness and mental well-being, forming social relationships or obtaining results in competition at all levels.”*<sup>15</sup>
  - ii. Professor Fred Coalter of Institute for Sports Research, University of Stirling in his study for SportScotland “The Social Benefits of Sport” takes the same view of the term “sport” and even goes beyond this definition: *“...the umbrella term ‘sport’ encompasses a wide range of activities that can be undertaken in a variety of formal and informal contexts and can be adjusted to take account of a wide variety of confidence and skill levels. Furthermore, the social nature of most sporting activities can serve to provide encouragement and support, ensuring the level of frequency and adherence required to obtain physical and psychological health benefits.”*<sup>16</sup>
- f. The Sport community cannot be delineated because it is comprised of a significant number of diverse stakeholders, who do not necessarily share similar goals, values or interests. When surveyed about the make-up of the Sport community, 56% of participants

<sup>8</sup> See Objection at T1a. “Definition of Sport Community” P. 8.

<sup>9</sup> See Objection Annex A7 “Answer 20.a.1 of Objectors .SPORT application”

<sup>10</sup> See Objection at T1b

<sup>11</sup> [http://www.history.com/news/5-sports-that-havent-made-it-into-the-olympics-yet;](http://www.history.com/news/5-sports-that-havent-made-it-into-the-olympics-yet)  
[http://usatoday30.usatoday.com/sports/olympics/2005-07-08-baseball-softball-dropped\\_x.htm?csp=34](http://usatoday30.usatoday.com/sports/olympics/2005-07-08-baseball-softball-dropped_x.htm?csp=34)

<sup>12</sup> See Q20a.2. of Objector’s application for .SPORT (Also Annex A7 of Objection)

<sup>13</sup> See Annex 1, Q.3 Sport Survey

<sup>14</sup> See Annex 2, SportAccord definition of “sport” taken from their website.

<sup>15</sup> see Annex 3, European sports charter

<sup>16</sup> see Annex 4, The Social Benefits of Sport

agreed that the community was comprised multiple stakeholders, not just organized teams. As such, the public at large recognizes the alleged Sport community as diverse and likely unable to be delineated<sup>17</sup>. Furthermore, Objector's definition fails to recognize other community stakeholders, for example:

- i. non-federation sport organizations (community recreational leagues);
- ii. media outlets that cover sports (ESPN, Sports Illustrated, and other international sports media outlets);
- iii. equipment producers and retailers;
- iv. fan participation - "fantasy" sports leagues;
- v. Video game industry.

g. Furthermore, a vast majority of the public does not recognize or associate official sponsorship or organizational control as a necessary element of Sport<sup>18</sup>.

2. *The alleged community is not clearly delineated because there is disagreement about the entities that make up the alleged community*

a. The alleged community is not clearly delineated, as demonstrated by its uncertain or unknowable number of members. Focusing solely on International and National Federations, Objector represents only a particular subset of the alleged "sport" community. Objector does not represent countless other important community stakeholders as discussed above. Applicant accepts that a community does not have to have a card carrying membership<sup>19</sup>, but one does have to be able to claim membership, and prove it. This is just not possible with "sport".

b. Objector, in their application, acknowledges that the "community" is comprised of "billions of members"<sup>20</sup>. A community comprising the majority of the human race is not clearly, or even slightly, delineated.

c. Furthermore, Objector's membership is arbitrarily restricted to a particular subset of the alleged "sport" community. Objector's membership criteria excludes legitimate sport activities from membership such as poker, electronic gaming, and hunting:

#### POKER

- i. Objector's membership criteria exclude a number of activities considered by many to be legitimate sports, such as board and card games<sup>21</sup>. The number of poker players alone is 40 million<sup>22</sup>. Membership with Objector has been a priority for the International Federation of Poker (IFP) for years, yet its membership has not been approved<sup>23</sup>. Despite Objector's refusal to confer membership, the IFP will be accepted into the International Mind Sports Association (IMSA)<sup>24</sup>. Interestingly, the International Olympic Committee (IOC) recognizes IMSA, meaning poker would be considered an official game of skill for the Olympics. In addition, Objector organizes the World Mind Games a competition involving IMSA members, and IMSA is an Associated Member of Objector. This highlights the level of confusion, within Objector's organisation, of what is a sport. If they have difficulty defining what a sport is, how can they claim clear delineation?

#### ELECTRONIC GAMING

- ii. Another sport ignored by Objector is electronic sports. International eSport Federation (IeSF) has been "*knocking on the door of Sport Accord*" with no success<sup>25</sup>. Despite the large scale of participation and organised competition, these are not recognised by Objector.

<sup>17</sup> See Annex 1, Q.5 Sport Survey

<sup>18</sup> See Annex 1, Q.3 Sport Survey

<sup>19</sup> See T1c, Objection

<sup>20</sup> See Annex 5, at 20.c.1

<sup>21</sup> See <http://www.sportaccord.com/en/members/>

<sup>22</sup> See <http://pokerplayersresearch.com/ToplineFindings.aspx>

<sup>23</sup> See <http://www.pokerfed.org/news/sportaccord-membership-is-priority/>

<sup>24</sup> see <http://www.pokernewsdaily.com/poker-as-an-olympic-sport-8700/>

<sup>25</sup> See <http://www.ie-sf.com/img/en/news/newsletter/201202.pdf>

## HUNTING

- iii. Objector claims that a key value membership in the sports community is “equal opportunity” yet they do not adhere to this themselves by stating sports which are “harmful to living creatures” or rely on any “luck” element cannot be defined as a sport<sup>26</sup>.
- iv. There are sports that appear to be explicitly excluded based on the criteria set forth in the application; these sports are not represented by Objector despite being members of the alleged sport community. The best example of one of these sports is hunting. Hunting organizations are explicitly excluded from membership because hunting, whilst a sport, involves harm to other living creatures, which is an exclusionary criteria to being a member of Objector.

### **D. Substantial Opposition Argument: Objector fails to prove “substantial opposition” to the application in the alleged community (AGB § 3.5.4)**

1. Objector represents a subset of the alleged community and does not represent the interests, goals, or values of numerous stakeholders in the alleged community. We refer to part C 2 above, and in particular the sports excluded from membership and the other stakeholders which are not represented by Objector.

Furthermore, the Sports Survey undertaken by Applicant showed that the vast majority of the public are not even aware of the existence of SportAccord (at Q.4). This fact of itself would not necessarily be indicative, but given that it claims to represent the alleged sports community, and such community comprises billions of members, one would expect that such representative body would be recognised by a good proportion of its potential members.

2. *The number of expressions of opposition relative to the composition of the community.*

Expressions of opposition from Objector and are small compared to the large composition of the alleged “sport” community, discussed above. Objector claims that it represents 107 International Sport Federations, and provides letters of support from 55 Federations (Objection Annex A3). Objector also cites support from IOC; however, IOC does not represent the alleged sport community as a whole any more than Objector does. At best, IOC’s support is equivalent to support from another Member Federation because Objector’s stated mission is to promote the “Olympic Movement.” (Objection at S2a “Role and Organization of Sport Accord” P 6.)

3. *The representative nature of entities expressing opposition and level of recognized stature or weight among sources of opposition*

- a. Objector represents a subsector of the alleged sport community as a whole, and does not provide examples of support from members of the alleged community that do not comprise its membership. Whilst Objector’s membership may represent a diverse collection of sport activities, it does not encompass all sport activities by any means. There is nearly unlimited diversity when the sports are considered as a whole.
- b. Objector does not represent leadership of the entirety of the alleged sport community. Objector filed its own community application to operate the TLD, and the current objection is an attempt to gain an advantage in the process outside the Community Evaluation process. In its application, Objector attached a document listing 60 organizations that it claims endorse its TLD in its application, yet it does not attach supporting documentation from all of those organizations, only from 19. Further, to be taken into account as relevant support for a community application, “*Such documentation must contain a description of the process and rationale used in arriving*

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<sup>26</sup>See [http://www.sportaccord.com/multimedia/docs/2012/08/public\\_portion\\_of\\_sportaccord\\_application1-1012-71460\\_SPORT.html](http://www.sportaccord.com/multimedia/docs/2012/08/public_portion_of_sportaccord_application1-1012-71460_SPORT.html) at Q20.c.3 last paragraph and Q20.d.1 2nd paragraph

at the expression of support. Consideration of support is not based merely on the number of comments or expressions of support received.” Not all of the support it received was unqualified<sup>27</sup>.

Further, although Objector has clearly organised a campaign amongst its members to support its objection, using a standard template letter that requires no thought or effort on the part of its members, it still only managed just only half to actually show support (of its claimed 107 Full members, although the list in the Objection at Annex A2 shows 90). Objector has offered no proof that its membership as a whole signed on to the opposition and their point at T2a reveals the organisation to be a little autocratic<sup>28</sup>.

- c. Expressions of support for the competing bid of Objector are not relevant to the consideration of whether there is substantial opposition to Applicant’s bid.
  - d. The counter argument of Objector, (paragraph T2d of the Objection), that it is natural that individual practitioners have not come forward with public comments, totally ignores the fact that the sports industry includes a great number of professional organisations such as media outlets, who could easily have objected.
4. *Costs incurred by Objector in expressing opposition, including other channels Objector may have used to convey opposition*
- a. Objector, and those currently expressing opposition have incurred minimal costs compared to the annual revenues of Objector, and the cost of participating in the new gTLD programme. Objector has annual revenues of just under 6M Swiss Francs<sup>29</sup>. Objection costs are likely to be under US \$30,000 plus legal costs. Furthermore, Objector has filed its own application for the .SPORT TLD, costs estimates for obtaining the .SPORT TLD should have included the necessity to defend their own application (either from objection or by lodging objections) and as such Objector has not expended any additional resources than necessary for participating in the new gTLD application process.
  - b. Objector cites in their Objection that the US “sports industry alone was valued at \$435 billion.”<sup>30</sup> The London Olympics 2012 revenue was over £2 billion<sup>31</sup>. On a global scale, “Today’s global sports industry is worth between €350 billion and €450 billion (\$480-\$620 billion)”<sup>32</sup>.
  - c. Objector has incurred little costs in expressing opposition compared to other campaigns of Objector. For example, Objector’s global conference in Quebec in 2012 led to them being donated \$600,000 by the Canadian government<sup>33</sup>.
- E. Targeting Argument: Objector fails to prove a strong association between the applied-for gTLD string and alleged community represented by Objector (AGB § 3.5.4).**

Assuming it were even possible to clearly delineate a sport community, Objector does not represent the community as a whole; it represents a subset of the alleged sport community. As such, there is not a strong association between the “community” represented by Objector and the applied for .SPORT TLD.

- a. *Statements contained in the application*

<sup>27</sup> See for example, the letter from the Association of International Olympic Winter Sports Federations <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/107503?t:ac=1593>

<sup>28</sup> “in objecting, SportAccord’s Executive Committee acts on behalf of the entire membership”

<sup>29</sup> <http://www.aroundtherings.com/articles/view.aspx?id=40141> as of Mar 2012

<sup>30</sup> See Objection Annex A10.1

<sup>31</sup> See <http://www.sportbusiness.com/news/186649/london-2012-olympics-revenue-breakdown-revealed>

<sup>32</sup> See [http://www.atkearney.com/paper/-/asset\\_publisher/dVxv4Hz2h8bS/content/the-sports-market/10192](http://www.atkearney.com/paper/-/asset_publisher/dVxv4Hz2h8bS/content/the-sports-market/10192)

<sup>33</sup> See <http://www.dec-ced.gc.ca/eng/media-room/news-releases/2012/05/3229.html>

As discussed above, Objector represents 107 International Federations. There is no question that there would be an association between the applied-for .SPORT gTLD and the 107 International Federations Objector represents; however, the applied-for TLD targets a much broader range of sport stakeholders as evidenced by statements contained in the application, for example:

*“Sport is a great leveller. Given the chance, anyone - from the poorest child to the world’s richest man - can experience it.”*

*“Thus, the aim of .sport is to create a blank canvas for the online sports sector set within a secure environment. The Applicant will achieve this by creating a consolidated, versatile and dedicated space for the sport sector..... Consequently consumer choice will be augmented as there will be a ready marketplace specifically for sports-related enterprises to provide their goods and services”*

The reference to the “ICANN Community” in the application is not indicative of a clearly delineated community, and therefore Objector’s argument (Obj. at T3a) is irrelevant. In any event arguably the ICANN community is much more delineated than any community claiming to be the “sport” community could ever be.

Whereas Applicant’s use of the TLD would target the entire sports industry, Objector plans to restrict the TLD at launch to persons of their choosing, beginning with Federations and other governing sports bodies<sup>34</sup>, before later opening up the TLD to persons of its choosing outside the restricted definitions, using vague and unspecified post validation procedures and unspecified eligibility requirements.

b. *Associations by the public*

The application by Applicant and public perceptions (under the Sports Survey) demonstrate that Applicant has a broader target than the alleged “sport” community, and the “strong association” alleged by Objector is purely ancillary or derivative<sup>35</sup>.

Finally, the public understands that a domain name registration does not confer or even define special status for the holder worldwide and for every purpose. For example, for-profit businesses operate .org domain names (slashdot.org); American-based companies use ccTLDs of other countries for unconventional naming purposes (bit.ly, fold.it, twit.tv).

Thus Applicant’s intended use for the TLD is more inclusive, and the public, including average Internet users, understands the same.

**F. Detriment Issue: Objector fails to prove a likelihood of material detriment to the rights or legitimate interests of a significant portion of the alleged community to which the string may be explicitly or implicitly targeted**

Objector speculates that the alleged detriments would befall the alleged sport community should the gTLD be delegated to Applicant. Most of the alleged detriments are detriments inherent in the nature of the Internet and not attributable to Applicant’s plans for operating the gTLD. Moreover, Applicant has taken measures above and beyond those required by ICANN to address the detriments inherent in the nature of the Internet. Thus, Objector’s alleged detriment seems to purely stem from the fact that Applicant would be delegated the gTLD instead of Objector.

1. *Objector proves no kind or amount of damage to the reputation of the Sport community that would result from Applicant’s operation of the applied-for gTLD string.*

<sup>34</sup> See Q.18.b.4 of Objector’s Application <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1593>

<sup>35</sup> See Annex 1, Q.5

Applicant intimately understands the issue of consumer trust/protection, and has made it a top priority. As discussed below, Applicant has proposed many policies and mechanisms to preserve consumer trust/protection. "Complete protection" is impossible in any realm. However, the laws and rules still apply, and both ICANN and Applicant will implement additional mechanisms to enforce them. Objector incorrectly limits its discussion to the reputation of Objector and its membership, and not the alleged sport community as a whole. The arguments at T4f (*Loss of Public Interest Benefits of a Community based .sport TLD*) of the Objection are telling in this regard.

As described below, Applicant is implementing measures to address risks, preserve consumer trust and confidence. Objector offers no proof of harm to legitimate enterprise, competition, and growth of the sports industry:

- a. The sports industry will have sufficient opportunity to shape policies of the TLD's operation through the mechanism of the Governance Council. Applicant has committed to form the Council as part of its application and fully intends to implement, for the protection of the sector. Whilst the Council is not yet formed, we have begun outreach for expressions of interest to join.<sup>36</sup>
  - b. Consumer trust will be a core operating principle: abusive registrations and abuse of the gTLD will result in rapid sanctions; and
  - c. Applicant will conduct surveys to measure consumer trust and consumer satisfaction, with results provided to the Governance Council; and
  - d. We believe there are benefits to rights and legitimate interests of the sports industry created by operation of a free and open TLD by a commercial entity. Given that there is no special regulated definition of the word "sport" or any restriction on the use of the word worldwide, combined with the fact that consumers understand that a domain name registration in a particular gTLD does not confer or even define special status for the holder worldwide and for every purpose, there will not be any loss of trust in the sports industry.
2. *Objector offers no evidence that Applicant is not acting or does not intend to act in accordance with the interests of the Sport community or of users more widely.*

Objector, on behalf of its members, is apparently arguing that harm will result if Applicant manages the TLD instead of an organization such as Objector's. As stated in AGB 3.5.4, it is not a legitimate argument that "*An allegation of detriment that consists only of Applicant being delegated the string instead of Objector will not be sufficient for a finding of material detriment.*"

Regardless, Applicant has a detailed plan to foster meaningful links to the sports industry:

- a. Sport organizations will have substantial opportunities to shape policies and operation of the TLD via the .Sport Governance Council. The Governance Council is intended to be more representative of geographic diversity and the overall purpose of sport than Objector and its membership. The Governance Council is intended to contribute meaningful policies that promote consumer trust. The Council could for example advise the TLD to implement post validation procedures, as to registrant identity or activity, although as noted above, it is rather difficult to dictate who should be entitled to register a .sport second level domain. Furthermore, Applicant has pledged to work with the Governance Council to further develop anti-abuse measures.
- b. Applicant will endeavor in good faith to operate TLD in an inclusive and respectful manner. It has made commitments in its application to:
  - i. resolving concerns, and providing security protections;
  - ii. operate a trustworthy and consumer-oriented TLD;
  - iii. go above and beyond minimum ICANN-mandated requirements for new gTLDs.

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<sup>36</sup> [www.governancecouncils.com/sport](http://www.governancecouncils.com/sport)

- c. The mechanisms described below and in the application demonstrate that Applicant is serious about operating an inclusive, secure, and useful beneficial TLD. The following procedures and practices were developed to ensure TLD grows in a responsible manner and promotes consumer trust and confidence:
  - i. Governance Council as mentioned above.
  - ii. Real-time, rapid reaction and remediation: Abuse Prevention and Mitigation (“APM”) seal. This is a seal with geo-location capabilities, which will appear on every website using this gTLD. It will allow users one click access to abuse reporting pages. This is significantly more sophisticated than anything available today for sports organisations operating over the internet.
  - iii. Additional mechanisms to protect and reserve IGO names.
  - iv. gTLD abuse prevention and mitigation plan.
  - v. Measure to promote WHOIS accuracy.
  - vi. Educating consumers about domain name abuse.
  - vii. Blacklisting repeat offenders.
  - viii. Restrictions on Proxy Registration Services.

3. *Objector offers no evidence that Applicant’s operation of the .Sport gTLD string will interfere with the core activities of the alleged Sport community.*

The core activities of Objector and the alleged “sport” community are independent of new TLDs. The Commitments and mechanisms described above and in application demonstrate Applicant will only enhance the core activities of the sports industry. Consumers and regulators understand that a domain name registration does not confer or even define special status for the holder worldwide and for every purpose.

4. *Objector offers no evidence that the core activities of Objector or the “Sport” community depend on the Domain Name System.*

The core activities of Objector and the alleged “sport” community are independent of the Domain Name System. Whilst some elements of the sports industry rely on the internet (e.g. viewing, distribution of information, and multiplayer video games) the actual playing of sport usually takes place offline.

5. *Objector offers no evidence of concrete or economic damage to the Sport community that would result from Applicant’s operation of the applied-for gTLD string.*

As stated above, Applicant has developed many robust safeguards and policies, and provided a detailed plan to foster meaningful links to the sports industry. The “Status quo” is not “material detriment” as defined by the AGB. Objector does not appear to have read Applicant’s application:

- a. The TLD policies do include an oversight mechanism to the sports industry (see Obj. at T4a).
- b. Behaviours such as cybersquatting, typosquatting (Obj. at T4a2 and T4a3) and phishing (Obj. at Annex A18), are all pre-identified breaches of Applicant’s acceptable use policies, and Applicant has specific mechanisms to address these. The rectification of these abuses quickly and efficiently is the reason the URS was developed by ICANN.
- c. As regards the other identified abusive behaviours (at T4a), the Governance Council will be able to make workable recommendations to craft the Acceptable Use Policies of the TLD appropriately.

Further, the alleged harms at T4b are all entirely speculative and no concrete evidence is provided:

- d. It is not clear who has produced Annex A13. It is assumed that such evidence is not independent and should carry minimal weight.

- e. As regards T4a7 (false sense of official sanction), consumers understand that a domain name registration does not confer or even define special status for the holder worldwide and for every purpose.
- f. The UDRP cases at Annex A11 and A19 do not appear to prove much other than the IOC and a racecourse were able to successfully claim a transfer of certain websites under the UDRP procedure. The presentation by e-nom at Annex 12-1 appears to have no relevance to any of Objector's arguments.
- g. The documents at Annex A12-2, A12-3, A12-5 and A12-6 are only relevant to another applicant for .sports, not to Applicant's application. Objector fails to provide any context.

Finally, the complaint by Objector about the Community Priority Evaluation (at Annex A17) process implies that Objector is not confident that it will qualify as a clearly delineated community. If it passes CPE, then it automatically would be delegated the TLD over Applicant, and auction would not be relevant.

6. *Objector offers no evidence that alleged detrimental outcomes would occur.*

As described, Applicant has created many security mechanisms, and the opportunity to propose more. Objector offers no proof whatsoever as to its "reasonably certain" claim. Its argument is nonsensical, unfair to commercial entities, and entirely baseless. All the alleged detrimental outcomes are speculative or would not result from Applicant's operation of the applied-for gTLD string.

In essence, Applicant's arguments amount to a mere an allegation of detriment that consist only of Applicant being delegated the string instead of Objector.

**III. Conclusion:**

For the foregoing reasons, Applicant respectfully requests the Expert to hold that Objector's objection is invalid. Therefore, the Expert should deny the objection.



II. Communication (Article 6(a) of the Procedure and Article 1 of the ICC Practice Note)

A copy of this Response is/was transmitted to Objector on 21<sup>st</sup> May 2013  
by e-mail to the following address: Contact Information Redacted  
Contact Information Redacted

A copy of this Response is/was transmitted to ICANN on 21<sup>st</sup> May 2013  
by e-mail to the following address: drfiling@icann.org

**Filing Fee (Article 1 Appendix III to the Rules and Article 11(f) of the Procedure)**

As required, Euros 5 000 were paid to ICC on 14<sup>th</sup> May 2013.

Evidence of the payment is attached for information.

**Description of the Annexes filed with the Response (Article 11(e) of the Procedure)**

*List and Provide description of any annex filed.*

1. Sport Survey
2. SportAccord definition of "sport"
3. European Sports Charter
4. Sportscotland Research Report
5. Extract from SportAccord .sport community application
6. Evidence of fee payment

Date: 21<sup>st</sup> May 2013

Signature:



PETER You

(CHIEF LEGAL OFFICER

FAMOUS FOUR MEDIA LIMITED

FOR AND ON BEHALF OF DOTCART LIMITED

# **Annex 11.**



International Chamber of Commerce  
*The world business organization*

International Centre for Expertise • Centre international d'expertise

**EXP/471/ICANN/88**  
**SPORTACCORD (SWITZERLAND) vs/ DOT SPORT LIMITED (GIBRALTAR)**

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**SPORTACCORD**  
Mr. Pierre Germeau  
Contact Information Redacted

By email: Contact Information Redacted

**FAMOUR FOUR MEDIA LIMITED**  
Mr. Peter Young  
Contact Information Redacted

By e-mail: Contact Information Redacted

25 June 2013

Dear Sirs,

Please be advised, that pursuant to Article 13 of the Procedure and Article 9(5) (d) of the Rules, the Centre has appointed as Expert in this matter:

Mr. Jonathan Peter Taylor  
Bird & Bird LLP  
Contact Information  
Redacted

Tel: Contact Information Redacted  
Email:

The Expert is the sole member of the Panel in accordance with Article 13 of the Procedure.

**Chairman of the Standing Committee of the Centre**

The Chairman of the Standing Committee appointed the Panel on 20 June 2013, pursuant to Article 3(3) of Appendix I to the Rules.

Please note that the Panel will only be fully constituted upon receipt of the parties' full payment of the estimated Costs.

.../...

**ICC International Centre for ADR • Centre international d'ADR de la CCI**  
Contact Information Redacted

### **Expert's Availability and Independence**

We enclose the Expert's ICC *curriculum vitae*, professional *curriculum vitae* as well as his Declaration of Acceptance and Availability, Statement of Impartiality and Independence.

Please be advised that the Expert has declared that he is available and able to serve as member of the Panel in this matter.

Further, please note that the Expert has declared that he is independent, however he wishes to call the parties' attention to certain facts or circumstances disclosed in his Declaration of Acceptance and Availability, Statement of Impartiality and Independence because they might be of such a nature as to call into question their independence in the eyes of the parties.

Accordingly, we invite the parties' comments in this regard, if any, **on or before 28 June 2013**.

Should we not receive any comments from the parties within the provided time limit, the Centre shall understand that they do not object to the appointment of Mr. Taylor as sole member of the Panel in this matter.

### **Expert's Fees and Expenses**

Pursuant to Article 3 of the Appendix III to the Rules, ICC has fixed the Expert's hourly rate at € 450. Further, any reasonable expenses of the Expert's shall be reimbursed.

### **Deposit for Costs**

#### **1. Costs**

According to Article 14(3) of the Rules, ICC currently estimates the total Costs for this matter at **€ 58 600**, subject to later readjustments.

The Costs cover the estimated fees and expenses of the Expert, as well as ICC's administrative costs incurred and still to be incurred.

In the course of the proceeding, the Centre may have to readjust the estimated Costs.

Further, and pursuant to Article 14(5) of the Rules, upon termination of the proceeding the Centre shall settle the total Costs of the proceeding and shall, as the case may be, reimburse the party or parties for any excess payment or bill the parties for any balance required.

#### **2. Advance Payment**

The Costs have to be fully paid by each party pursuant to Article 14(b) of the Procedure.

Accordingly, the Costs should be paid in the following manner:

- Objector: € 53 600 (€ 58 600 – € 5 000 already paid)
- Applicant: € 53 600 (€ 58 600 – € 5 000 already paid)

.../...

In accordance with Article 14(b) of the Procedure, the payment has to be made **within 10 days of the receipt of this letter**. The evidence of such payment has to be submitted to the Centre within the same time limit.

Therefore, we invite the parties to proceed with the payment of the Costs pursuant to the following instructions:

Beneficiary (*Account holder*): International Chamber of Commerce  
Contact Information  
Redacted

Bank of Beneficiary: UBS SA  
Contact Information Redacted

IBAN: Contact Information Redacted

Swift Code/BIC: Contact Information Redacted

Please include the **case reference, the party's name, the disputed string and the application ID** on your payment to help ensure that it is accurately credited.

Please note also that the parties should bear any banking charges associated with the payment.

We draw your attention to the fact that if the Objector fails to make the advance payment of Costs, its Objection shall be dismissed and no fees that the Objector has paid shall be refunded (Article 14(d) (i) of the Procedure).

Further, we draw your attention to the fact that if the Applicant fails to make the advance payment of Costs, the Objection will be deemed to have been sustained and no fees that the Applicant has paid shall be refunded (Article 14(d) (ii) of the Procedure).

Finally, please note that upon termination of the proceeding, ICC shall refund to the prevailing party, as determined by the Panel, its advance payment of Costs (Article 14(e) of the Procedure). However, please note that the Filing Fee is not refundable.

#### **Transfer of the File**

Please be advised that the Costs must be fully paid by each party before this proceeding can continue. Once full payments have been received, the Centre will transfer the file to the Panel and invite it to proceed with this matter.

Accordingly, the Panel and the parties should **not** make contact until the Centre has transferred the file to the Panel.

Should you have any further questions, please do not hesitate to contact us.

.../...

Yours faithfully,



Špela Košak  
Deputy Manager  
ICC International Centre for Expertise

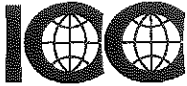
Enclosures (*for parties only*):

- Experts' ICC *curriculum vitae*
- Experts' professional *curriculum vitae*
- Experts' Declaration of Acceptance and Availability, Statement of Impartiality and Independence

c.c. (*without enclosures*):

Mr. Jonathan Peter Taylor

By email: Contact Information Redacted



International Chamber of Commerce

*The world business organization*

International Centre for Expertise Centre international d'expertise

Case N°: EXP/471/ICANN/88

**ICC EXPERT  
DECLARATION OF ACCEPTANCE AND AVAILABILITY,  
STATEMENT OF IMPARTIALITY AND INDEPENDENCE**

Family Name(s): TAYLOR Given Name(s): JONATHAN

*Please tick all relevant boxes.*

**1. ACCEPTANCE**

- I agree to serve as expert under and in accordance with ICANN's gTLD Applicant Guidebook, including the New gTLD Dispute Resolution Procedure ("Procedure"), the Rules for Expertise of the ICC ("Rules") including Appendix III to the ICC Rules and supplemented by the ICC Practice Note on the Administration of Cases. I confirm that I am familiar with these rules and documents. I accept that my fees and expenses will be fixed exclusively by the ICC International Centre for Expertise ("Centre") (Article 3 Appendix III to the ICC Rules).

**NON-ACCEPTANCE**

- I decline to serve as expert in this case.  
*(If you tick here, simply date and sign the form without completing any other sections.)*

**2. AVAILABILITY**

- I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this proceeding diligently, efficiently and in accordance with the time limits provided in the Procedure, subject to any extensions granted by the Centre pursuant to Article 21(a) of the Procedure.

.../...

ICC International Centre for ADR Centre international d'ADR de la CCI  
Contact Information Redacted

**3. INDEPENDENCE AND IMPARTIALITY**

(Tick one box and provide details below and/or, if necessary, on a separate sheet.)

In deciding which box to tick, you should take into account, having regard to Article 11(1) of the Rules and Article 13(c) of the Procedure, whether there exists any past or present relationship, direct or indirect, between you and any of the parties, their related entities or their lawyers or other representatives, whether financial, professional or of any other kind. Any doubt must be resolved in favour of disclosure. Any disclosure should be complete and specific, identifying *inter alia* relevant dates (both start and end dates), financial arrangements, details of companies and individuals, and all other relevant information.

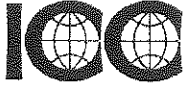
**Nothing to disclose:** I am impartial and independent and intend to remain so. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my independence in the eyes of any of the parties and no circumstances that could give rise to reasonable doubts as to my impartiality.

**Acceptance with disclosure:** I am impartial and independent and intend to remain so. However, mindful of my obligation to disclose any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the parties or that could give rise to reasonable doubts as to my impartiality, I draw attention to the matters below and/or on the attached sheet.

Date: 17. 06. 13 Signature: 

The information requested in this form will be considered by the ICC International Centre for Expertise solely for the purpose of your appointment. The information will remain confidential and will be stored in a case management database system. It may be disclosed solely to the parties and their counsel in the case referenced above for the purposes of that proceeding. According to Article 32 and, in particular, Article 40 of the French law "Informatique et Libertés" of 6 January 1978, you may access this information and ask for rectification by writing to the Centre.





International Chamber of Commerce

The world business organization

International Centre for Expertise Centre international d'expertise

CURRICULUM VITAE (CV)

For the confidential use of the International Chamber of Commerce and communication to the parties. To be completed in English.

[X] Mr. [ ] Ms.

Family Name(s): TAYLOR Given Name(s): JONATHAN PETER

Date of birth: Contact Information Redacted Nationality(ies): BRITISH

Personal Address: Contact Information Redacted

Telephone: Contact Information Redacted Mobile: Contact Information Redacted

E-Mail: Contact Information Redacted Fax:

Business Address (Including company or firm name where applicable):

BIRD & BIRD LLP Contact Information Redacted

Telephone: Contact Information Redacted Fax: Contact Information Redacted Mobile: Contact Information Redacted

E-Mail: Contact Information Redacted Website: www.twobirds.com

Please indicate which address you wish to be used for any correspondence:

[ ] Personal [X] Business

Please indicate which email you wish to be used for all notifications and communications:

[ ] Personal [X] Business

.../...

ICC International Centre for ADR • Centre international d'ADR de la CCI Contact Information Redacted

For the confidential use of ICC and communication to the parties. To be completed in English.

Academic degrees / Qualifications:

BA (1<sup>st</sup> Class Hons.) in Jurisprudence, University of Oxford, 1989

LLM, University of Virginia, 1990

Qualified to practise at the New York Bar, 1991, practised there until 1997.

Qualified to practise as a solicitor in England and Wales, 1996, and have practised there ever since 1997.

Training and qualifications in the field of dispute resolution (e.g. training as an arbitrator, accreditation as a mediator etc.)

Chairman of the Anti-Doping Tribunal of the International Baseball Federation.

Member of Sport Resolution UK's Panel of Arbitrators.

Current professional activity(ies) and position(s):

Partner and Joint Head of the International Sports Group, Bird & Bird LLP, London

Member, Ethics Committee, British Horseracing Authority

Member, WADA Working Group on legal matters

Other professional experience (including activities and positions) relevant for the present procedure:

Director of Studies in Sports Law, King's College, London, 2000-2007.

Joint editor, Lewis & Taylor, 'Sport: Law & Practice' (Bloomsbury 3<sup>rd</sup> Edn, due 2013)

Additional information (Use separate sheet if necessary):

Please see CV attached.

.../...

For the confidential use of ICC and communication to the parties. To be completed in English.

Languages:

I hereby confirm that I am fully able to conduct expertise proceedings in English without the assistance of an interpreter or translator and that I am capable of drafting an expert determination in English.

Additionally, please mark all languages in which you consider yourself able to conduct expertise proceedings and read and understand documents without the assistance of an interpreter or translator:

- |                                  |                                     |                                      |                                 |
|----------------------------------|-------------------------------------|--------------------------------------|---------------------------------|
| <input type="checkbox"/> French  | <input type="checkbox"/> German     | <input type="checkbox"/> Italian     | <input type="checkbox"/> Arabic |
| <input type="checkbox"/> Spanish | <input type="checkbox"/> Portuguese | <input type="checkbox"/> Russian     | <input type="checkbox"/> Polish |
| <input type="checkbox"/> Chinese | <input type="checkbox"/> Japanese   | <input type="checkbox"/> Other _____ |                                 |

Please indicate other languages of which you have good knowledge:

---



**Jonathan Taylor**

Partner, Sports Group

Contact Information  
Redacted

DD. Contact Information Redacted

Contact Information Redacted

**Practice Areas:**

- Regulation of sport.
- Commercialisation of sport.
- Resolution of sports-related disputes.

**Education:**

- BA (Hons) 1<sup>st</sup> Class in Jurisprudence, University College, Oxford, 1989.
- LL.M, University of Virginia, 1990.

**Professional Qualifications:**

- Admitted to New York bar, 1990.
- Admitted as a solicitor in England & Wales, 1996.

**Positions:**

- Chairman, IBAF Anti-Doping Panel
- Member, BHA Ethics Committee.
- Member, WADA Working Group on Legal Matters.
- Member, Sport Resolutions (UK) Panel of Arbitrators.

Jonathan Taylor is a partner in Bird & Bird LLP's Sports Group, which is recognised as a market-leading UK sports law practice.

After working as a commercial litigator at the New York bar for seven years, Jon returned to England in 1997, since when he has acted solely for clients in the sports sector, advising international and national governing bodies, public and quasi-public agencies, event organisers, broadcasters, sponsors and commercial agents, on the full range of commercial, contentious, regulatory and disciplinary issues that arise in the sports sector. His experience includes:

- Drafting player contracts (he drafted the British Lions contracts for the 2001, 2005 and 2009 tours); broadcasting contracts (for the Six Nations Championship, the Heineken Cup, and the Football Associations of the Republic of Ireland, Wales and Northern Ireland, among others); sponsorship contracts (including the Lions-HSBC main sponsor contract for 2009 and 2013, and the ERC-Heineken title sponsorship for each cycle since 2001); funding contracts; and match/event staging contracts.
- Drafting sporting rules and regulations, including anti-doping rules ('whereabouts rules' for the World Anti-Doping Agency and the International Olympic Committee, the UK Anti-Doping Rules for UK Anti-Doping, and the Tennis Anti-Doping Programme for the International Tennis Federation), anti-corruption rules (for the International Cricket Council and the British Darts Organisation), salary cap regulations (for the Rugby Football League) and match-sanctioning rules and regulations (for the

# BIRD & BIRD

International Cricket Council and others).

- Prosecuting sports clubs and athletes, before internal tribunals and (on appeal) before the Court of Arbitration for Sport, for breach of those rules and regulations, including Pakistani cricketers Salman Butt, Mohammad Amir and Mohammad Asif for breach of the ICC's Anti-Corruption Code; and professional tennis players Mariano Puerta, Martina Hingis and Richard Gasquet for breach of the Tennis Anti-Doping Programme.
- Defending the rules and decisions of sports governing bodies from legal challenge, including defending the International Rugby Board's match-sanctioning regulations in the English High Court and before the European Commission; defending the match-sanctioning rules and decisions of the International Cricket Council and the England Cricket Board in the English High Court; and defending decisions of the Football League (in relation to Wimbledon FC and Leeds United FC) and the Football Conference (in relation to the 'football creditor' rule) in FA Rule K arbitrations.
- Advising sports bodies on Government initiatives impacting on sport, including responding on behalf of various football and rugby bodies to proposals to list their events for mandatory FTA broadcast under the Broadcasting Act; drafting the DCMS-sponsored National Anti-Doping Policy; and assisting in the establishment of UK Anti-Doping and the National Anti-Doping Panel as independent anti-doping organisations.
- Taking action in the courts against third parties ambushing/infringing on sports bodies' events and rights, including obtaining High Court injunctions restraining (i) touting of tickets for the 2004 UEFA European Championships, and (ii) unauthorised streaming of live UCL television programming on the Internet.

Based on the quality of his work and advice, Jon has been described in the legal directories as '*simply pre-eminent*' (Legal 500) and as a '*star individual*' in the field (Chambers). In 2007, The Times listed him as one of the 11 'Best Sports Lawyers in Britain', describing him as '*a first-class act ... a pre-eminent regulatory and litigation*

# BIRD & BIRD

*lawyer ... "Unpretentious, a great bloke and a fantastic lawyer." In both 2009 and 2010, Sports Business named him one of 'The World's Twenty Most Influential Lawyers' in the sports sector. And Chambers 2011 said he is 'a titanic figure within UK sports law. He advises a broad range of sporting clients on commercial, contentious, regulatory and disciplinary issues. He is also a seasoned advocate, and has represented his clients in proceedings before a wide range of sports tribunals, including before the Court of Arbitration for Sport (CAS). Sources acknowledge that "on the disciplinary side in particular, there is no one better in sport." The praise is near-universal, with commentators describing a "phenomenally good lawyer: he is ferociously bright, exhibits great judgement and commands total loyalty from his clients."*

Jon sits as an arbitrator in sports disputes (as chairman of the International Baseball Federation's Anti-Doping Panel, and also under FA Rule K), and is also a member of the British Horseracing Authority's Ethics Committee and of the World Anti-Doping Agency's Working Group on Legal Matters. He was Director of Studies in Sports Law at King's College, London, from 2000 to 2007; and is co-editor (with Adam Lewis QC of Blackstone Chambers) of the leading UK sports law text, *Sport: Law and Practice* (Bloomsbury 3<sup>rd</sup> Edn due 2013).

# **Annex 12.**

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**From:** Peter Young  
**Sent:** jeudi 27 juin 2013 18:17  
**To:** EXPERTISE  
**Subject:** RE: ICC EXP/471/ICANN/88  
**Attachments:** Appointment of Jonathan Taylor sport panellist.docx

**Importance:** High

Dear Sirs

We refer to your letter of Tuesday 25<sup>th</sup> June 2013.

Please find attached a document detailing an objection to the appointment of Mr Jonathan Taylor as panellist.

Yours faithfully

Peter Young



**Peter Young**  
*Director/Chief Legal Officer*  
*Famous Four Media Limited*  
Contact Information  
Redacted

Contact Information Redacted

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**From:** READE Emma  
**Sent:** 25 June 2013 18:38  
**To:** Contact Information Redacted i'; Peter Young

**On Behalf Of EXPERTISE**



Contact Information Redacted

**Cc:** EXPERTISE

**Subject:** ICC EXP/471/ICANN/88

Dear Sirs,

Please find attached our letter of today.

Faithfully yours,

Emma Reade

ICC International Centre for Expertise

Contact Information Redacted

Contact Information

Tel.: Redacted

Fax:



Please consider the environment before printing this e-mail.

-----  
*This message is confidential. If you have received this message in error please delete it and notify the sender immediately. Please contact the Centre by telephone at*  
Contact Information Redacted

*You should not retain the message or disclose its contents to anyone.*

Contact Information Redacted

-----  
*Ce message est confidentiel. Si vous avez reçu ce message par erreur, veuillez le détruire et en informer l'expéditeur. Veuillez contacter le Centre par téléphone au*  
Contact Information Redacted

*Vous ne devez ni conserver le message, ni en révéler le contenu.*

Contact Information Redacted

Please note that we are submitting an objection at this time but we reserve the right to supplement the objection with additional information we discover in the allotted time to deadline which we interpret from the ICC rules as 1 July, 2013.<sup>1</sup>

We strongly object to the appointment of Mr. Jonathan Taylor as the sole panelist on the community objection against our application for the .SPORT string. First, the appointment of **any** sports lawyer seems inappropriate, for two reasons:

1. The issues at stake are not related to sports law, but are in the nature of questions of general interpretation: a sports lawyer's natural inclination will be to feel that he or she is part of a so-called "community". This is borne out by the fact that Mr Taylor has previously referred to sports "communities" in previous professional articles written by him<sup>2</sup>. This concern is notwithstanding our overall contention that for the purposes of the ICANN new gTLD Program, the complainant's assertion that a "sports community" exists falls short of meeting the ICANN requirements for such a community.
2. Any sports lawyer would, whether consciously or not, prefer a sports organization or federation (such as the objector, SportAccord) over and above a commercial registry operator (such as dot Sport Limited).

Second, Mr. Taylor's career appears to have been intertwined with, and depend heavily upon the very entities that have objected not only to our .SPORT string application, but also objected to our application for another string that is the subject of a very similar objection (.RUGBY):

### **1. Mr. Taylor is the co-head of Bird & Bird's International Sport Group.**

- "Jonathan is the co-head of Bird & Bird's Sport Group."<sup>3</sup>
- Bird & Bird is regularly retained by and represents the positions of established governing bodies which compose the membership of the objector, Sport Accord.
- Bird & Bird has become the go-to firm for the governing bodies of sport, and its client roster alone reveals the team's standing in the market, including the Football Association (FA), the International Cricket Council (ICC), the International Tennis Federation (ITF), the Premier League, the Rugby Football Union (RFU) and British Cycling, amongst others.<sup>4</sup>

### **2. Involvement with International Rugby Board**

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<sup>1</sup> See email correspondence sent to ICC 26 June 2013 from Peter Young.

<sup>2</sup> [http://www.wipo.int/wipo\\_magazine/en/2012/01/article\\_0002.html](http://www.wipo.int/wipo_magazine/en/2012/01/article_0002.html) where the word "community" is mentioned 5 times.

<sup>3</sup> Jonathan Taylor Attorney Page, Bird & Bird Website, [http://twobirds.com/English/Lawyers/Pages/Jonathan\\_Taylor1.aspx](http://twobirds.com/English/Lawyers/Pages/Jonathan_Taylor1.aspx), Accessed June 25, 2013

<sup>4</sup> <http://www.chambersandpartners.com/USA/Editorial/253807>

- According to his CV, Jonathan Taylor defended The International Rugby Board's match-sanctioning regulations in English High Court and before the European Commission.<sup>5</sup>
- **The International Rugby Board is a member of SportAccord<sup>6</sup> and submitted a letter to ICANN in support of SportAccord's application for the .sport TLD.<sup>7</sup> The IRB separately objected, on community grounds, to another string for which we applied, .RUGBY.**

### 3. Involvement with International Olympic Committee

- According to his CV, Jonathan Taylor drafted 'whereabouts rules' for the International Olympic Committee.
- **The International Olympic Committee is listed as having expressed their official support for SportAccord's application for the .sport TLD<sup>8</sup> and appears on SportAccord's .sport Policy Advisory Board.<sup>9</sup>**

### 4. Involvement with the International Cricket Council

- According to his CV, Jonathan Taylor drafted anti-corruption rules for the International Cricket Council and defended the council's match-sanctioning rules and decisions in English High Court.<sup>10</sup>
- **The International Cricket Council is a member of SportAccord.**
- "SportAccord is the umbrella organisation for all (Olympic and non-Olympic) international sports federations as well as organisers of multi-sports games and sport-related international associations." and appears on the "List of International Sports Federations"<sup>11</sup>

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<sup>5</sup> Jonathan Taylor, Curriculum Vitae, Accessed

<sup>6</sup> "Members," SportAccord webpage, <http://www.sportaccord.com/en/members/>, Accessed June 25, 2013

<sup>7</sup> In a March 26, 2012 letter from Acting CEO of the International Rugby Board, Robert Brophy, to SportAccord Director General, Vincent Gaillard, Brophy wrote, "With regard to the .sport internet domain name, the IRB is happy to offer its formal support to this initiative. This support is offered on the understanding that depending on the direction the initiative takes, the IRB will be entitled to make a decision at a later date as to its level of involvement."

<sup>8</sup> "Attachment 20f (oo-ListSportAccord-support.pdf)" ICANN Application Details webpage, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1593>, Accessed June 25, 2013

<sup>9</sup> "Policy Advisory Board," SportAccord webpage, <http://www.sportaccord.com/en/what-we-do/dot-sport/?idContent=16369>, Accessed June 25, 2013

<sup>10</sup> According to Jonathan Taylor's CV, his experience includes: "Drafting sporting rules and regulations, including ..... anti-corruption rules (for the International Cricket Council) ..... and match sanctioning rules and regulations (for the International Cricket Council and others)."

<sup>11</sup> Members Page, SportAccord Website, <http://www.sportaccord.com/en/members/>, Accessed June 25, 2012

## 5. Involvement with the World Anti-Doping Agency

- Bird & Bird's International Sport Group represented The World Anti-Doping Agency in a dispute with The British Olympic Association over the compatibility of its doping bye-law with The World Anti-Doping Code.<sup>12</sup>
- **SportAccord lists the World Anti-Doping Agency as a partner institution on its website**, and Mr. Taylor was listed on the SportAccord 2007 Delegate List as a delegate from The World Anti-Doping Agency Legal Committee<sup>13</sup>.

## 6. Involvement with the International Tennis Federation

- In 2012, Mr. Taylor represented The International Tennis Federation before The Court Of Arbitration For Sport in the appeal of doping sanctions against Bulgarian professional tennis player Dimitar Kutrovsky, as counsel for the Respondent.<sup>14</sup>
- Mr. Taylor also represented The International Tennis Federation in its appeal of a sentence imposed on Richard Gasquet after he tested positive for cocaine metabolites.<sup>15</sup>
- **The International Tennis Federation is a member of SportAccord.**<sup>16</sup>

## 7. Involvement with FIFA

- In 2006, *The Lawyer* Named Taylor a member of FIFA's "Legal Dream Team" for his work as a partner at Hammonds, the firm representing FIFA's IP Rights Protection, UK and German ticketing and sponsorship agreements.<sup>17</sup>
- **FIFA is a member of SportAccord.**<sup>18</sup>

## 8. Mr Taylor was a SportAccord Convention Panelist

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<sup>12</sup> "Acting for the World Anti-Doping Agency in its high profile dispute with the British Olympic Association over the compatibility of its doping bye-law with the World Anti-Doping Code." Bird & Bird International Sports Group Website, <http://twobirds.com/English/Expertise/Pages/Sport.aspx>, Accessed June 25, 2013

<sup>13</sup> <http://www.sportcentric.com/vsite/vfile/page/fileurl/0.11040.5035-184873-202095-120962-0-file.00.pdf>, Accessed June 25, 2013

<sup>14</sup> Arbitration CAS 2012/A/2804, Dimitar Kutrovsky v. International Tennis Federation (ITF), Oct. 3, 2012, <http://jurisprudence.tas-cas.org/sites/CaseLaw/Shared%20Documents/2804.pdf>, Accessed June 25, 2013

<sup>15</sup> Arbitral Award, Court of Arbitration for Sport, CAS 2009/A/1926, International Tennis Federation v. Richard Gasquet, <http://www.itftennis.com/media/132761/132761.pdf>, Accessed June 25, 2013

<sup>16</sup> Members Page, SportAccord Website, <http://www.sportaccord.com/en/members/>, Accessed June 25, 2012

<sup>17</sup> Ben Moshinsky, "Forget Argentina and Brazil – this is the real World Cup-winning team," *The Lawyer*, May 29, 2006

<sup>18</sup> Members Page, SportAccord Website, <http://www.sportaccord.com/en/members/>, Accessed June 25, 2012

- In 2011, Mr. Taylor was a panelist at The 2011 LawAccord International Convention.<sup>19</sup>
- The LawAccord Conference was actually a complement to the main Sport Accord conference programme.<sup>20</sup>
- “Organisers of this year’s SportAccord Convention in London have announced that a conference of senior sports law practitioners from around the world will take place as a complement to the main conference programme.”

## 9. Involvement with the International Baseball Federation

- Mr. Taylor is chairman of The International Baseball Federation’s Anti-Doping Panel-Tribunal.<sup>21</sup>
- **The International Baseball Federation is a member of SportAccord.**<sup>22</sup>

## 10. Involvement with ICANN

- Mr. Taylor has served as counsel to a party who successfully used ICANN’s UDRP process to recover a domain name for a client. Because of this he is likely skeptical of any entrepreneurial efforts to establish new gTLDs and their potential impact on his client base.
- Mr Taylor’s team prosecuted major cases such as the landmark *Bacardi-Martini v. Newcastle United* dispute in 1998 regarding the French statute preventing alcohol brands from advertising at sporting events, and an Internet Corporation for Assigned Names and Numbers (“**the ICANN**”) dispute between a football club and a cyber squatter over a domain name.<sup>23</sup>

<sup>19</sup> “Yesterday’s LawAccord International Convention at the Park Plaza County Hall revealed the existence of tensions between sports governing bodies and the law-enforcement agencies in the battle against match-fixing.

“During a debate on the case for creating an international body comparable with the World Anti-Doping Agency (WADA) to tackle match-fixing, panellist **Jonathan Taylor** of UK-based international law firm Bird & Bird declared: ‘This is a corrupt, criminal, clandestine behaviour by people who often come from outside the sport, and so are not subject to its laws. In such cases sports administrators can’t be law-enforcers – they have to go to the professional fulltime agencies.’

“Lawyers debate match-fixing remedies,” *The Daily* (SportAccord International Convention Newsletter), June 4, 2011

<sup>20</sup> “SportAccord Convention unveils LawAccord conference plans,” *SportBusiness International*, Feb. 24, 2011, <http://www.sportbusiness.com/sportbusiness-international/sportaccord-convention-unveils-lawaccord-conference-plans>, Accessed June 25, 2013

<sup>21</sup> IBAF 2011 Yearbook, [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&sqi=2&ved=0CDQQFjAB&url=http%3A%2F%2Fwww.ibaf.org%2Fdoc%2F45d0a523-83ad-40c3-a273-c8d691b486bf%2F2011\\_IBAF\\_yearbook\\_eng.pdf&ei=TA3KUf2bH8G90gG63YH4DQ&usq=AFQjCNG1Rkklkdoko31XQam8cuQykP15AA&sig2=FNCB2MEjQc75G7LX7l-jhg&bvrm=bv.48293060.bs.1.d.dmQ](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&sqi=2&ved=0CDQQFjAB&url=http%3A%2F%2Fwww.ibaf.org%2Fdoc%2F45d0a523-83ad-40c3-a273-c8d691b486bf%2F2011_IBAF_yearbook_eng.pdf&ei=TA3KUf2bH8G90gG63YH4DQ&usq=AFQjCNG1Rkklkdoko31XQam8cuQykP15AA&sig2=FNCB2MEjQc75G7LX7l-jhg&bvrm=bv.48293060.bs.1.d.dmQ), Accessed June 25, 2013

<sup>22</sup> Members Page, SportAccord Website, <http://www.sportaccord.com/en/members/>, Accessed June 25, 2012

<sup>23</sup> [http://www.mylaw.net/Article/Jonathan\\_Taylor\\_The\\_man\\_behind\\_controversial\\_whereabout\\_rule/#.Ucrg-JzhfLJ](http://www.mylaw.net/Article/Jonathan_Taylor_The_man_behind_controversial_whereabout_rule/#.Ucrg-JzhfLJ) (accessed June 26)

**11. Mr. Taylor has other strong relationships with persons involved in sport.**

- Mr. Taylor serves as a member of the Editorial Board of the World Sports Law Report which carries an annual subscription rate upwards of £620. This creates an incentive to take position and outlooks that are favorable to the subscribers of this publication.
- *World Sports Law Report* has an Editorial Board that includes top practitioners that advise sport, the companies involved with it and the athletes that participate in it.<sup>24</sup>

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<sup>24</sup> [http://www.e-comlaw.com/world-sports-law-report/about\\_template.asp](http://www.e-comlaw.com/world-sports-law-report/about_template.asp)

# **Annex 13.**



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EXP/471/ICANN/88

SPORTACCORD (SWITZERLAND) vs/ DOT SPORT LIMITED (GIBRALTAR)

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SPORTACCORD

Mr. Pierre Germeau

Contact Information Redacted

By email: Contact Information Redacted

FAMOUR FOUR MEDIA LIMITED

Mr. Peter Young

Contact Information Redacted

By e-mail: Contact Information Redacted

25 July 2013

Dear Sirs,

The Centre writes to you with reference to its letter dated 16 July 2013 to inform the parties that it has decided not to confirm the appointment of Mr. Taylor as Expert in this matter.

Accordingly, the Centre will now proceed with the appointment of another Expert and inform the parties of such appointment immediately thereafter.

Subsequently, the Centre will transfer the file to the fully constituted Expert Panel.

Should you have any questions, please do not hesitate to contact us.

Yours faithfully,

Hannah Tümpel

Manager

ICC International Centre for Expertise

c.c.: - Mr. Jonathan Peter Taylor

By e-mail: Contact Information Redacted

ICC International Centre for ADR • Centre international d'ADR de la CCI

Contact Information Redacted



# **Annex 14.**



International Chamber of Commerce

*The world business organization*

International Centre for Expertise • Centre international d'expertise

**EXP/471/ICANN/88**  
**SPORTACCORD (SWITZERLAND) vs/ DOT SPORT LIMITED (GIBRALTAR)**

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**SPORTACCORD**  
Mr. Pierre Germeau  
Contact Information Redacted

Contact Information Redacted  
*By email:*

**FAMOUR FOUR MEDIA LIMITED**  
Mr. Peter Young  
Contact Information Redacted

Contact Information Redacted  
*By e-mail:*

30 July 2013

Dear Sirs,

The Centre writes to you with reference to our dated 25 July 2013.

We inform you that the Centre has now proceeded with the appointment in replacement of the previous Expert, pursuant to Articles 7 and 11(5) of the Rules and has appointed

Mr. Guido Santiago Tawil  
M. & M. BOMCHIL  
Contact Information Redacted

Tel: Contact Information Redacted  
Email:

as the sole member of the Panel in accordance with Article 13 of the Procedure.

.../...

**ICC International Centre for ADR • Centre international d'ADR de la CCI**  
Contact Information Redacted

**Chairman of the Standing Committee of the Centre**

The Chairman of the Standing Committee appointed the Expert on 29 July 2013, pursuant to Article 7 of the Rules and Article and 3(3) of Appendix I to the Rules.

**Expert's Availability and Independence**

We enclose the Expert's ICC *curriculum vitae*, his professional *curriculum vitae* as well as his Declaration of Acceptance and Availability, Statement of Impartiality and Independence.

Please be advised that the Expert has declared that he is available and able to serve as sole member of the Panel in this matter.

**Transfer of the File**

The Centre will proceed with the transfer of the file to the Expert shortly.

Should you have any further questions, please do not hesitate to contact us.

Yours faithfully,



Špela Košak  
Deputy Manager  
ICC International Centre for Expertise

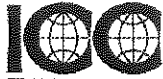
Enclosures:

- Expert's ICC *curriculum vitae*
- Expert's professional *curriculum vitae*
- Expert's Declaration of Acceptance and Availability, Statement of Impartiality and Independence

c.c. (*without enclosures*):

Mr. Guido Santiago Tawil

By email: Contact Information Redacted



International Chamber of Commerce

The world business organization

International Centre for Expertise / Centre international d'expertise

### CURRICULUM VITAE (CV)

For the confidential use of the International Chamber of Commerce and communication to the parties. To be completed in English.

Mr.  Ms.

Family Name(s): Tawil Given Name(s): Guido Santiago

Date of birth: Contact Information Redacted Nationality(ies): Argentinian

Personal Address: Contact Information Redacted

Contact Information  
Telephone: Redacted Mobile:

E-Mail: Contact Information Redacted Fax:

Business Address (including company or firm name where applicable):

Contact Information Redacted

Telephone: Contact Information Redacted Fax: Contact Information Redacted Mobile:

E-Mail: Contact Information Redacted Website: www.bomchil.com

Please indicate which address you wish to be used for any correspondence:

Personal  Business

Please indicate which email you wish to be used for all notifications and communications:

Personal  Business

.../...

ICC International Centre for ADR / Centre international d'ADR de la CCI  
Contact Information Redacted

*For the confidential use of ICC and communication to the parties. To be completed in English.*

Academic degrees / Qualifications:

Lawyer (1983), LL. M in Administrative Law (1986), Ph. D (Administrative Law, 1991, awarded with the Law School award for the best doctoral dissertation), Chair Professor of Administrative Law of the University of Buenos Aires, Chair Professor in other undergraduate and graduate courses (see attached CV)

Training and qualifications in the field of dispute resolution (e.g. training as an arbitrator, accreditation as a mediator etc.)

Current professional activity(ies) and position(s):

Member of the Executive Committee and Partner of M. & M. Bomchil in charge of the international arbitration, administrative law and regulatory practices of the firm.

President of the Latin American Arbitration Association (ALARB).

Governing Council Member of ICCA and others (see attached CV)

Council Member of the International Bar Association (IBA) Legal Practice Division (LPD)

Other professional experience (including activities and positions) relevant for the present procedure:

Former Cochair of the IBA's Arbitration Committee (2009-2010)

Former Court Member of the London Court of International Arbitration (LCIA)

Former Secretary of Argentina's Supreme Court of Justice (rank of district federal judge, 1989-1991)

Former Commissioner of Argentina's Securities & Exchange Commission (1991-1993)

Additional information (Use separate sheet if necessary):

.../...

For the confidential use of ICC and communication to the parties. To be completed in English.

Languages:

I hereby confirm that I am fully able to conduct expertise proceedings in English without the assistance of an interpreter or translator and that I am capable of drafting an expert determination in English.

Additionally, please mark all languages in which you consider yourself able to conduct expertise proceedings and read and understand documents without the assistance of an interpreter or translator:

- |   |                                     |                                      |                                 |
|---|-------------------------------------|--------------------------------------|---------------------------------|
| <input type="checkbox"/> French             | <input type="checkbox"/> German     | <input type="checkbox"/> Italian     | <input type="checkbox"/> Arabic |
| <input checked="" type="checkbox"/> Spanish | <input type="checkbox"/> Portuguese | <input type="checkbox"/> Russian     | <input type="checkbox"/> Polish |
| <input type="checkbox"/> Chinese            | <input type="checkbox"/> Japanese   | <input type="checkbox"/> Other _____ |                                 |

Please indicate other languages of which you have good knowledge:

\_\_\_\_\_

## GUIDO SANTIAGO TAWIL

Guido Santiago Tawil is a Senior Partner and member of the Executive Committee at M. & M. Bomchil, in Buenos Aires where he heads the international arbitration and regulatory practices of the firm.

Mr. Tawil is Chair of the Latin American Arbitration Association (ALArb), Council Member of the International Council for Commercial Arbitration (ICCA); Court Member of the London Court of International Arbitration (LCIA); Member of the Academic Council of the Institute for Transnational Arbitration (ITA); Member of the ICC's Latin American Arbitration Group; Member of the Foundation for International Arbitration Advocacy's (FIAA) Executive Committee; Member of the Administrative Law Institute of the National Law Academy; and of the Argentine Chamber of Commerce (CAC) Advisory Committee, among other institutions. He has been Cochair of the IBA's Arbitration Committee (2009-2010); of the IBA's Latin American Forum (2008) and of the Young Lawyers' Division of the Buenos Aires Bar (Colegio de Abogados de la Ciudad de Buenos Aires).

Mr. Tawil also serves as Chair Professor of Administrative Law at the Universidad de Buenos Aires School of Law and of Economic Regulation in the Administrative Law Master Program at Universidad Católica Argentina. He has served as Chair Professor of Public Utilities and Economic Regulation in the Administrative Law Master Program at Universidad Austral; as Visiting Professor at Universidad de Barcelona and Universidad Andina Simón Bolívar and as Visiting Scholar at the Boalt Hall School of Law (U.C., Berkeley).

He was appointed by the Argentine Ministry of Justice as member of the Advisory Committee on Administrative Regulation, of the committee responsible for drafting Argentina's Code of Administrative Procedure (2000) and of the Scholars' Committee responsible for drafting Argentina's Uniform Code of Legislation.

He has published seven books and over 120 articles and other papers related to his areas of practice. He has been awarded with the Universidad de Buenos Aires School of Law Award for the best doctoral dissertation in all areas of law and with the "Alejandro E. Shaw Award" provided by the Buenos Aires Bar for the best legal contribution.

Before joining his firm as a partner in 1991, Mr. Tawil served as Commissioner of Argentina's Securities & Exchange Commission (Comisión Nacional de Valores) and as Secretary of Argentina's Federal Supreme Court of Justice (position equivalent to federal judge).

Mr. Tawil received his law degree in 1983, a Master degree in Administrative Law and Public Administration in 1986, and a Ph. D. from the Universidad de Buenos Aires (Administrative Law Area) in 1991, with the highest academic qualifications, all of them issued by the Universidad de Buenos Aires School of Law.



International Chamber of Commerce

*The world business organization*

International Centre for Expertise Centre international d'expertise

Case N°: EXP/471/ICANN/88

**ICC EXPERT  
DECLARATION OF ACCEPTANCE AND AVAILABILITY,  
STATEMENT OF IMPARTIALITY AND INDEPENDENCE**

**Family Name(s):** Tawil

**Given Name(s):** Guido Santiago

*Please tick all relevant boxes.*

**1. ACCEPTANCE**

I agree to serve as expert under and in accordance with ICANN's gTLD Applicant Guidebook, including the New gTLD Dispute Resolution Procedure ("**Procedure**"), the Rules for Expertise of the ICC ("**Rules**") including Appendix III to the ICC Rules and supplemented by the ICC Practice Note on the Administration of Cases. I confirm that I am familiar with these rules and documents. I accept that my fees and expenses will be fixed exclusively by the ICC International Centre for Expertise ("**Centre**") (Article 3 Appendix III to the ICC Rules).

**NON-ACCEPTANCE**

I decline to serve as expert in this case.  
*(If you tick here, simply date and sign the form without completing any other sections.)*

**2. AVAILABILITY**

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this proceeding diligently, efficiently and in accordance with the time limits provided in the Procedure, subject to any extensions granted by the Centre pursuant to Article 21(a) of the Procedure.

.../...

ICC International Centre for ADR Centre international d'ADR de la CCI  
Contact Information Redacted



**3. INDEPENDENCE AND IMPARTIALITY**

*(Tick one box and provide details below and/or, if necessary, on a separate sheet.)*

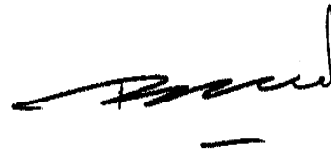
In deciding which box to tick, you should take into account, having regard to Article 11(1) of the Rules and Article 13(c) of the Procedure, whether there exists any past or present relationship, direct or indirect, between you and any of the parties, their related entities or their lawyers or other representatives, whether financial, professional or of any other kind. Any doubt must be resolved in favour of disclosure. Any disclosure should be complete and specific, identifying *inter alia* relevant dates (both start and end dates), financial arrangements, details of companies and individuals, and all other relevant information.

**Nothing to disclose:** I am impartial and independent and intend to remain so. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my independence in the eyes of any of the parties and no circumstances that could give rise to reasonable doubts as to my impartiality.

**Acceptance with disclosure:** I am impartial and independent and intend to remain so. However, mindful of my obligation to disclose any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the parties or that could give rise to reasonable doubts as to my impartiality, I draw attention to the matters below and/or on the attached sheet.

Date: July 25, 2013

Signature:



*The information requested in this form will be considered by the ICC International Centre for Expertise solely for the purpose of your appointment. The information will remain confidential and will be stored in a case management database system. It may be disclosed solely to the parties and their counsel in the case referenced above for the purposes of that proceeding. According to Article 32 and, in particular, Article 40 of the French law "Informatique et Libertés" of 6 January 1978, you may access this information and ask for rectification by writing to the Centre.*

# **Annex 15.**

## Reconsideration Request Form

Version of 11 April 2013

ICANN's Board Governance Committee is responsible for receiving requests for reconsideration from any person or entity that has been materially affected by any ICANN staff action or inaction if such affected person or entity believes the action contradicts established ICANN policies, or by actions or inactions of the Board that such affected person or entity believes has been taken without consideration of material information. Note: This is a brief summary of the relevant Bylaws provisions. For more information about ICANN's reconsideration process, please visit <http://www.icann.org/en/general/bylaws.htm#IV> and <http://www.icann.org/en/committees/board-governance/>.

This form is provided to assist a requester in submitting a Reconsideration Request, and identifies all required information needed for a complete Reconsideration Request. This template includes terms and conditions that shall be signed prior to submission of the Reconsideration Request.

Requesters may submit all facts necessary to demonstrate why the action/inaction should be reconsidered. However, argument shall be limited to 25 pages, double-spaced and in 12 point font. *For all fields in this template calling for a narrative discussion, the text field will wrap and will not be limited. Please submit completed form to [reconsideration@icann.org](mailto:reconsideration@icann.org).*

### 1. Requester Information

**Name:** dot Sport Limited

**Address:** Contact Information Redacted

**Email:** Contact Information Redacted

**Phone Number (optional):** Contact information Redacted

(Note: ICANN will post the Requester's name on the Reconsideration Request page at <http://www.icann.org/en/committees/board-governance/requests-for-reconsideration-en.htm>. Requestors address, email and phone number will be removed from the posting.)

### 2. Request for Reconsideration of (check one only):

Board action/inaction

Staff action/inaction

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

(Provide as much detail as available, such as date of Board meeting, reference to Board resolution, etc. You may provide documents. All documentation provided will be made part of

the public record.)

Dot Sport Limited (referred to as the “**Requester**”) is seeking reconsideration of ICANN acceptance of the Expert Determination of the new gTLD Community Objection regarding the string .SPORT (Application ID 1-1174-59954) by the International Centre for Expertise in CASE No. EXP/471/ICANN/88. We attach the decision as Annex 1 (referred to as the “**Determination**”).

**4. Date of action/inaction:**

(Note: If Board action, this is usually the first date that the Board posted its resolution and rationale for the resolution or for inaction, the date the Board considered an item at a meeting.)

The Determination was forwarded on 25th October 2013 by the International Chamber of Commerce (referred to as the "ICC")

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

(Provide the date you learned of the action/that action would not be taken. If more than fifteen days has passed from when the action was taken or not taken to when you learned of the action or inaction, please provide discussion of the gap of time.)

25th October 2013

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

The Requester is one of two applicants for the .SPORT gTLD, and was in a contention set with SportAccord for the .SPORT string (Application ID 1-1174-59954). SportAccord was also the objector in the present case. The Determination will affect the Requester because according to the rules in the Applicant Guidebook, an application which is the subject of a successful community objection must be withdrawn. Therefore the objector

will automatically be delegated the .SPORT gTLD if a withdrawal is required.

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

Other applicants (third parties) in the current gTLD application round who are facing Community Objections are highly concerned that the Applicant Guidebook is being incorrectly applied by panelists appointed by the ICC, and that incorrect decisions already made are being cited as precedent by objectors. See attached letter to ICANN dated 1st November at Annex 2, prepared by various new gTLD applicants at page 5, who together represent, by volume, over 58% of all current open gTLD applications, a clear majority:

*"We also bring to ICANN's attention the fact that objectors on other unrelated cases are citing these decisions in their Supplemental Submissions in order to influence experts to weaken the objection criteria and rule in their favor. **If these are considered to be precedents for other Experts, we can assure you that most community objectors will unfairly prevail over applicants who applied as standard applicants in good faith.**"*

Applicants for future rounds will be put on notice that a community can be created over any generic word, which makes any application a risky proposition. As made clear by ICANN regarding the standard for objections, "[t]here is a presumption generally in favor of granting new gTLDs to applicants who can satisfy the requirements for obtaining a

*gTLD – and, hence, a corresponding burden upon a party that objects to the gTLD to show why that gTLD should not be granted to the applicant” p. 5 / 16 (New gTLD Draft Applicant Guidebook Version 3 – Public Comments Summary and Analysis, p. 67 available at <https://archive.icann.org/en/topics/new-gtlds/summary-analysis-agv3-15feb10-en.pdf>).*

**The Community Evaluation Panel would be rendered redundant by the Determination in many cases if it is accepted, since the community test for objections has been rendered an extremely simple hurdle compared to the Community Priority Evaluation. Internet users will be affected by the objector's amorphous registration policies for second level domains in the .SPORT gTLD (see Application ID 1-1012-71460 at Question 18).**

## **8. Detail of Board or Staff Action – Required Information**

**Staff Action:** If your request is in regards to a staff action or inaction, please provide a detailed explanation of the facts as you understand they were provided to staff prior to the action/inaction presented to the staff and the reasons why the staff's action or inaction was inconsistent with established ICANN policy(ies). Please identify the policy(ies) with which the action/inaction was inconsistent. The policies that are eligible to serve as the basis for a Request for Reconsideration are those that are approved by the ICANN Board (after input from the community) that impact the community in some way. When reviewing staff action, the outcomes of prior Requests for Reconsideration challenging the same or substantially similar action/inaction as inconsistent with established ICANN policy(ies) shall be of precedential value.

**Board action:** If your request is in regards to a Board action or inaction, please provide a detailed explanation of the material information not considered by the Board. If that information was not presented to the Board, provide the reasons why you did not submit the material information to the Board before it acted or failed to act. “Material information” means facts that are material to the decision.

If your request is in regards to a Board action or inaction that you believe is based upon inaccurate, false, or misleading materials presented to the Board and those materials formed

the basis for the Board action or inaction being challenged, provide a detailed explanation as to whether an opportunity existed to correct the material considered by the Board. If there was an opportunity to do so, provide the reasons that you did not provide submit corrections to the Board before it acted or failed to act.

Reconsideration requests are not meant for those who believe that the Board made the wrong decision when considering the information available. There has to be identification of material information that was in existence of the time of the decision and that was not considered by the Board in order to state a reconsideration request. Similarly, new information – information that was not yet in existence at the time of the Board decision – is also not a proper ground for reconsideration. Please keep this guidance in mind when submitting requests.

**Provide the Required Detailed Explanation here:**

ICANN has determined that the Reconsideration process can properly be invoked for challenges of third party's decisions where it can be stated that either the vendor failed to follow its process in reaching the decision, or that ICANN staff failed to follow its process in accepting that decision (Recommendation of the Board Governance Committee (BGC) Reconsideration Request 13-5, August 1, 2013, page 4).

**Failure to observe ICANN procedure**

The new gTLD program included a dispute resolution procedure pursuant to which disputes between a person or entity who applies for a new gTLD and a person or entity who objects to that gTLD are resolved in accordance with the New gTLD Dispute Resolution Procedure (Article 1(b), New gTLD Dispute Resolution Procedure (referred to as the "DRP")).

Dispute resolution proceedings are required to be administered by a Dispute Resolution Service Provider (referred to as "DRSP") in accordance with the DRP and the applicable

DRSP Rules<sup>1</sup>. Any Panel appointed by the DRSP is obliged to apply the standards that have been defined by ICANN<sup>2</sup>. The DRP expressly provides that parties cannot derogate from the DRP without the express approval of ICANN<sup>3</sup>.

In the present case of .SPORT (Application ID 1-1174-59954), as the Requester evidences below, the sole expert appointed to the Panel (referred to as the "**Expert**") and ergo, the DRSP have derogated substantially from the DRP and the Expert has failed to apply the standards defined by ICANN in reaching his decision in the Determination. We provide full details of the failure to follow the DRP and the standards listed in the Applicant Guidebook at Point 10, after providing grounds for our claim.

#### **Breach of ICANN policy on Transparency**

However, we mention here that, whilst struggling to make sense of the wide number of deviations from the DRP, the Requester undertook further research into the subject of conflict of interest. We were concerned to learn that on 22 February 2011, at a major conference of the International Bar Association in Rio de Janeiro, Brazil entitled "Olympic-Size Investments: Business Opportunities and Legal Framework", Dr. Guido Tawil, was co-chair of a panel entitled '***The quest for optimising the dispute resolution process in major sport-hosting events***' in which the following was discussed:

*"The panel will debate the trends and best practices of resolving disputes in*

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<sup>1</sup> Article 1(c) of the DRP

<sup>2</sup> Article 20(a) of the DRP

<sup>3</sup> Article 1(d) of the DRP



*challenging environments with time-sensitive deadlines. Panellists will address issues related to arbitration, dispute boards, expert determination, mediation and electronic discovery on infrastructure projects for big international sports events. The experiences of Atlanta, Barcelona and the London Olympic Games will be discussed. The panel will also address the unique aspects of sports disputes and the potential use of a fast-track dispute resolution process in this area*"<sup>4</sup>.

The flyer for this event appears at Annex 3 and demonstrates that the conference was aimed at "*Brazilian and international lawyers both private or in-house, government officials, law professors, business executives at investment management firms, company representatives, **sports federation leaders**, bankers, academics, economists and politicians.*"<sup>5</sup>

Prior to Dr. Tawil's appointment, the Requester successfully challenged the appointment of Mr. Jonathan Taylor as sole panelist, on the basis that Mr. Taylor's legal practice was closely related to the activities of the objector and its constituent sports federations. In this context, Dr. Tawil should clearly have disclosed this information about his interest in sporting arbitration and his presence at the conference. We quote from the Applicant Guidebook (§3.5.4) on the Selection of Expert Panels "Experts must be independent of the parties to a dispute resolution proceeding. Each DRSP will follow its adopted

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<sup>4</sup> <http://www.int-bar.org/conferences/conf338/>

<sup>5</sup> <http://www.int-bar.org/conferences/conf338/>

procedures for requiring such independence, including procedures for challenging and replacing an expert for lack of independence." The ICC's own rules state that: "Before an appointment, a prospective expert shall sign a statement of independence and disclose in writing to the Centre [ICC] any facts or circumstances which might be of such a nature as to call into question the expert's independence in the eyes of the parties<sup>6</sup>".

We note that Dr. Tawil was a member of the of the Conflicts of Interest Subcommittee which monitored developments concerning the IBA Guidelines on Conflicts of Interest in International Arbitration (the 'Guidelines'), adopted by the IBA Council in May 2004. To that extent, Dr. Tawil has no excuse for not disclosing this interest in the circumstances of his succession to Mr. Taylor. We quote section 3 of the Guidelines:

*"(a) If facts or circumstances exist that may, in the eyes of the parties, give rise to doubts as to the arbitrator's impartiality or independence, the arbitrator shall disclose such facts or circumstances to the parties, the arbitration institution or other appointing authority (if any, and if so required by the applicable institutional rules) and to the co-arbitrators, if any, prior to accepting his or her appointment or, if thereafter, as soon as he or she learns about them...*

***(c) Any doubt as to whether an arbitrator should disclose certain facts or circumstances should be resolved in favour of disclosure."***

The failure to disclose is further exacerbated by the controversy surrounding the terms

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<sup>6</sup> Article 7(4) of ICC Expertise Rules Section III: Appointment Of Experts

of his recusal from a recent matter involving a US oil company. "Chapter 3: Legal vultures: Law firms driving demand for investment arbitration...In another case of a US oil company against Ecuador, the investor-appointed arbitrator, Guido Tawil, resigned following allegations of an "extremely close connection and relationship" with King & Spalding, the oil company's counsel"<sup>7</sup>. King & Spalding was ranked amongst the 20 busiest investment arbitration law firms actively promoting investment treaty disputes in 2011 by Corporate Europe Observatory<sup>8</sup>.

In summary, when there has been previous controversy involving the Expert over the links between big business and boosting arbitration practice and in the specific context of the recusal of the prior choice of expert precisely on the grounds of conflict of interest with the objector, it was imperative that Dr. Tawil should have disclosed his presence at the conference. It is clear that his mind has been recently focused on the prospect of creating business opportunities by close connections with industry, and very specifically, the organized sporting industry (of which SportAccord is a part). In the circumstances, Dr. Tawil failed in his obligation to disclose a material factor relevant to confirmation of his appointment, and for this reason the resulting Determination must now be considered invalid on the grounds of failure to disclose facts or circumstances that would have, in the eyes of the parties, given rise to doubts as to the arbitrator's impartiality or independence, prior to accepting his or her appointment as Expert. There

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<sup>7</sup> [http://corporateeurope.org/trade/2012/11/chapter-3-legal-vultures-law-firms-driving-demand-investment-arbitration#footnote63\\_smh55ia](http://corporateeurope.org/trade/2012/11/chapter-3-legal-vultures-law-firms-driving-demand-investment-arbitration#footnote63_smh55ia)

<sup>8</sup> Ibid.

has been an obvious breach of the relevant DRP of the designated ICANN service provider (as set out above) as well as a breach of the ICANN policy on Transparency as set out in ICANN's Bylaws:

- Article 3 Section 1 provides that *"ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness"*.

## **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?)

We respectfully request that the BCG recommends that:

1. ICANN rejects the decision on .SPORT on the grounds that: (i) material disclosure (of facts or circumstances that would have, in the eyes of the parties, given rise to doubts as to the Expert's impartiality or independence) was not made by the Expert prior to his appointment in accordance with mandatory DRP rules (as detailed by the Requester in section 8, above), which renders the Determination void for failure to follow an ICANN procedure and, further, for violation of ICANN policy on transparency; AND/OR THAT (ii) the Expert was not appropriately qualified to render the Determination which renders the Determination void for failure by the DRSP to follow the mandatory ICANN process of appointment of an appropriately qualified expert (as set out in detail by the Requester in section 10, below); AND/OR THAT (iii) the Expert fails to follow the required ICANN procedure

and standards (in that he deviates arbitrarily and materially from the due process established by the Applicant Guidebook as set out in detail by the Requester in section 10, below).

2. In any case under section 9(1), above, the .SPORT matter should go back to a freshly convened panel which the ICC must demonstrate has been given substantial training in the Applicant Guidebook processes and standards which would be able to apply those standards and protocols in a non-arbitrary way.
3. Additionally, the Requester strongly requests that ICANN requests a formal account from Dr. Guido Tawil of whether he has any links, including current or prospective links, with the objector or any of its member federations.
4. Further, the Requester strongly requests that the ICC be formally requested to demonstrate that the Expert was given reasonable training in the Applicant Guidebook processes and standards which would have qualified and enabled him to be able to apply the ICANN standards and protocols in the required way.

**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.**

We rely on the following grounds to demonstrate standing and the right to assert this Request for Reconsideration. The following are well known requirements within ICANN Bylaws and the new gTLD application process.

**a. Standing and Right**

ICANN has determined that the Reconsideration process can properly be invoked for challenges of third party's decisions where it can be stated that either the vendor failed to follow its process in reaching the decision, or that ICANN staff failed to follow its process in accepting that decision (Recommendation of the Board Governance Committee (BGC) Reconsideration Request 13-5, August 1, 2013, page 4). As an applicant under the ICANN process directly affected by a vendor's action, we respectfully consider that we have the standing and the right to assert the Request.

**b. Grounds/Justification**

- (i) **As a party with standing in good faith, the Requester has the right to expect and insist that the ICANN appointed vendor operates "in an open and transparent matter" to "the maximum extent possible":** Article 3 Section 1 provides that *"ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness"*.
- (ii) **As a party with standing in good faith, the Requester has the right to request that ICANN staff decline to accept the determination of the Expert on the grounds that the requisite ICANN standards, processes and policies have not been followed.** The Requester further relies on the guidance provided by the Recommendation of the Board Governance Committee (BGC) Reconsideration Request 13-10/10 October 2013, which state that where we can demonstrate

there is a breach of policy or process, we can properly invoke the

Reconsideration:

- "ICANN have determined that the Reconsideration process can properly be invoked for challenges of the third-party DRSP's decisions where it can be stated that either the DRSP failed to follow the established policies or processes in reaching the decision or that ICANN staff failed to follow its policies or processes in accepting that decision (at page 5)".
- "The Applicant Guidebook (Applicant Guidebook) sets out the standards used to evaluate and resolve objections". The requesting party must "establish any policy or process that either panel failed to follow (at page 10)."

**(iii) In addition, there has been sufficient deviancy from the DRP and application of ICANN standards in the context of the failure to disclose (as set out in section 8, above) as to call into account perceived neutrality of the Expert and of the objection procedure itself; which constitutes a breach of the relevant DRP rule:**

In administering objection proceedings, DRSPs **"shall apply the standards that have been defined by ICANN<sup>9</sup>."** Further Under the ICANN Bylaws, all decisions should be made by applying documented policies "neutrally and objectively, with integrity and fairness<sup>10</sup>."

**(iv) Finally, Article 7(2) of ICC Expertise Rules Section III: Appointment Of Experts states: "Prior to the proposal of an expert, the Centre shall consider in particular**

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<sup>9</sup> Art. 20(a) of the DRP

<sup>10</sup> See ICANN Bylaws (11 Apr. 2013) Art. I, §2.8

the prospective expert's qualifications relevant to the circumstances of the case, and the expert's availability, place of residence, and language skills": **From the failure of the Expert to apply the relevant DRP and the applicable standards set out in the DRP, it is clear that the Expert was not familiar with the Applicant Guidebook, clearly had not received any training prior to drafting the Determination, and to that extent did not have the requisite "qualifications relevant to the circumstances of the case"**. The Determination of an Expert who as demonstrated below has clearly reached his decision without an appropriate understanding or observance of the DRP, must clearly be rejected as invalid.

**The requisite ICANN standards, processes and policies have not been followed.**

**(a) Creating a new standard for the *likelihood* material detriment in the Determination**

The Expert has failed to follow the DRP requirement and/or failed to apply the relevant standard as required by the Applicant Guidebook in his definition and application of the test of "likelihood". He has completely replaced the standard with a lower standard: of future "possible" harm (at paragraphs 155 and 156 of the Determination). Almost universally, legal dictionaries define or equate the term likelihood with "probability" of something being true and vice versa; "The likelihood of a proposition or hypothesis



being true, from its conformity to reason or experience, or from superior evidence or arguments adduced in its favor<sup>11</sup>." By contrast, the Expert writes:

"Therefore, the standard that the Appointed Expert should apply to this issue is the "chance" that detriment will occur, which differs from the standard of "actual damage" invariably applied in litigation or arbitration. In other words, the standard of a "likelihood of material detriment" is, in the Appointed Expert's opinion, equivalent to future "possible" damage."<sup>12</sup>

There is little basis in established jurisprudence for interpreting "likelihood" as "possible" harm: a possibility is simply one of several outcomes which may or may not materialize. Likely harm, on the other hand, is clearly the *probability*, based on experience or superior reasoning, that harm will occur. For the Expert to select this definition which favours the objector, is blatantly and expressly failing to follow the required process and replacing the required standard as required of him by the Applicant Guidebook. This is an extremely serious deviation - to draw a parallel, the test for trademark infringement under US trademark law is "likely to cause confusion, or to cause mistake, or to deceive"<sup>13</sup>". Consider the outrage which would result if the test for "likelihood" in US trademark law was watered down in a single decision by a random arbitrator to the possibility of confusion (i.e. that it is theoretically possible that there is a consumer somewhere who might be confused, whether or not it is likely that such confusion might ever happen in reality) - and there was no recourse for the affected

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<sup>11</sup> <http://thelawdictionary.org/probability/>

<sup>12</sup> Page 23 of the Determination

<sup>13</sup> See 15 USC § 1114(1)(a) and (b) <http://www.law.cornell.edu/uscode/text/15/1114>

party from that decision. We re-iterate that this arbitrary creation of a new standard is an extremely serious violation of the DRP which ICANN cannot fail to address.

In addition, a detailed reading of the Determination provides no evidence whatsoever that the Expert even considered the “level of certainty that alleged detrimental outcomes would occur.” Unlikely and hypothetical situations are given credence over any level of certainty.

**(b) A failure to apply the existing standard for cause of the material detriment to a community**

The Expert also ignored the Applicant Guidebook requirements for a showing of material detriment specifically created by the application or at least linked to it. Among the requirements for proof is the objector's burden to provide tangible proof that its community and its reliance on the DNS is likely to be adversely affected by the application for the string in question. While the Expert is clearly aware that the objector needs to prove that “**the application** creates a likelihood of material detriment...<sup>14</sup>”, **none** of the factors that were considered included anything about the application itself. The Expert did not identify a single objectionable or lacking aspect in the application that creates a likelihood of material detriment. The likely actual merits or demerits of the application were entirely ignored in the context of detriment which might be caused

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<sup>14</sup> Applicant Guidebook §3.5.4

by the success of the application. In other words, the expert failed to apply the required obligatory test which would make *the application* the cause of the material detriment.

**(c) Creation of a new standard for material detriment with several limbs**

The Expert writes:

"Even though SportAccord did not prove that dot Sport Limited would not have acted (or did not intend to act) in accordance with the interests of the sport community, the Appointed Expert considers that this is only one factor, among others, that may be taken into account in making this determination. Conversely, the Appointed Expert sees a strong dependence of the Sport Community on such domain name.<sup>15</sup>"

This is entirely the wrong test to be applied. SportAccord were never required to prove intention to cause material detriment - but they were always required to prove that the application was likely to cause material detriment. What the Expert has done effectively is to create a new test for material detriment, one with several limbs.

**(d) Creation of a new test for the subject of material detriment**

At paragraph 160, the Expert writes "Regarding the economic damage that SportAccord may suffer". The Expert was never meant to consider the economic damage that SportAccord suffered. Instead, objectors have to prove the "likelihood of material

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<sup>15</sup> Page 24 of the Determination

detriment to the rights or legitimate interests of a *significant portion of the community* to which the string may be explicitly or implicitly targeted.<sup>16</sup> In the Determination, the Expert either misread the Applicant Guidebook or incorrectly assumed that the objector was the sports community, effectively creating a new test for the subject of the material detriment.

**(e) Failure to apply the Applicant Guidebook standards consistently demonstrating that the Expert was not qualified to conduct the DRP to the required standard**

All of the foregoing points to a fundamental lack of understanding of the required DRP on the part of the Expert and/or the complete failure to apply the required ICANN standard (as set out in the Applicant Guidebook and the DRP).

We make one more point under this heading: In the Determination, the Expert expressly stated that, *"the concept of 'community' is not defined by the ICANN Guidebook."*<sup>17</sup>

*While the DRP might not define community, on the contrary, the Applicant Guidebook (the ICANN Guidebook) does in fact define the concept of community at Applicant Guidebook §4.2.3 under the heading Community Priority Evaluation Criteria:*

*"'Community' - Usage of the expression 'community' has evolved considerably from its Latin origin – 'communitas' meaning 'fellowship' –while still implying more of cohesion than a mere commonality of interest, [etc]".*

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<sup>16</sup> Applicant Guidebook §3.5.4

<sup>17</sup> Page 18 of the Determination

Such inaccuracies are forgivable in a layman: but for the dispute resolution process to engender trust in the validity of its outcome, the designated "expert" cannot afford to make such inaccurate statements at the most basic level, let alone completely redefine applicable standards and processes in the process of rendering a Determination without inviting questions as to *why*? Either there was a lack of training<sup>18</sup> and a corresponding lack of essential knowledge of the totality of the rules in the Applicant Guidebook and the procedural matrix in which all the applicants have been operating, i.e. that the Expert was unqualified for the task of making an ICANN decision under the DRP; or as, the further research we conducted on the Expert in order to explain such large deviations evidences, we would raise here the question about the whether the Determination was made by applying documented policies “neutrally and objectively, with integrity and fairness<sup>19</sup>” in light of the failure to disclose (set out in Section 8).

### **Conclusion**

A single deviation by a panelist is perhaps possible to overlook and may not amount to a breach of process. However, ICANN cannot look the other way when there are at least five demonstrably separate points on which the Expert has clearly deviated from the DRP Procedure, in the Determination, deviations so blatant and obvious as to be widely criticized in the domain industry. The following comment is typical of the thrust of these

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<sup>18</sup> The underlying question on the part of the Requester (and the 11 other new gTLD applicants who wrote to ICANN of 1st November at Annex 2): did the Expert actually read the Application Guidebook? The lack of due care and attention in his review of the evidence and his erroneous application or actual rewriting of the applicable standards presented would suggest otherwise.

<sup>19</sup> See ICANN Bylaws (11 Apr. 2013) Art. I, §2.8

comments from entirely independent observers extrapolating from the .SPORT Determination: "This lack of certainty and consistency isn't good for either applicants or objectors. *Yet ICANN may decide it's easier to just sit back and watch it unfold.*"<sup>20</sup>.

The decision in .SPORT demonstrates to date the clearest example of how completely it is possible for ICANN mandated standards to be utterly misapplied or for the DRP to be completely disregarded by an expert acting in an arbitrary and capricious way. The Expert himself would be unable to object to the grant of the Request. To quote from a Spanish language article referencing Dr. Tawil, on the liability of the state for judicial error, which is an analogous situation:

*"Conforme lo señala el profesor Guido Tawil, citando a Reyes Monterreal, "el error judicial capaz de acarrear la responsabilidad del Estado se producirá, cuando 'del contexto de la sentencia, de la realidad de los hechos y sus circunstancias y de la apreciación de la prueba y, por la otra, de la confrontación entre la solución dada y la que jurídicamente convenía al caso, resulte manifiesta la materialidad de la equivocación"*<sup>21</sup> [Translation: As noted by Professor Guido Tawil, citing Reyes Monterreal, "judicial error leading to state responsibility will occur when [on the one hand] 'in the context of the sentence, the reality of the facts and circumstances and the evaluation of

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<sup>20</sup> <http://ohashi.info/aggregator>; <http://domainnamewire.com/2013/10/29/breathaccord-wins-community-objection-against-breathe-top-level-domain-name/>; <http://domainincite.com/14918-famous-four-vows-to-fight-sport-objection-loss>, etc; See Annex 4 for sample articles.

<sup>21</sup> RESPONSABILIDAD DEL ESTADO. AUTOR. ALEJANDRO TARABORRELLI, martes, 23 de marzo de 2010 at <http://civiltaraborrelli.blogspot.com/2010/03/responsabilidad-del-estado-autor.html>.

the evidence and, on the other hand, of the confrontation between the solution given and the most legally appropriate in the case, the resulting error is manifestly obvious"]

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

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.**

**Do you have any documents you want to provide to ICANN?**

If you do, please attach those documents to the email forwarding this request. Note that all documents provided, including this Request, will be publicly posted at <http://www.icann.org/en/committees/board-governance/requests-for-reconsideration-en.htm>.

**Terms and Conditions for Submission of Reconsideration Requests**

The Board Governance Committee has the ability to consolidate the consideration of Reconsideration Requests if the issues stated within are sufficiently similar. The Board Governance Committee may dismiss Reconsideration Requests that are querulous or vexatious.

Hearings are not required in the Reconsideration Process, however Requestors may request a hearing. The BGC retains the absolute discretion to determine whether a hearing is appropriate, and to call people before it for a hearing.

The BGC may take a decision on reconsideration of requests relating to staff action/inaction without reference to the full ICANN Board. Whether recommendations will issue to the ICANN Board is within the discretion of the BGC.

The ICANN Board of Director's decision on the BGC's reconsideration recommendation is final and not subject to a reconsideration request.

A handwritten signature in blue ink, consisting of several fluid, overlapping strokes that are difficult to decipher.

Signature

8<sup>th</sup> November 2013

Date



**THE INTERNATIONAL CENTRE FOR EXPERTISE OF THE  
INTERNATIONAL CHAMBER OF COMMERCE**

CASE No. EXP/471/ICANN/88

SPORTACCORD  
(SWITZERLAND)

vs/

DOT SPORT LIMITED  
(GIBRALTAR)

This document is an original of the Expert Determination rendered in conformity with the New gTLD Dispute Resolution Procedure as provided in Module 3 of the gTLD Applicant Guidebook from ICANN and the ICC Rules for Expertise.

**INTERNATIONAL CENTRE FOR EXPERTISE  
INTERNATIONAL CHAMBER OF COMMERCE**

**SPORTACCORD  
(Switzerland)**

**v.**

**DOT SPORT LIMITED  
(Gibraltar)**

**EXP/471/ICANN/88**

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**EXPERT DETERMINATION**

By

Prof. Dr. Guido Santiago Tawil

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This document is an original of the Expert Determination rendered in conformity with Article 21 of the ICANN New gTLD Dispute Resolution Procedure

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## **TABLE OF ABBREVIATIONS**

Applicant	dot Sport Limited
Appointed Expert	The Appointed Expert as defined in Section II of this Expert Determination
DRSP	Dispute Resolution Service Provider
GNSO	ICANN Generic Names Supporting Organization
gTLD	generic Top-Level Domain
ICANN	The Internet Corporation for Assigned Names and Numbers
ICANN Guidebook	Module 3 of the ICANN's gTLD Applicant Guidebook, version dated June 4, 2012.
ICC	The International Chamber of Commerce
ICC Centre	The International Centre for Expertise of the International Chamber of Commerce
ICC Practice Note	ICC Practice Note on the Administration of Cases
ICC Rules for Expertise	The Rules for Expertise of the International Chamber of Commerce in force as from January 1 <sup>st</sup> , 2003
Objector	SportAccord
Parties	SportAccord and dot Sport Limited
Rules of Procedure	The ICANN's Attachment to Module 3 – New gTLD Dispute Resolution Procedure

## **EXPERT DETERMINATION**

1. In accordance with Article 21 of the New gTLD Dispute Resolution Procedure (“Rules of Procedure”), the Appointed Expert renders this Expert Determination.

### **I. The Parties**

#### **A. Objector**

2. Objector in these proceedings is SPORTACCORD (“SportAccord” or “Objector”), an association established according to the laws of Switzerland, domiciled at  
Contact Information Redacted

3. In these proceedings, Objector is represented by:

Mr. Pierre Germeau  
SportAccord  
Contact Information Redacted

4. Notifications and communications arising in the course of these proceedings were made to the aforementioned e-mail address.

#### **B. Applicant**

5. Applicant in these proceedings is DOT SPORT LIMITED (“dot Sport Limited” or “Applicant”), a company established according to the laws of Gibraltar, domiciled at :  
Contact Information Redacted

6. In these proceedings, Applicant is represented by:

Mr. Peter Young  
Contact Information Redacted

Contact Information Redacted

7. Notifications and communications arising in the course of these proceedings were made to the aforementioned e-mail address.

## **II. The Appointed Expert**

8. On July 29, 2013, the Chairman of the Standing Committee of the International Centre for Expertise of the International Chamber of Commerce (the "ICC Centre") appointed Prof. Dr. Guido Santiago Tawil as Expert in accordance with Articles 7 and 11(5) of the the Rules for Expertise of the International Chamber of Commerce in force as from January 1<sup>st</sup>, 2003 (the "ICC Rules for Expertise"). The Appointed Expert contact details are:

Guido Santiago Tawil  
M & M Bomchil  
Contact Information Redacted

9. Managers of the ICC Centre who are in charge of the file are:

Hannah Tümpel (Manager)  
Spela Kosak (Deputy Manager)  
Contact Information Redacted

## **III. Summary of the Procedural History**

10. On March 13, 2013, SportAccord filed an Objection pursuant to Module 3 of the gTLD Applicant Guidebook, version dated June 4, 2012 ("ICANN Guidebook"), the Attachment to Module 3 – New gTLD Dispute Resolution Procedure ("Rules of Procedure") and the Rules for Expertise of the International Chamber of Commerce in force as from January 1<sup>st</sup>, 2003 ("ICC Rules for Expertise") supplemented by the ICC Practice Note on the Administration of Cases ("ICC Practice

Note”).

11. On March 16, 2013, the ICC Centre acknowledged receipt of the Objection and conducted the administrative review of it in accordance with Article 9 of the Rules of Procedure for the purpose of verifying compliance with the requirements set forth in Articles 5 to 8 of the Rules of Procedure.

12. On April 5, 2013, the ICC Centre informed the Parties that the Objection was in compliance with Articles 5 to 8 of the Rules of Procedure. Accordingly, the Objection was registered for processing.

13. On April 12, 2013, the Internet Corporation for Assigned Names and Numbers (“ICANN”) published its Dispute Announcement pursuant to Article 10(a) of the Rules of Procedure.

14. On the same date, the ICC Centre informed the Parties that it was considering the consolidation of the present case with the case No. EXP/486/ICANN/103 (SportAccord v. Steel Edge LLC; gTLD: “.sports”) in accordance with Article 12 of the Rules of Procedure. Therefore, the ICC Centre invited the Parties to provide their comments regarding the possible consolidation no later than April 16, 2013.

15. On April 15, 2013, Applicant filed its comments on the possible consolidation by e-mail to the ICC Centre, a copy of which was sent directly to Objector.

16. On April 16, 2013, Objector filed its comments on the possible consolidation by e-mail to the ICC Centre, a copy of which was sent directly to Applicant.

17. On April 22, 2013, the ICC Centre informed the Parties that it decided not to proceed with the consolidation. It further invited Applicant to file a Response to the Objection within 30 days of the ICC Centre’s transmission of such letter in accordance with Article 11(b) of the Rules of Procedure.

18. On May 21, 2013, dot Sport Limited filed its Response to SportAccord’s Objection.

19. On May 22, 2013, the ICC Centre acknowledged receipt of Applicant’s Response. It further informed the Parties that the Response was in compliance with the Rules of Procedure.

20. On June 21, 2013, the ICC Centre appointed Mr. Jonathan P. Taylor as expert in accordance with Article 13 of the Rules of Procedure and Article 9(5)(d) of the Rules for Expertise.

21. On July 16, 2013, the ICC Centre acknowledged receipt of Applicant’s objection to Mr. Taylor’s appointment.

22. On July 25, 2013, the ICC Centre informed the Parties that it had decided not to confirm the appointment of Mr. Taylor as Expert in the present case and, there-

fore, it would proceed with the appointment of another Expert.

23. On July 29, 2013, the Chairman of the Standing Committee of the ICC Centre appointed Prof. Dr. Guido Santiago Tawil as Expert in accordance with Article 7 of the ICC Rules for Expertise and Article 3(3) of its Appendix I. On July 30, 2013, the ICC Centre notified the Parties of the Expert's appointment. It further sent the Parties the Expert's *curriculum vitae* as well as his Declaration of Acceptance and Availability, Statement of Impartiality and Independence.

24. On August 2, 2013, the ICC Centre reminded the Parties that the estimated costs had been paid in full by each party and confirmed the constitution of the expert panel.

25. On the same day, the electronic file was transferred by the ICC Centre to the Appointed Expert.

26. On August 5, 2013, the Appointed Expert issued Communication E-1 by means of which it informed the Parties that (i) based on their submissions and pursuant to Article 21 of the Rules of Procedure, it would render its Expert Determination, and (ii) at that stage, it did not consider necessary to request the Parties to submit any written statement in addition to the Objection and the Response, including their respective exhibits.

27. In accordance with point 6 of the ICC Practice Note on the Administration of Cases ("ICC Practice Note"), the requirement for the Expert Mission contained in Article 12(1) of the ICC Rules for Expertise has been waived.

28. Pursuant to Article 21(a) of the Rules of Procedure, the time-limit for rendering this Expert Determination expires on September 16, 2013.

29. The Expert Determination was submitted in draft form to the ICC Centre on August 23, 2013, within the 45 day time limit in accordance with Article 21(a) of the Procedure.

#### **IV. Procedural Issues and Applicable Rules**

30. SportAccord filed a "Community Objection", defined as "*a substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted*" according to Article 3.2.1. of the ICANN Guidebook, against dot Sport Limited's application for the gTLD ".sport".

31. Pursuant to Article 5(a) of the Rules of Procedure, all submissions –including this Expert Determination– have been made in English. Further, all submissions and communications between the Parties, the Appointed Expert and the ICC Centre were filed electronically as stated in Article 6(a) of the Rules of Procedure.



32. In accordance with Article 4(d) of the Rules of Procedure, the seat of these proceedings is the location of the ICC Centre in Paris, France.

33. For the purpose of rendering this Expert Determination, the applicable rules are: the ICC Rules for Expertise, supplemented by the ICC Practice Note, the ICANN Guidebook and the Rules of Procedure.

## V. Summary of the Parties' Positions

34. The issues to be addressed by the Appointed Expert shall be those resulting from the Parties' submissions and those which the Appointed Expert considers to be relevant to make a determination on the Parties' respective positions.

35. Based on the Parties' written submissions (SportAccord's Objection, dot Sport Limited Response and their respective exhibits), the main issues and claims under determination can be summarised as follows.

### A. Objector's Position

36. SportAccord claims that it has standing to object to applications for the gTLD ".sport" on the grounds that it is an established international representative institution of the Sport Community,<sup>1</sup> which has been impacted by such gTLD application. Further, Objector states that it is a not-for-profit association constituted in accordance with the Swiss Civil Code and comprises several autonomous and independent international sports federations and other international organizations<sup>2</sup> which contribute to sport in various fields.<sup>3</sup>

37. Regarding the description of the basis for the Objection as established in Article 3.3.1 of the ICANN Guidebook, SportAccord states that the Sport Community

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<sup>1</sup> According to Objector, the Sport Community is organized on local, national and international levels and is clearly delineated by way of its organizational structures and its values. See: Objection, page 6.

<sup>2</sup> SportAccord has 91 full members: international sports federations governing specific sports worldwide and 16 associate members: organizations which conduct activities related to the international sports federations. See: Exhibit Ap-2.

<sup>3</sup> Indeed, Objector claimed that "*SportAccord is the umbrella organisation for both Olympic and non-Olympic international sports federations as well as organisers of international sporting events*". See: Objection, page 6. Article 2 of SportAccord Statutes establishes several purposes of this association which, among others, include: "a) to promote sport at all levels, as a means to contribute to the positive development of society; b) to assist its Full Members in strengthening their position as world leaders in their respective sports... d) to increase the level of recognition of SportAccord and its Members by the Olympic Movement stakeholders as well as by other entities involved in sport... j) to coordinate and protect the common interests of its Members... k) to collaborate with organisations having as their objective the promotion of sport on a world-wide basis". See: Exhibit Ap-1. Objector states that its programs include, among others, "*International Federation (IF) recognition, IF relations, doping-free sport, fighting illegal betting, governance, sports' social responsibility, multi-sports games, the '.sport' initiative, the sports hub, the annual SportAccord Convention and the annual IF Forum*". See: Objection, page 7.

is organized, delineated, of long-standing establishment and impacted by sport-related domain names. In light of this statement, Objector expresses its substantial opposition to the application, claiming representation of a significant portion of the Sport Community. It further argues that there is no evidence of community support for any of the non-community-based applications.<sup>4</sup>

38. According to SportAccord, the Sport Community is both targeted implicitly and explicitly by the application for the “.sport” gTLD.<sup>5</sup>

39. Finally, Objector elaborates on the material “*detriment*” to the rights and legitimate interests of the Sport Community –and to users in general– if dot Sport Limited’s application is allowed to proceed or even finally approved.<sup>6</sup>

40. Based on these allegations, Objector requests that the Appointed Expert acknowledges that (i) the “.sport” gTLD string targets the Sport Community, (ii) there is a substantial opposition to such application from a significant portion of the Sport Community, and (iii) therefore, the application for the “.sport” gTLD is to be rejected.

#### B. Applicant’s Position

41. Applicant rejects SportAccord’s Objection. From the outset of its Response, Applicant alleges that the “.sport” gTLD is intended and designed to increase availability and access to create, produce and disseminate informative, creative and innovative sport-related content. It further alleges that mechanisms have been established to ensure that the gTLD “*operates and grows in a manner that is responsible, protects consumers and promotes consumer and industry trust and confidence*”.<sup>7</sup>

42. In addition, dot Sport Limited alleges that SportAccord has no standing to object on the ground that it fails to prove that it has “*an on-going relationship*” with a clearly delineated Sport Community as a whole.<sup>8</sup>

43. In relation to the “Community” argument, dot Sport Limited explains that the Sport Community is not “*clearly delineated*” because it is comprised of a significant number of stakeholders who do not necessarily share similar goals, values or interests. It also emphasizes that such “Community” lacks formal boundaries, which is also proved by the fact that there is a disagreement about the entities that make up such “Community”.<sup>9</sup>

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<sup>4</sup> See: Objection, page 8.

<sup>5</sup> See: Objection, page 10.

<sup>6</sup> See: Objection, page 11.

<sup>7</sup> See: Response, page 4. In particular, Applicant claims that the objection process “*is not a substitute for Community Evaluation and was not envisaged to be a mechanism by which one applicant could gain a competitive advantage over another*”.

<sup>8</sup> See: Response, pages 4 and 5.

<sup>9</sup> See: Response, page 5.

44. Further, Applicant rejects Objector's argument that the substantial opposition to the application comes from a significant portion of the Sport Community. Indeed, it is Applicant's position that Objector represents a subset of the alleged Community and does not represent the interests, goals, or values of numerous stakeholders in such "Community".<sup>10</sup>

45. In any event, dot Sport Limited states that *"there is not a strong association between the "Community" represented by Objector and the applied for ".sport" TLD" string.*<sup>11</sup>

46. Finally, concerning the material *"detriment"* to the rights and legitimate interests of the Sport Community –as alleged by Objector–, Applicant argues that SportAccord failed to prove a likelihood of material detriment. It further states that the damages alleged by SportAccord are speculative in nature and there is no evidence that such alleged detrimental outcomes would occur.<sup>12</sup>

47. Based on these arguments, dot Sport Limited requests the Appointed Expert to hold that SportAccord's objection is invalid and, therefore, deny the Objection.

## **VI. Findings of the Appointed Expert**

48. In order to make its determination, the Appointed Expert will address the following issues, in accordance with the criteria listed in the ICANN Guidebook :

(1) *Does SportAccord have standing to put forward a Community Objection against the application made by dot Sport Limited?*

(2) *Is the Sport Community clearly delineated?*

(3) *Is there a substantial opposition to the application ".sport" gTLD on behalf of a significant part of the Sport Community?*

(4) *Is the Sport Community explicitly or implicitly targeted by the application ".sport" gTLD?*

(5) *Is there any material detriment to the rights or legitimate interests of the Sport Community if the application ".sport" gTLD is allowed to proceed?*

49. In the following Sections, the Appointed Expert sets out and summarises his understanding of the Parties' positions concerning each of these issues, as elaborated by the Parties in their written pleadings, followed by the Appointed Expert's own analysis and determination concerning such issues.

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<sup>10</sup> See: Response, page 8.

<sup>11</sup> See: Response, page 10.

<sup>12</sup> See: Response, page 11.

A. Objector's Standing

(1) *Does SportAccord have standing to put forward a Community Objection against the application made by dot Sport Limited?*

50. The Appointed Expert is of the view that prior to considering the grounds of the Objection, it is necessary to address this preliminary issue, namely the question of whether SportAccord has standing to put forward a "Community Objection" against the application ".sport" gTLD made by dot Sport Limited.

51. The Appointed Expert will start by deciding this preliminary question in the understanding that if the Appointed Expert finds that the Objector lacks *ius standi* to object, it will become unnecessary to enter into the analysis of the grounds of the Objection.

(i) *Positions of the Parties*

52. Applicant has challenged Objector's standing to file an objection against the application for the ".sport" gTLD. In its Response, Applicant argues that Objector failed to prove that it has "*an on-going relationship*" with a "*clearly delineated Sport Community*" as a whole, failing to meet the standard established in Article 3.2.2.4 of the ICANN Guidebook.<sup>13</sup>

53. While dot Sport Limited recognizes that Objector is an "established institution", it affirms that SportAccord only has an on-going relationship "*with a particular subset of stakeholders*".<sup>14</sup>

54. Applicant goes further and states that, in fact, there is no Sport Community since there are so many activities which can be legitimately identified as "sports". Based on this statement, dot Sport Limited reaffirms its position by stating that the alleged Sport Community is not "*clearly delineated*", because "*just about anyone could claim to have an interest in sport*".<sup>15</sup> Additionally, Applicant criticizes Objector's policies for creating obstacles to free and open participation in its activities, membership and leadership.

55. Although Objector has not dealt directly with these arguments, which were put forward once SportAccord had submitted its Objection, it claims that it has standing to object to the application for the ".sport" gTLD since it is an established international representative institution of the Sport Community, which has been impacted by the mentioned string application.

56. Objector states that it is a not-for-profit association established since 1967,

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<sup>13</sup> See: Response, page 4.

<sup>14</sup> See: Response, page 5. According to Applicant, "*Objector's mission statement clearly shows that Objector only represents a particular subset of the alleged community, organized sports, failing to represent other stakeholders such as: unorganized sports...; sports equipment manufacturers and retailers; media outlets such as newspapers, TV, bloggers... Objector cannot speak for them*".

<sup>15</sup> See: Response, page 5.

which has an ongoing relationship with the Sport Community due to the fact that it comprises autonomous and independent international sports federations and other international organizations.

57. In particular, SportAccord alleges that it has (i) 91 full members: international sports federations governing specific sports worldwide, and (ii) 16 associate members: organizations which conduct activities closely related to the international sports federations. In Objector's words, "*SportAccord is the umbrella organisation for both Olympic and non-Olympic international sports federations as well as organisers of international sporting events*".<sup>16</sup>

58. Finally, in the Objector's view, the Sport Community is highly organized on local, national and international levels and, thus it is clearly delineated by way of its organizational structures and values.

(ii) *Considerations of the Appointed Expert*

59. Pursuant to Article 3.2.2 of the ICANN Guidebook, it is for the Appointed Expert to determine whether the Objector has standing to object.

60. In accordance with the ICANN Guidebook, objectors must satisfy certain standing requirements to have their objections considered by the expert panel. In the case of a "Community Objection", "*established institutions associated with clearly delineated communities are eligible to file a community objection. The community named by the objector must be a community strongly associated with the applied-for gTLD string in the application that is the subject of the objection...*".<sup>17</sup>

61. Therefore, to qualify for standing for a "Community Objection", the Objector shall fulfill two conditions, namely that (i) it is an established institution, and (ii) it has an ongoing relationship with a clearly delineated community.

62. The ICANN Guidebook provides useful guidelines so as to determine whether these two requirements should be considered as satisfied by the Objector.

63. Regarding the first condition to be met (i.e.: "*established institution*"), Article 3.2.2.4 of the ICANN Guidebook lists some key factors which may be considered by the expert panel in making its determination. These factors are: (i) the level of global recognition of the institution, (ii) the length of time the institution has been in existence; and (iii) the public historical evidence of its existence, such as the presence of a formal charter or national or international registration, or validation by a government, inter-governmental organization, or treaty.

64. In order to evaluate its standing "*the institution must not have been estab-*

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<sup>16</sup> See: Objection, page 6.

<sup>17</sup> Article 3.2.2.4 of the ICANN Guidebook.

*lished solely in conjunction with the gTLD application process”.*<sup>18</sup>

65. SportAccord (previously known as “GAISF”, the General Association of International Sports Federations) is a not-for-profit association established in 1967.<sup>19</sup> The length of time that SportAccord has been in existence –almost half a century– is sufficient, in the Appointed Expert’s view, to consider Objector as a long-established institution and clearly evidences that such association was not created with the sole intention to participate in the gTLD application process.

66. Additionally, the Appointed Expert notes that Objector also meets the standard of “global recognition”, as mentioned in the ICANN Guidebook, since it has a very large membership, comprising of 91 international sports federations and 16 organizations related to sports. In the Appointed Expert’s opinion, this is also indicative of Objector’s public historical evidence of its existence.

67. Even though Applicant has relied on a survey according to which Objector is hardly known to the majority of the public surveyed,<sup>20</sup> it is the Appointed Expert’s view that the level of global recognition of any institution should be analysed within the context of the community that such institution is claiming to be a part of, not the public in general.

68. Although the facts described above would be enough to confirm Objector’s compliance with the first condition, the Appointed Expert notes that the very same Applicant has recognized that Objector is an “*established institution*”,<sup>21</sup> focussing its challenge on the second condition required to file an objection (i.e.: an on-going relationship with a clearly delineated community).

69. Based on these reasons, the Appointed Expert concludes that Objector is an “*established institution*” in the terms of Article 3.2.2.4 of the ICANN Guidebook.

70. Having decided that Objector meets the first standard contained in the ICANN Guidebook, the Appointed Expert now turns to the issue of whether Objector has an on-going relationship with a clearly delineated community.

71. To make a determination on this issue, the Appointed Expert should take into account the guidelines provided in Article 3.2.2.4 of the ICANN Guidebook. To this end, such provision sets out the following elements to be considered: (i) the presence of mechanisms for participation in activities, membership, and leadership, (ii) the institutional purpose related to the benefit of the associated community, (iii) the performance of regular activities that benefit the associated community; and (iv) the level of formal boundaries around the community.

72. Referring to these factors, the ICANN Guidebook states that “*the panel will*

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<sup>18</sup> See: Article 3.2.2.4 of the ICANN Guidebook.

<sup>19</sup> See: Exhibit Ap-1.

<sup>20</sup> Response, page 8 and Annex A-1.

<sup>21</sup> Response, page 4.

*perform a balancing of the factors listed above, as well as other relevant information, in making its determination. It is not expected that an objector must demonstrate satisfaction of each and every factor considered in order to satisfy the standing requirements”.*<sup>22</sup>

73. Applicant has challenged Objector’s standing on the grounds that it only has an on-going relationship “with a particular subset of stakeholders” and not the community as a whole.<sup>23</sup>

74. In the Appointed Expert’s view, Applicant’s argument is not convincing. First, because even though Objector may not represent the “entire” Sport Community, it acts for a preponderant part of such community.

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

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

77. Furthermore, Objector’s declared purposes are closely associated with the benefits of the community members it represents<sup>24</sup> and its regular activities are naturally intended to benefit its members.

78. In addition, the Appointed Expert notes that Objector, as an institution that represents multiple sports federations, has explicitly foreseen –through its statutes– different mechanisms for participation in activities, membership and leadership among the sport federations and organizations. For instance, SportAccord’s statutes regulate in detail the procedure to become a member of the institution and participate accordingly.<sup>25</sup>

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<sup>22</sup> Article 3.2.2.4 of the ICANN Guidebook.

<sup>23</sup> Response, page 4.

<sup>24</sup> According to Objector’s statutes (See: Exhibit Ap-1): “*The objectives of SportAccord are: a) to promote sport at all levels, as a means to contribute to the positive development of society; b) to assist its Full Members in strengthening their position as world leaders in their respective sports; c) to develop specific services for its Members, and provide them with assistance, training and support; d) to increase the level of recognition of SportAccord and its Members by the Olympic Movement stakeholders as well as by other entities involved in sport; e) to organise multi-sports games and actively support the organisation of multi-sports games by its Members; f) to be a modern, flexible, transparent and accountable organisation; g) to organise, at least once a year, a gathering of all of its Members, and of other stakeholders of the sport movement, preferably on the occasion of its General Assembly; h) to recognise the autonomy of its Members and their authority within their respective sports and organisation; i) to promote closer links among its Members, and between its Members and any other sport organisation; j) to coordinate and protect the common interests of its Members; k) to collaborate with organisations having as their objective the promotion of sport on a world-wide basis; l) to collect, collate and circulate information to and among its Members”.*

<sup>25</sup> See: Exhibit Ap-1, SportAccord’s Statutes, Articles 5 to 15.

79. Regarding Applicant's argument that Objector's policies create obstacles to free and open participation in its activities, membership and leadership (for instance, by excluding some sports activities, such as card games), in the Appointed Expert's view such "obstacles" are simply the conditions that any organization has to meet to become a member of the institution, as occurs in any other field.<sup>26</sup>

80. In analysing Objector's statutes, membership is open to "*any sport organisation... which groups together the majority of the National Federations (or organisations) throughout the world practising its sport and regularly holding international competitions...*" and "*any sport organisation which groups together the activities of several members... for the purpose of organising competitions*";<sup>27</sup> which shows that membership, far from being closed and exclusive, is accessible to any organization which complies with these minimum standards.

81. Finally, although the issue of the existence of a "Sport Community" is related to the merits of the Objection –and will be analysed in section B–, the Appointed Expert is of the view that Objector's "community", which includes multiple organizations associated with sports, is "*clearly delineated*" for the purpose of objecting to the application for ".sport" gTLD made by dot Sport Limited.

82. Therefore, in the Appointed Expert's view, SportAccord is an established institution which has an ongoing relationship with a clearly delineated community and, consequently, has standing to object to Applicant's application in the present case.

#### B. The "Sport Community"

##### (2) *Is the Sport Community clearly delineated?*

83. Having decided that SportAccord has standing to object to the application for ".sport" gTLD made by dot Sport Limited, the Appointed Expert will now focus on the issue of whether the Sport Community is clearly delineated.

84. The Parties have discussed at length the independent existence of a "Sport Community" and diverging positions were advanced on this issue.

##### (i) *Positions of the Parties*

85. In its Objection, SportAccord defines the Sport Community as "*the community of individuals and organizations who associate themselves with Sport*".<sup>28</sup> According to Objector, Sport is an activity done by individuals or teams of individuals, aiming at healthy exertion, improvement in performance, perfection of skill, fair

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<sup>26</sup> It should be also noted that not all game cards –as claimed by Applicant– are excluded from Objector's membership. The World Bridge Federation is, for instance, a member of SportAccord.

<sup>27</sup> See: Exhibit Ap-1, SportAccord's Statutes, Article 6.

<sup>28</sup> See: Objection, page 8.



competition and desirable shared experience between practitioners as well as organizers, supporters and audience.

86. Objector's position is that the Sport Community "*is highly organized*" both at a local level (local clubs, etc.) and a higher level (Sport Community governance is exercised by regional, national, and international Sport Federations, which collaborate at the local, national and international levels in sport events or with event organizers, governments, the various bodies of the Olympic Movement, associations or federations).

87. Even though Objector states that it represents 107 International Sport Federations, individual practitioners of sport, sport spectators, sport fans and sport sponsors are also part of the Sport Community and share their values and objectives.<sup>29</sup>

88. Finally, Objector explains that the Sport Community "*is clearly delineated*" since it has formal lines of accountability on all levels. In Objector's view, the keyword "*delineated*" should not imply a focus on rigid edges of a community, like card-carrying membership organizations.<sup>30</sup>

89. Applicant rejects Objector's assertion that the Sport Community is "*clearly delineated*". Indeed, dot Sport Limited contends that the Sport Community lacks this characteristic since "*it is comprised of a significant number of stakeholders who do not necessarily share similar goals, values or interests, thus the community lacks formal boundaries, evidenced by disagreement as to which stakeholders are considered members of the Sport community*".<sup>31</sup>

90. According to Applicant, the alleged Sport Community is associated with a "generic" string (".sport") and, therefore, it cannot meet the "*clearly delineated*" criteria due to its broad definition and the nature of the generic term ("sport"), which is by definition used by a significant number of people, who do not necessarily share similar goals, values or interests.

91. Further, Applicant criticizes Objector's assertion that the Sport Community is "*highly organized*" when there is no organization, for instance, for viewers, the media or amateur sportspeople who play sport for fun in their spare time. In Applicant's view, "*there is therefore confusion as to who actually comprises the sport community. This is simply because there is no clearly delineated community*".<sup>32</sup>

92. In addition, dot Sport Limited states that, according to a survey undertaken by itself, there is a low level of public recognition of a Sport Community since 74% of participants surveyed did not see formal organization or registration as a requirement to participate in sports.<sup>33</sup>

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<sup>29</sup> See: Objection, page 9.

<sup>30</sup> See: Objection, page 9.

<sup>31</sup> See: Response, page 5.

<sup>32</sup> See: Response, page 6.

<sup>33</sup> See: Response, Annex 1.

93. Applicant also argues that there is no agreement among experts as to the definition of “sport”, giving examples of different accepted definitions. In analyzing Objector’s definition of “sport”, Applicant concludes that such concept fails to recognize other community stakeholders, for example, non-federation sport organizations (such as, community recreational leagues), media outlets that cover sports, equipment producers and retailers, video game industry, etc.

94. Finally, it is dot Sport Limited’s position that the Sport Community is not clearly delineated because there is no agreement as to the entities that make up the alleged community. Applicant explains that, for instance, Objector’s membership criteria exclude legitimate sport activities from membership such as poker, electronic gaming and hunting.<sup>34</sup>

95. To conclude, Applicant states that Objector acknowledged that the Sport Community is comprised of “billions of members” and, consequently, a community comprising the majority of the human race is not clearly, or even slightly, delineated.<sup>35</sup>

(ii) *Considerations of the Appointed Expert*

96. The Appointed Expert has to decide whether the “Sport Community” is clearly delineated.

97. In accordance with Article 3.5.4 of the ICANN Guidebook, “...for an objection to be successful... the objector must prove that the community expressing opposition can be regarded as a clearly delineated community”.

98. As mentioned before, the ICANN Guidebook offers useful guidelines in order to determine whether a community is clearly delineated. “A panel could balance a number of factors to determine this, including but not limited to: (i) the level of public recognition of the group as a community at a local and/or global level; (ii) the level of formal boundaries around the community and what persons or entities are considered to form the community; (iii) the length of time the community has been in existence; (iv) the global distribution of the community (this may not apply if the community is territorial); and (v) the number of people or entities that make up the community”.<sup>36</sup>

99. Having set out the factors to be considered, the ICANN Guidebook further provides that “...if opposition by a number of people/entities is found, but the group represented by the objector is not determined to be a clearly delineated community, the objection will fail”.

100. The concept of “community” is not defined by the ICANN Guidebook. The

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<sup>34</sup> See: Response, page 7.

<sup>35</sup> See: Response, page 7.

<sup>36</sup> Article 3.5.4 of the ICANN Guidebook.

word “community” is broad and allows more than one interpretation. Besides the political (nationality), religious or ethnic meanings or implications that the term may have, it generally refers to a “group of people” that may be considered as a “unit” that share similar interests, goals or values.<sup>37</sup>

101. Furthermore, the word “sport” is also a generic term. If someone mentions the word “sport” without any specificity, it is highly probable that different listeners will imagine different aspects, ideas or own preconceptions about what the speaker does want to refer. The same occurs with other generic terms such as “health”, “law”, “government”, “commercial”, etc.

102. Nevertheless, the generic nature of these words does not constitute an obstacle for a community to identify itself with them. For instance, the word “lawyer” (or, more precisely, the “.lawyer” gTLD) may identify the community of lawyers around the world, even though it would be difficult (or impossible) to find that all lawyers share the same goals, values or interests.

103. In the case at hand, it is the Appointed Expert’s view that the community represented by Objector (international sports federations and organization) enjoys a high level of public recognition in its field and has existed for decades. Further, since it was established in 1947, it has succeeded in increasing the number of its members, rather than becoming smaller or less representative.

104. Further, regarding the “*number of... entities that make up the community*”, an aspect that the ICANN Guidebook highlights as relevant, the Appointed Expert notes that Objector is comprised of 91 well-known international sports federations and 16 organizations related to sports. If SportAccord had not obtained a high level of recognition in the sport field since it had been established, some of the well-known federations included in such association would not have remained part of it.

105. In any event, the Appointed Expert understands that this is not a case in which a single sport association or organization claims for the priority use of the “.sport” gTLD –irrespective of other federations or organization which could claim for the same right or interest–, but the whole community of sports federations and organization (or, at least, the most part of it) represented by Objector.

106. Finally, the Appointed Expert cannot accept Applicant’s argument that the Sport Community is not organized when Objector has proved that it has its own mechanism of participation, programs and organization through its statutes and government bodies. The fact that the media (which may constitute a different community) or viewers are unable to be part of this association is irrelevant to consider Objector as a delineated community. Otherwise, no community could be

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<sup>37</sup> According to the British English Dictionary, the word “community” has three different meanings “1) the people living in one particular area or people who are considered as a unit because of their common interests, social group, or nationality, 2) a group of animals or plants that live or grow together, 3) the general public”. See British English Dictionary, Cambridge Ed., 2013.

recognized under the ICANN gTLD proceedings since it would be easy for any Applicant to find secondary or not closed-related members outside of it.

107. The “Sport Community”, in the Appointed Expert’s view, is a community that clearly distinguishes itself from other communities by its characteristics, objectives and values.

108. Therefore, the Appointed Expert concludes that the Sport Community is clearly delineated for the purpose of these proceedings and, consequently, Applicant’s objections in this respect must also fail.

C. The “Substantial Opposition” to the Application

*(3) Is there a substantial opposition to the application for the “.sport” gTLD on behalf of a significant part of the Sport Community?*

109. Having decided that the Sport Community is clearly delineated, the Appointed Expert now turns to determine whether there is a substantial opposition of a significant part of the Sport Community.

*(i) Positions of the Parties*

110. Objector highlights that it expresses opposition on behalf of the 107 International Federations encompassed in such association, as listed in Appendix A-2 of the Objection. Objector has proffered more than 50 letters of opposition from different federations and also points to other individual oppositions.<sup>38</sup>

111. SportAccord notes that while many international sport bodies, international sport federations and specialized agencies have already expressed their opposition, there is no evidence, by contrast, of community support in favour of the application “.sport” gTLD made by dot Sport Limited.

112. According to SportAccord, “*the portion of the community expressing opposition through its representative organization is not just significant, but overwhelming*”.<sup>39</sup> It also argues that Applicant’s application targets the most visible and highly organized segments of the Sport Community, represented by national and international sport federations.

113. Finally, Objector elaborates on the argument that although individual practitioners of the Sport Community (who do not need organization to practise sports) have not made opposition to the application, it is natural that the organized segment of such Community reacts and raises objections on behalf of their stakeholders.

114. In turn, Applicant claims that SportAccord has failed to prove “substantial

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<sup>38</sup> See: Objection, page 9.

<sup>39</sup> See: Objection, page 10.

opposition” to the application, since Objector represents a subset of the alleged community and does not represent the interests, goals, or values of numerous stakeholders in the alleged community (for instance, sports excluded from membership and the other stakeholders not represented by Objector).<sup>40</sup>

115. Applicant insists on the “relative” low number of oppositions compared with the composition of the alleged community. In Applicant’s own words, “*expressions of opposition from Objector are small compared to the large composition of the alleged ‘sport’ community*”.<sup>41</sup>

116. Further, dot Sport Limited also claims that Objector did not provide examples of support from members of the alleged community that do not comprise its membership. Based on this argument, Applicant states that Objector does not encompass all sport activities by any means.

117. Applicant also alleges that Objector organized a campaign among its members to support its Objection by using a standard template letter that requires no thought or effort to sign it.<sup>42</sup> Notwithstanding so, Applicant notes that only half of SportAccord’s members have actually shown support to the Objection. Further, Applicant states that Objector has offered no proof that its membership as a whole signed on to the opposition.

118. Regarding the counter-argument related to individual sport practitioners (not organized) advanced by Objector, dot Sport Limited answers that such assertion “*totally ignores the fact that the sports industry includes a great number of professional organisations such as media outlets, who could easily have objected*” but did not do so.<sup>43</sup>

(ii) *Considerations of the Appointed Expert*

119. The Appointed Expert has to decide whether there is a substantial opposition to the application for the “.sport” gTLD on behalf of a significant part of the Sport Community.

120. To this end, the Appointed Expert will focus on Article 3.5.4 of the ICANN Guidebook, which establishes the standards to be analysed in order to make a determination on this issue.<sup>44</sup>

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<sup>40</sup> See: Response, page 8. Moreover, dot Sport Limited states that, according to the sports survey undertaken by itself, the vast majority of the public are not even aware of the existence of SportAccord.

<sup>41</sup> See: Response, page 8.

<sup>42</sup> See: Response, page 9.

<sup>43</sup> See: Response, page 9.

<sup>44</sup> According to such provision, “*a panel could balance a number of factors to determine whether there is substantial opposition, including but not limited to: (i) number of expressions of opposition relative to the composition of the community; (ii) representative nature of entities expressing opposition; (iii) level of recognized stature or weight among sources of opposition; (iv) distribution or diversity among sources of expressions of opposition, including: (a) regional (b) subsectors of community, (c) the leadership of community, (d) membership of community; (v) historical defense of the*

121. In order to determine the appropriate standard to evaluate the Objection, it should be noted that Article 3.5.4 of the ICANN Guidebook does not require that the “entire” community expresses its opposition. Rather, it requires that Objector proves a “substantial” opposition within the community it has identified itself as representing.

122. Therefore, the Appointed Expert is of the view that the argument on the “relative low number” of oppositions compared to the composition of the Sport Community, as put forward by Applicant, should be balanced with the relevance and representative nature of each opposition within the community. For instance, in the present case, the opposition made by an individual rugby player or fan will not have the same weight in order to determine if an objection represents substantial opposition as the one made by the International Rugby Board.<sup>45</sup>

123. In this respect, the Appointed Expert is satisfied with the evidence produced by Objector, which includes 55 letters of opposition submitted by different recognized sport federations,<sup>46</sup> together with other statements from different reputable sport organizations and specialized agencies, such as the International Olympic Committee (IOC), the World Anti-Doping Agency (WADA) or the United Nations Office on Sport for Development and Peace (UNOSDP).<sup>47</sup>

124. Aside from this, the Appointed Expert notes that Objector represents all its members in these proceedings. Indeed, in accordance with its internal organization, the fact that SportAccord’s Executive Council has decided to object to dot Sport Limited’s application implies that all members of the association are deemed to have agreed to such decision to object.<sup>48</sup>

125. Therefore, to require individual letters from all SportAccord’s members –as Applicant has suggested– is simply redundant. The fact that other sport federations represented by Objector did not explicitly object to dot Sport Limited application should not be seen, in the Appointed Expert’s view, as an opposition to SportAccord’s claim.

126. Consequently, based on the representative nature of the Objector for the Sport Community, the relevance of the entities which have expressed their opposition (either individually or through the Objector) and the global recognition of the entities which are represented by Objector in these proceedings, the Appointed Expert concludes that there is a substantial opposition to the application “.sport” gTLD on behalf of a significant part of the Sport Community as established in Article 3.5.4 of the ICANN Guidebook.

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*community in other contexts; and (vi) costs incurred by objector in expressing opposition, including other channels the objector may have used to convey opposition”.*

<sup>45</sup> See: Objection, Appendix A-3, tab 34.

<sup>46</sup> See: Objection, Appendix A-2.

<sup>47</sup> See: Objection, Appendix A-3.

<sup>48</sup> SportAccord’s Statutes, Article 33.3 “...the Council represents and commits SportAccord with regard to third parties”. See Exhibit Ap-1.

D. Targeting

(4) *Is the Sport Community explicitly or implicitly targeted by the application “.sport” gTLD?*

127. The next issue to be decided by the Appointed Expert is whether the Sport Community has been explicitly or implicitly targeted by the application for the “.sport” gTLD made by Applicant.

(i) *Positions of the Parties*

128. Due to the fact that word “sport” is almost exclusively associated with organized sport, sport for leisure and sport for health, Objector states that the Sport Community is “*explicitly*” targeted by the application for the “.sport” gTLD. In any event, SportAccord also argues that the “.sport” gTLD string “*implicitly*” targets the Sport Community.

129. Therefore, Objector concludes that the criterion of “*strong association*” between the Sport Community and the gTLD string “.sport” is, in its view, completely satisfied.<sup>49</sup>

130. Conversely, Applicant alleges that Objector failed to prove a “*strong association*” between the applied-for gTLD string and the alleged community since SportAccord does not represent the community as a whole. According to dot Sport Limited, “*whereas Applicant’s use of the TLD would target the entire sports industry, Objector plans to restrict the TLD at launch to persons of their choosing, beginning with Federations and other governing sports bodies, before later opening up the TLD to persons of its choosing outside the restricted definitions, using vague and unspecified post validation procedures and unspecified eligibility requirements*”.<sup>50</sup>

131. Applicant considers that it has a broader target than the alleged Sport Community, and the “*strong association*” alleged by Objector is purely ancillary or derivative.

(ii) *Considerations of the Appointed Expert*

132. It is for the Appointed Expert to decide whether the Sport Community is explicitly or implicitly targeted by the application for the “.sport” gTLD.

133. Pursuant to Article 3.5.4 of the ICANN Guidebook, “*the objector must prove a strong association between the applied-for gTLD string and the community represented by the objector. Factors that could be balanced by a panel to determine this include but are not limited to: (i) Statements contained in application; (ii) other*

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<sup>49</sup> See: Objection, page 10.

<sup>50</sup> See: Response, page 10.

*public statements by the applicant; (iii) associations by the public”.*

134. In the Appointed Expert’s opinion, since the community represented by Objector is the “Sport Community”, it is evident that the application for “.sport” gTLD made by Applicant explicitly targets such community.

135. Having recognized that the Sport Community is clearly delineated, it cannot be denied that there is a strong (or even identical) association between the applied-for gTLD string “.sport” and the community represented by Objector.

136. Therefore, the Appointed Expert concludes that the Sport Community has been explicitly targeted by the “.sport” gTLD.

E. Detriment

(5) *Is there any material detriment to the rights or legitimate interests of the Sport Community if the application for the “.sport” gTLD is allowed to proceed?*

137. Finally, the Appointed Expert has to address the issue of whether the application for the “.sport” gTLD causes any material detriment to the rights or legitimate interests of the Sport Community.

(i) *Positions of the Parties*

138. Objector states that the “.sport” gTLD application made by dot Sport Limited lacks accountability to the Sport Community. Regarding the detriment that such application may generate, SportAccord points to ambush marketing, cybersquatting, typo-squatting, brand-jacking, misuse of sport themes for pornography, the systematic exacerbation of naming conflicts and the massive utilization of name-defensive registrations, giving examples on how each situation (in any given scenario) may affect the rights or legitimate interests of the Sport Community.<sup>51</sup>

139. In its Objection, SportAccord describes other possible detriments, such as the false sense of official sanction that consumers may have if an unaccountable registry operator manages such domain.<sup>52</sup>

140. Further, according to Objector, “*Under the United States Department of Commerce’s agreement with ICANN, the Affirmation of Commitments, ICANN must demonstrate that the new gTLD program contributes, in part, to consumer trust. Delegating “.sport” to an unaccountable registry operator, which lends a false sense of official sanction to the .sport domain name space, would inevitably erode consumer trust by misleading individuals through unofficial content*”.<sup>53</sup>

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<sup>51</sup> See: Objection, page 11.

<sup>52</sup> See: Objection, page 13. SportAccord says that, for example, “Rugby.Sport” domain will lead internet users to believe that the International Rugby Board sanctions such a website.

<sup>53</sup> See: Objection, page 13.



141. Objector also notes that if the “.sport” gTLD application is allowed to proceed, the Sport Community would suffer a loss in its image and prestige by the misappropriated use of community-specific keywords. *“The very reason why there is a community-based objection (as opposed to a rights infringement objection) is the fact that keywords targeting a sub-community are a commons and that each member of the sub-community has the right to expect that community institutions ensure the responsible management of those keywords.”*<sup>54</sup>

142. According to Objector, while in many cases there is no concept of individual ownership in terms of intellectual property, each community has a natural concept of collective ownership of keywords essential to it or to its sub-communities. Based on this argument, SportAccord considers that the uncontrolled or unaccountable operation of the “.sport” registry would constitute the *“tragedy of the commons”*, a material detriment which cannot be measured in monetary units.

143. Objector expands on the disruption of Sport Community efforts and achievements. It provides examples of the loss of credibility of community-based governance models and states that community-based communication policies for anti-doping, anti-drug, anti-racism, ticket scalping, illegal or undesirable gambling, etc., will be disrupted if key domain names related to them are used without adherence to those policies. This can only be avoided, in Objector’s view, if the gTLD registry is directly accountable to the Sport Community.<sup>55</sup>

144. Further, SportAccord focuses on the actual and certain damages that the Sport Community would suffer in case the “.sport” gTLD is operated by a registry without appropriate community-based accountability. In Objector’s view, not only would this situation generate an economic damage, but also a detriment of the reputation, the values and the governance of the Sport Community as a whole.<sup>56</sup>

145. Finally, Objector points to the loss of benefits for not operating the “.sport” TLD by the Sport Community itself, the loss of opportunity to create a community-based organizational tool and, most important, the irreversible damage caused by the forfeiture of the opportunity for the Sport Community to build the right image through the operation of the gTLD.<sup>57</sup>

146. Applicant contends that, in fact, Objector failed to prove a likelihood of material detriment to the rights or legitimate interests of the alleged community. In its opinion, Objector speculates that the alleged detriments would befall the alleged Sport Community should the gTLD be delegated to Applicant, but *“most of the alleged detriments are detriments inherent in the nature of the Internet and not attributable to Applicant’s plans for operating the gTLD.”*<sup>58</sup>

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<sup>54</sup> See: Objection, page 14.

<sup>55</sup> See: Objection, page 15.

<sup>56</sup> See: Objection, page 17.

<sup>57</sup> See: Objection, page 18.

<sup>58</sup> See: Response, page 11.

147. Applicant claims that it has taken measures to address the detriments inherent in the nature of the Internet. *“Thus, Objector’s alleged detriment seems to purely stem from the fact that Applicant would be delegated the gTLD instead of Objector”*.<sup>59</sup>

148. Further, it is dot Sport Limited’s position that Objector proves no kind or amount of damage to the reputation of the Sport Community that would result from Applicant’s operation of the applied-for gTLD string. In Applicant’s words, *“Consumer trust will be a core operating principle: abusive registrations and abuse of the gTLD will result in rapid sanctions”*.<sup>60</sup>

149. In addition, dot Sport Limited accuses Objector of not offering evidence (i) that Applicant is not acting or does not intend to act in accordance with the interests of the Sport Community or of users more widely; (ii) that Applicant’s operation of the “.sport” gTLD string will interfere with the core activities of the alleged community; and (iii) much less that the Objector’s core activities depend on the domain name system.<sup>61</sup>

150. Applicant also states that the alleged economic damage to the Sport Community has not been proved by Objector. In any case, abusive behaviour or Objector’s speculative detriments, if they occur, may be easily corrected or penalized. In addition, dot Sport Limited criticizes some evidence advanced by Objector which, in its view, does not show any actual damage to the alleged Sport Community.<sup>62</sup>

151. To conclude, it is Applicant’s position that the Objector’s alleged damages are hypothetical and would not result from Applicant’s operation of the applied-for gTLD string.<sup>63</sup>

(ii) *Considerations of the Appointed Expert*

152. The Appointed Expert has to decide on the likelihood of material detriment to the rights or legitimate interests of the Sport Community in the event that the application process ends with the adjudication of the string (“.sport”) to Applicant.

153. The Appointed Expert first notes that, in accordance with Article 3.5.4 of the ICANN Guidebook, *“the objector must prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant por-*

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<sup>59</sup> See: Response, page 11.

<sup>60</sup> See: Response, page 11. Applicant further believes that there are benefits to rights and legitimate interests of the sports industry created by operation of a free and open TLD by a commercial entity. *“Given that there is no special regulated definition of the word “sport” or any restriction on the use of the word worldwide, combined with the fact that consumers understand that a domain name registration in a particular gTLD does not confer or even define special status for the holder worldwide and for every purpose, there will not be any loss of trust in the sports industry...”*.

<sup>61</sup> See: Response, page 12.

<sup>62</sup> See: Response, page 13.

<sup>63</sup> See: Response, page 13.

*tion of the community to which the string may be explicitly or implicitly targeted. An allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment”.*

154. Such Article also provides the factors that could be used by an expert panel in making this determination. These elements include, but are not limited to, “(i) nature and extent of damage to the reputation of the community represented by the objector that would result from the applicant’s operation of the applied-for gTLD string; (ii) evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely, including evidence that the applicant has not proposed or does not intend to institute effective security protection for user interests; (iii) interference with the core activities of the community that would result from the applicant’s operation of the applied-for gTLD string; (iv) dependence of the community represented by the objector on the DNS for its core activities; (v) nature and extent of concrete or economic damage to the community represented by the objector that would result from the applicant’s operation of the applied-for gTLD string; and (vi) level of certainty that alleged detrimental outcomes would occur”.<sup>64</sup>

155. First, the Appointed Expert finds that the ICANN Guidebook does not call for “actual damage” for an objection to be accepted. It establishes a lower bar, namely a “likelihood of material detriment”, logical consequence of the impossibility of assessing any damage when the Applicant has yet to start operating the gTLD string.

156. Therefore, the standard that the Appointed Expert should apply to this issue is the “chance” that detriment will occur, which differs from the standard of “actual damage” invariably applied in litigation or arbitration. In other words, the standard of a “likelihood of material detriment” is, in the Appointed Expert’s opinion, equivalent to future “possible” damage.

157. In this regard, the Appointed Expert agrees with Applicant that many detriments alleged by Objector are purely hypothetical, such as the risk of cybersquatting, ambush marketing or the misuse of sport themes for purposes foreign to sport values.

158. Notwithstanding so, the Appointed Expert is of the opinion that Objector has proved several links between potential detriments that the Sport Community may suffer and the operation of the gTLD by an unaccountable registry, such as the sense of official sanction or the disruption of some community efforts.

159. Further, the Appointed Expert shares Objector’s argument that all domain registrations in a community-based “.sport” gTLD will assure sports acceptable use policies. On the other hand, this cannot be warranted by Applicant in the same way in the event that the application for the “.sport” gTLD is approved by

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<sup>64</sup> Article 3.5.4 of ICANN Guidebook.

ICANN.

160. Regarding the economic damage that SportAccord may suffer, the Appointed Expert is of the view that although the figures and calculations on negative externalities provided by Objector may have been exaggerated,<sup>65</sup> the risk of economic damages which would be inflicted to Objector due to the operation of the gTLD by an unaccountable registry shows a reasonable level of certainty and could not be avoided if the application is allowed to proceed.

161. Therefore, the Appointed Expert is not in a position to accept Applicant's argument that Objector's alleged detriment only relies on the fact that Applicant would be delegated the ".sport" gTLD instead of Objector.

162. Finally, even though SportAccord has not proved that dot Sport Limited will not act (or will not intend to act) in accordance with the interests of the Sport Community, the Appointed Expert considers that this is only one factor, among others, that may be taken into account in making this determination. Conversely, the Appointed Expert sees a strong dependence of the Sport Community on such domain name.

163. For these reasons, the Appointed Expert concludes that there is a strong likelihood of material detriment to the rights or legitimate interests of the Sport Community if the application ".sport" gTLD is allowed to proceed.

## VII. Decision

164. Having read all the submissions and evidence provided by the Parties, for the reasons set out above and in accordance with Article 21(d) of the Rules of Procedure, I hereby render the following Expert Determination:

- I. The "Community Objection" which has been put forward by SportAccord in these proceedings is successful.
- II. Objector SportAccord prevails.
- III. The ICC Centre will refund SportAccord the advance payment of costs it made in connection with these proceedings.

Date: October 23, 2013

Signature: 

Prof. Dr. Guido Santiago Tawil  
Expert

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<sup>65</sup> See: Objection, Appendix A-13.

To,

Mr. Cherine Chalaby, Chair, NGPC, ICANN

Mr. Fadi Chehadé, President and CEO, ICANN

Mr. Akram Atallah, President, Generic Domains Division, ICANN

Ms. Christine Willett, VP of New gTLD Operations, ICANN

CC: Ms. Špela Košak, Deputy Manager, ICC

1<sup>st</sup> November 2013

Dear Mr.Chalaby, Mr.Chehadé, Mr. Atallah, Ms. Willett,

We, the undersigned, are writing to express our ever-growing concerns relating to the Community Objection process. Some of our concerns in this regard have already been communicated to you in two letters, dated 22<sup>nd</sup> July 2013 and 24<sup>th</sup> September 2013.

Unfortunately, the issues surrounding Community Objection determinations are growing, and we are more concerned than ever that this process, and therefore the entirety of the New gTLD Program, is being corrupted by significant departures from the Applicant Guidebook (AGB). The undersigned strictly followed and relied upon the AGB throughout the application process. This included consideration about whether or not to apply for strings that may have been subject to Community Objections or contested by Community Priority Applicants. We were part of the ICANN community's discussion that set a high bar for prevailing Community Objections and resulted in the high standard that is in the AGB. The analysis we present herein related to the ICC's Expert Panels shows a disregard of the model and the standards set forth in the AGB. This is intolerable and deserves immediate mitigation.

While the decision regarding .SPORT provided by the expert can be questioned in all four criteria, the analysis is most clearly erroneous and is in clear contradiction of the AGB with regard to two specific criteria: community definition, and the likelihood of material detriment. Specifically, the record clearly demonstrates that panelists are not considering the very stringent definition of "community" set forth in the AGB. The decisions to date indicate that panelists are employing their own personal assumptions of "community" or have accepted the objectors' definition of "clearly delineated communities" without question. Additionally, panelists are ignoring the AGB requirements for a showing of material detriment. Among those requirements is the objector's burden to prove that its community is likely to be adversely affected by the delegation of the string in question.

Please note that the undersigned represent a variety of companies, including both single-string applicants and portfolio applicants, not all of which are facing community objections. We must stress that this is an issue that affects the entire New gTLD Program and ICANN community, and the support of applicants not directly affected by Community Objection proceedings speaks to our shared interest in strictly adhering to *all* AGB procedures.

To recap our prior correspondence, the first letter brought to ICANN's attention the fact that Expert Panels appointed by the DRSPs for the purpose of providing an Expert Determination on each community objection are three degrees removed from ICANN. They have neither prior experience with the new gTLD program nor a deep understanding of the AGB. It was then explicitly suggested that these Expert Panels should be provided with training or education materials that reinforce certain standards—primarily that the Panels must strictly follow the AGB to arrive at Expert Determinations. We are concerned that this process was never put into place.

The second letter pointed out specific examples of serious lapses on ICC Experts' parts in the Expert Determinations for .ARCHITECT and .FLY. The letter was a sincere attempt to inform ICANN of the fact that, although ICANN may have spent significant amounts of time working with the personnel at the DRSPs to familiarize them with the AGB, it is clear that the requisite knowledge and understanding of the AGB has not been successfully conferred to the actual Expert Panels appointed by the ICC. It was also recommended that ICANN should make appropriate appeal mechanisms available to parties who have been materially affected by decisions that departed from AGB standards. Finally, we urged ICANN to consider temporarily suspending all objection adjudications until a certain basic level of training was conducted to ensure that all concerned Experts are well versed with the AGB.

The response that was received from ICANN to this letter was disappointing, to say the least, given that ICANN's only follow-through was a simple acknowledgement of the correspondence, with no forthcoming engagement on these very serious issues.

Although the form response we received from Customer Service claimed that our comments would be "considered carefully," we believe this assurance was not genuine. We say this because the ICC recently published an Expert Determination on a community objection against an application for the .SPORT<sup>1</sup> generic TLD which, again, is fatally flawed. In particular, we draw ICANN's attention to at least five examples of glaring errors in this determination, which prove that at least one of ICC's Experts is not familiar with the AGB or its intent.

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<sup>1</sup> .SPORT Expert Determination: [http://www.iccwbo.org/Data/Documents/Buisness-Services/Dispute-Resolution-Services/Expertise/ICANN-New-gTLD-Dispute-Resolution/EXP\\_471\\_ICANN\\_88\\_Expert\\_Determination/](http://www.iccwbo.org/Data/Documents/Buisness-Services/Dispute-Resolution-Services/Expertise/ICANN-New-gTLD-Dispute-Resolution/EXP_471_ICANN_88_Expert_Determination/)

1. The Expert reported that, *“the concept of ‘community’ is not defined by the ICANN Guidebook.”*<sup>2</sup>

Clearly, the Expert did not know that the concept of “community” is actually explained by the ICANN Guidebook:

“‘Community’ - Usage of the expression ‘community’ has evolved considerably from its Latin origin – ‘communitas’ meaning ‘fellowship’ –while still implying more of cohesion than a mere commonality of interest. Notably, as “community” is used throughout the application, there should be: (a) an awareness and recognition of a community among its members; (b) some understanding of the community’s existence prior to September 2007 (when the new gTLD policy recommendations were completed); and (c) extended tenure or longevity—non-transience—into the future.”<sup>3</sup>

We reiterate that the above definition of the term “community” was relied upon by *all* applicants whilst making their decisions to stake hundreds of thousands of dollars applying as standard applicants for generic strings in the new gTLD Program. It is absolutely unfair and unacceptable for an application to be rejected under the premise that the concept of “community” is not defined in the AGB. This is blatantly untrue and to disregard this is to compromise the integrity of the AGB, the New gTLD Program, and ICANN.

We understand that the above description of “community” is referenced with regard to community applications; however, the context is relevant to “community” objections as well. This is because, like a community application, a community objection that is upheld directly eliminates the bona fide standard application against which it is filed. Consequently, it is the Expert’s duty to thoroughly test the existence of a “clearly delineated community” as per AGB descriptions before eliminating the standard application from the program altogether.

2. While the Expert is clearly aware that the objector needs to prove that “the application creates a likelihood of material detriment...”, none of the factors that were considered included anything about the application. The Expert did not identify a single objectionable or lacking aspect in the application that creates a likelihood of material detriment.
3. The Expert states:

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<sup>2</sup> Page 18 of the .SPORTExpert Determination

<sup>3</sup> §4-11 of AGB

*“In other words, the standard of a “likelihood of material detriment” is, in the Appointed Expert’s opinion, equivalent to future “possible” damage.”<sup>4</sup>*

In this case, the Expert opines that “likelihood” is equivalent to “future possible.” It almost appears as if the criteria have been deliberately weakened in order to allow the objector to prevail. In fact, the Expert even made this statement:

*“...Expert agrees with Applicant that many detriments alleged by Objector are purely hypothetical...”*

In spite of this, the Expert ruled in favor of the Objector. If the Expert’s current logic is followed, every application, including the Objector’s own application, creates “possible” damage. In this case, an allegation of material detriment against any application would be upheld because there is future “possible” damage. How can any applicant guarantee that it is “not possible,” in all conceived hypotheticals, for any future damage to occur?

The .SPORT ruling leaves no doubt the panelist replaced the word “likelihood” with the word “possibility” thus materially altering AGB fourth test to read as follows:

*“The application creates a ~~likelihood~~ possibility of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted.”<sup>5</sup>*

Procedurally, the guidebook explicitly does not provide the panelist with discretion to change the burden of proof the objector bears. If this is not true, then ICANN did not notify applicants and other interested parties of such discretion provided to the panelist. Either way a procedural error has occurred. In the spirit of fairness and due process, we call upon ICANN to incorporate an appeals process for exactly such procedural errors in the community objection proceedings.

4. The Expert has erroneously considered the “economic damage” that the *objector* “may suffer.”<sup>6</sup> Instead, he was supposed to consider the “nature and extent of damage to the reputation of the *community* represented by the objector...”. It appears that the Expert misread the AGB or inappropriately assumed that the Objector IS the “sports community.”
5. The decision provides no evidence that the Expert even considered the “level of certainty that alleged detrimental outcomes would occur.” As noted above, in point 3,

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<sup>4</sup> Page 27 of the .SPORT Expert Determination

<sup>5</sup> §3-24 of AGB

<sup>6</sup> Page 28 of the .SPORT Expert Determination



unlikely and hypothetical situations have been given credence over any level of certainty.

To evidence that unbiased industry insiders share our viewpoint on this subject, please take note of two recently published relevant articles, both by reputed journalists who are not participants in the new gTLD program:

- 1) <http://www.thedomains.com/2013/10/29/wow-icc-upholds-objection-of-sportsaccord-to-famous-fours-app-for-new-gtld-sport-giving-sportaccord-the-extension/>. In this case, the title itself expresses shock over this Expert Determination.
- 2) <http://domainnamewire.com/2013/10/29/breatheaccord-wins-community-objection-against-breathe-top-level-domain-name/>. This article is a satirical response to the above news that the .sport objection was upheld. It shows the extent to which the journalist found the .sport decision to be unmerited.

We also bring to ICANN's attention the fact that objectors on other unrelated cases are citing these decisions in their Supplemental Submissions in order to influence Experts to weaken the objection criteria and rule in their favor. If these are considered to be precedents for other Experts, we can assure you that most community objectors will unfairly prevail over applicants who applied as standard applicants in good faith.

Not only does this situation cause immense commercial damage to the affected applicants, but also sets a precedent for future application rounds where applicants cannot rely on the application documents and ICANN can expect absolutely any applicant to use (or rather, abuse) the community objection process as its first attempt at contention resolution. These current decisions by ICC Experts will probably be used as grounds for rejecting future applications on the most generic words.

ICANN should *immediately* rectify this obvious deficiency. We sincerely request ICANN to take a more active role in the Dispute Resolution Process altogether. This includes impressing upon the ICC that its Experts need appropriate training before additional decisions are published to avoid any further inadequate decision making, by ensuring that the AGB is followed for future cases, and by putting in place an appeals mechanism so that procedural errors such as those in the .sport decision can be rectified. As applicants in the program, we are confident that ICANN will do the right thing, and ensure that its contracted parties uphold the AGB at any cost.

We thank you for taking the time to read this letter, and look forward to a positive and constructive response from you.

Sincerely,

Shweta Sahjwani, Radix FZC

United TLD Holdco Ltd.

DotClub Domains, LLC

Top Level Design, LLC

Donuts Inc.

Top Level Domain Holdings Ltd

Priver Nivel S.A.

Fegistry, LLC

Employ Media, LLC

Famous Four Media Limited

Merchant Law Group, LLP

DOTSTRATEGY CO.

# Olympic-Size Investments: Business Opportunities and Legal Framework

21-23 February 2011

Sofitel Copacabana Hotel,  
Rio de Janeiro, Brazil



the global voice of  
the legal profession

A conference presented  
by the IBA Latin  
American Regional Forum

## Final Programme

# Programme

## Conference Co-Chairs

Gilberto Giusti *Pinheiro Neto Advogados, São Paulo*  
Hendrik Haag *Hengeler Mueller, Frankfurt; Council Member, IBA Legal Practice Division*

## Host Committee

Andrade & Fichtner Advogados  
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Veirano Advogados Associados  
Vieira Rezende Barbosa e Guerreiro Advogados  
Xavier Bernardes Bragança Sociedade de Advogados

## Monday 21 February

1400 – 1700

Visit to the Maracanã Stadium  
*(Please note that this visit has been cancelled)*

1900 – 2200

Welcome dinner cordially offered by the city of Rio de Janeiro and hosted by Mr Eduardo Paes, Mayor of the city of Rio de Janeiro  
*At the City Palace (Palácio da Cidade)*  
*(Shuttle service from Sofitel Copacabana at 1830)*

## Tuesday 22 February

0800 – 1700 - Foyer

Registration at Sofitel Copacabana Hotel

0845 – 0900 - Rooms Rio de Janeiro I and II

**Welcome remarks**  
Michael Reynolds Allen & Overy LLP, Brussels; IBA Vice-President

0900 – 0915 - Rooms Rio de Janeiro I and II

**Directive remarks from the conference Co-Chairs**  
Gilberto Giusti  
Hendrik Haag

0915 – 1000 - Rooms Rio de Janeiro I and II

**Opening address**  
Eduardo Paes Mayor of the city of Rio de Janeiro

1000 – 1115 - Rooms Rio de Janeiro I and II

### Procurement and construction

This panel will discuss the role of the legal professional during the progress of the investments and the legal structure surrounding the construction issues during a country's preparation for a major event such as the Olympic Games and/or the World Cup, events that can generate profits of millions of dollars to the host country. The work of lawyers must be focused on accomplishing contracts and resolving any possible conflicts that may arise. The panel will approach a more practical point of view, establishing the steps that a country needs to take in order to succeed in hosting these major events.

### Session Co-Chairs

Horacio Bernardes Neto *Xavier Bernardes Bragança Sociedade de Advogados, São Paulo; Vice-Chair, IBA Bar Issues Commission and Council Member, IBA Public and Professional Interest Division*  
Mark Lane *Present Masons, London; Co-Chair, IBA International Construction Projects Committee*

### Speakers

Rodrigo Bueno *Construtora Norberto Odebrecht SA, São Paulo*  
Todd Crider *Simpson Thacher & Bartlett LLP, New York*  
Roberto Hernández-García *COMAD SC, Mexico City; Co-Chair, IBA International Construction Projects Committee*  
José Luis Vittor *McDermott WW & Emery LLP, Houston*  
Diego Muñoz Tamayo *Muñoz Tamayo & Asociados, Bogotá*

1115 – 1145 - Foyer

Coffee break

Lunches and coffee breaks kindly sponsored by

**ARAÚJO E POLICASTRO**  
ADVOCADOS

**PACHECO COTO**

# Programme continued

## Tuesday 22 February

1145 – 1300 - Rooms Rio de Janeiro I and II

### Energy – challenges of creating an efficient and sustainable energy model for an Olympic city

This panel will discuss issues that affect the future of energy in light of the challenges that Brazil faces as host of world class sport events: re-thinking energy policies; developing and implementing renewable energies; the challenges of Pre-salt exploration; the development of energy projects from the legal perspective.

#### Session Co-Chairs

Brian Bradshaw *Morgan Lewis & Bockius LLP, Houston*  
Daniela Ribeiro *Vieira Rezende Barbosa e Guerreiro Advogados, Rio de Janeiro*

#### Speakers

Carlos de Maria y Campos *Gálcia Abogados, Mexico City*  
Jaime Herrera *Passé Herrera & Ruiz, Bogotá*  
Helder Queiroz *Institute of Economics – Economy Institute of the Federal University of Rio de Janeiro, Rio de Janeiro*  
Fernando Quicías Dorado *Perez-Llorca, Madrid*

1300 – 1430 - Rooms Copacabana and Flamengo  
Lunch

#### Keynote Speaker

Gold Olympic medalist coaching the Brazilian men's volleyball team, two-time bronze Olympic medalist coaching the Brazilian women's volleyball team, silver Olympic medalist playing in the Brazilian men's volleyball team and countless other international titles.  
Bernardo Rocha de Rezende (Bernardinho) *Coach of Brazil men's volleyball team, Rio de Janeiro*

1430 – 1545 - Rooms Rio de Janeiro I and II

### The services sector moved by major sport-hosting events

This panel will provide participants with in-depth information from players who have expertise in the major sports events sector. Some of the issues that will be brought before the panel for discussion include key sensitivities that are likely to have a significant impact on business, as well as key success factors within the control of sector operators which should be followed.

#### Session Co-Chairs

Rossana Fernandes Duarte *TozziniFreire Advogados, São Paulo*  
Juan José Lopez-de-Silanes *Basham Ringe y Correa SC, Mexico City*  
Conference Coordinator, *IBA Real Estate Committee*

#### Speakers

Luiz Henrique Lessa *Brazilian Association for Real Estate and Tourism Development – ADRT, Ponta Verde*  
Mauro Miranda *Janes Lang LaSalle, São Paulo*  
Paulo Sérgio de Almeida *Brazilian Ministry of Labour and Employment, Brasília*  
Josier Marques Vilar *Rio de Janeiro Hospitals and Health Centres Association, Rio de Janeiro*  
Luis Wever *Odgers Berndtson, São Paulo*

1545 – 1615 - Foyer  
Coffee break

1615 – 1730 - Rooms Rio de Janeiro I and II

### The quest for optimizing the dispute resolution process in major sport-hosting events

The panel will debate the trends and best practices of resolving disputes in challenging environments with time-sensitive deadlines. Panellists will address issues related to arbitration, dispute boards, expert determination, mediation and electronic discovery on infrastructure projects for big international sports events. The experiences of Atlanta, Barcelona and the London Olympic Games will

be discussed. The panel will also address the unique aspects of sports disputes and the potential use of a fast-track dispute resolution process in this area.

#### Session Co-Chairs

Julio Cesar Bueno *Pinheiro Neto Advogados, São Paulo*; *Vice-Chair, IBA Project Establishment Subcommittee and Website Officer, IBA Latin American Regional Forum*  
Guido Tawil *M&M Borchini, Buenos Aires*; *Council Member, IBA Legal Practice Division*

#### Speakers

Virginia Allan *Uria & Menéndez, Madrid*  
Jerry Brodsky *Peckar & Abramson, Miami, FL*  
Adrian Hughes *QC Thirty Nine Essex Street Chamber, London*  
David W Rinkin *Debevoise & Plimpton LLP, New York*; *IBA Secretary General*

1900 – 2200

### Cocktail reception offered by the Host Committee

At late *Clube do Rio de Janeiro*  
(*Shuttle service from Sofitel Copacabana at 1815*)

## Wednesday 23 February

0800 – 1800 - Foyer

Registration at *Sofitel Copacabana Hotel*

0900 – 0915 - Rooms Rio de Janeiro I and II

### Reopening remarks from the immediate past Co-Chair of the Latin American Regional Forum

Jaime Herrera

0915 – 1115 - Rooms Rio de Janeiro I and II

### Taxation - double session

#### 1. Challenges and incentives of structuring projects

The tax challenges of structuring projects, including: tax obstacles and tax incentives to be considered when contracting the construction and financing; the perspective of the investors.

#### Session Co-Chairs

Raquel Novais *Machado Meyer Sendacz e Opice Advogados, São Paulo*; *Vice-Chair, IBA Taxes Committee*  
Carola Van Den Bruinhorst *Loyers & Loeff, Amsterdam*; *Council Member, IBA Legal Practice Division*

#### Speakers

Claire Kennedy *Bennett Jones LLP, Toronto, ON*  
Gláucia Maria Lauletta *Fraschina Mattos Filho Veiga Filho Marrey Jr e Quiroga Advogados, São Paulo*  
Sonia Velasco *Cuatrecasas, Gonçalves Pereira SLP, Barcelona*; *Conference Coordinator, IBA Taxes Committee*

#### 2. Customs/importing and exporting

- Free trade of goods and services and the WTO rules
- The Convention on contracts for the International Sale of Goods - CISG
- Customs issues within Mercosur

#### Session Co-Chairs

Jaime Carey *Carey & Cia, Santiago*; *Council Member, IBA Legal Practice Division*  
Gustavo M Brigagão *Ulhoa Canto Rezende e Guerra Advogados, Rio de Janeiro*

# Programme continued

## Speakers

Lauro Gama Jr *Binenbojm Gama & Carvalho Britto Advogados, Rio de Janeiro*  
Eduardo Grebler *Grebler Advogados, São Paulo*

## Keynote Speaker

Renato Villela *Secretary of Finance of the State of Rio de Janeiro, Rio de Janeiro*

1115 – 1145 - Foyer  
Coffee break

1145 – 1300 - Rooms Rio de Janeiro I and II

### **The challenges of financing infrastructure for major events**

Recent experience in the financing of infrastructure - both stadia and urban infrastructure, such as airports, roads, telecommunications etc. in connection with recent stagings of the Olympic Games, the football World Cup and other major sporting events, the do's and don'ts, the differences of financing infrastructure in Latin America, the views from BNDES and from the private banking sector; how to get involved in infrastructure financing in Brazil, challenges to overcome and pitfalls to avoid.

## Session Co-Chairs

Robert L Nelson Jr *Akin Gump Strauss Hauer & Feld LLP, San Francisco, CA and Abu Dhabi*; Vice-Chair, IBA Project Finance Subcommittee  
Ricardo Veirano *Veirano Advogados Associados, São Paulo*; Vice-Chair, IBA Latin American Regional Forum

## Speaker

Antonio Felix de Araújo Cintra *TazziniFreire Advogados, São Paulo*

1300 – 1430 - Rooms Copacabana and Flamengo  
Lunch

1430 – 1545 - Rooms Rio de Janeiro I and II

### **Capital markets: going public with infrastructure projects in Brazil**

A roundtable with local and foreign capital markets specialists to discuss market opportunities and regulatory challenges relating to infrastructure projects in Brazil.

## Session Co-Chairs

Francisco Antunes Maciel *Müssnich Barbosa Müssnich & Aragão Advogados, Rio de Janeiro*  
Petra Zijp *NautaDuijth Nij, Amsterdam*; Co-Chair, IBA Capital Markets Forum

## Speakers

Julian Chediak *Motta Fernandes Rocha Advogados, Rio de Janeiro*  
Nelson Eizirik *CarvalhoPassa e Eizirik Advogados, Rio de Janeiro*  
Paul Schnell *Skadden Arps Slate Meagher & Flom LLP, New York*  
Otavio Yazbek *Brazilian Securities Commission - CVM, Rio de Janeiro*

1545 – 1615 - Foyer  
Coffee break

1615 – 1730 - Rooms Rio de Janeiro I and II

### **Environment - legacy to the future**

This panel will analyse the need to develop the Olympic project with an environmentally friendly focus, trying to minimise the adverse impact of the urban transformation, infrastructures and landscaping in the host city. We will develop aspects such as the investments planned for the conservation of the environment to comply with environmental protection standards set by the International Olympic Committee, the necessary adjustments to existing environmental legislation needed to convert Rio de Janeiro into a 'green city', as well as the requirements of different infrastructure investments in order to be environmentally friendly. In so doing the Olympics will leave a lasting legacy for Rio de Janeiro and Brazil.

## Session Co-Chairs

José Antonio Fichtner *Andrade & Fichtner Advogados, Rio de Janeiro*  
Eduardo Sanguinetti *Sanguinetti Fodere Bragard Abogados, Montevideo*; Co-Chair, Latin American Regional Forum

## Speakers

Luiz Fernando Sant'Anna *Demarest & Almeida Advogados, São Paulo*  
Gabriel R Macchiavello *Rattagan Macchiavello Arocena & Peria Robirosa Abogados, Buenos Aires*  
Pedro Teixeira *ThyssenKrupp CSA, Rio de Janeiro*

1730 – 1800 - Rooms Rio de Janeiro I and II

### **Final remarks from the conference Co-Chairs**

2000 – 2300

### **Cocktail and closing party - Carnival show**

*At Unidas da Tijuca Samba School*

*(Shuttle service from Sofitel Copacabana at 1930)*

#### **Continuing Professional Development/Continuing Legal Education**

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[www.ibanet.org/Education\\_and\\_Internships/LLM/LLM\\_Home.aspx](http://www.ibanet.org/Education_and_Internships/LLM/LLM_Home.aspx)



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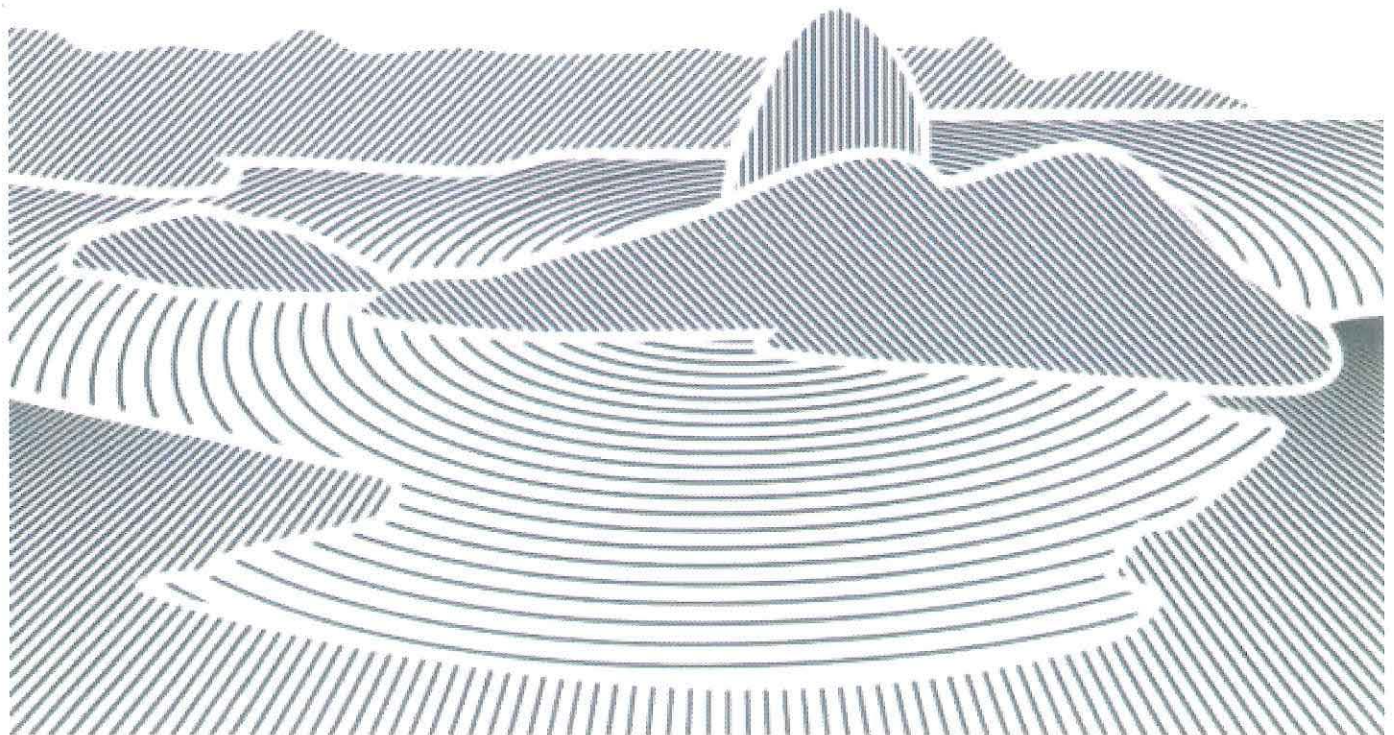
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The City of Brazil (Internacionalização Polêmica)  
Advogados e a Ordem da Confiança (Relatório de  
"Oportunidade de Investimento, Negócios Oportunistas  
e o Legal Environment")



SÃO PAULO

RIO DE JANEIRO

Contact Information Redacted

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SWITZERLAND

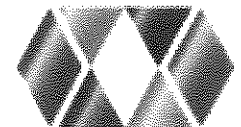
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# International Bar Association

The International Bar Association (IBA), established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world. It has a membership of more than 40,000 individual lawyers and more than 200 bar associations and law societies spanning all continents. It has considerable expertise in providing assistance to the global legal community.

Grouped into two divisions – the **Legal Practice Division** and the **Public and Professional Interest Division** – the IBA covers all practice areas and professional interests, providing members with access to leading experts and up-to-date information. Through the various committees of the divisions, the IBA enables an interchange of information and views among its members as to laws, practices and professional responsibilities relating to the practice of business law around the globe. Additionally, the IBA's high-quality publications and workshops conferences provide unrivalled professional development and network building opportunities for international legal practitioners and professional associates.

The IBA's **Bar Issues Commission** provides an invaluable forum for IBA member organisations to discuss all matters relating to law at an international level.

The IBA's **Human Rights Institute** (HRI) works across the Association, to promote, protect and enforce human rights under a just rule of law, and to preserve the independence of the judiciary and the legal profession worldwide.

Other institutions established by the IBA include the **Southern Africa Litigation Centre** and the **International Legal Assistance Consortium**.

## The IBA Latin American Regional Forum

The Latin American Regional Forum covers all countries in Latin America as well as Mexico, Puerto Rico and Spanish-speaking areas of the Caribbean. The forum provides a focus for all activities in the region. It organises sessions at IBA conferences and in particular has been instrumental in ensuring that a Latin American perspective is addressed during relevant special sessions. The Forum is closely affiliated with the **North American Regional Forum** in the regions are geographically proximate and share many issues.

International Bar Association

Contact Information Redacted



# New TLD applicants flummoxed by objection results

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

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## Applicants ask ICANN to intervene in objection process.

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

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

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

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

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

# BreatheAccord wins community objection against .Breathe top level domain name

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

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

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

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

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

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

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

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

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

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

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

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

## Famous Four vows to fight .sport objection loss

Kevin Murphy, October 31, 2013, 19:37:08 (UTC), Domain Registries

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

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

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

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

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

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

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

So what's the company so worked up about?

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

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

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

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

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

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

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

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

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

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

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

Similar arguments were made in LROs.

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

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

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

# **Annex 16.**

ICC International Centre for Expertise  
38 Cours Albert 1er  
75008 Paris  
France

15 January 2014

Dear Sirs

**CASE No. EXP/471/ICANN/88 SPORTACCORD (SWITZERLAND) vs/ DOT SPORT LIMITED**

Following the issue of the judgment by Dr. Guido Tawil on 23 October 2013, we believed that the reasoning behind the judgment deviated in material respects from the guidance in the Applicant Guidebook, without any apparent reason on the facts or the relative merits of the respective arguments.

Therefore we undertook further research into the subject of conflict of interest. We were concerned to learn that on 22 February 2011, at a major conference of the International Bar Association in Rio de Janeiro, Brazil entitled "Olympic-Size Investments: Business Opportunities and Legal Framework", Dr. Guido Tawil, was co-chair of a panel entitled *'The quest for optimising the dispute resolution process in major sport-hosting events'* in which the following was discussed:

*"The panel will debate the trends and best practices of resolving disputes in challenging environments with time-sensitive deadlines. Panellists will address issues related to arbitration, dispute boards, expert determination, mediation and electronic discovery on infrastructure projects for big international sports events. The experiences of Atlanta, Barcelona and the London Olympic Games will be discussed. The panel will also address the unique aspects of sports disputes and the potential use of a fast-track dispute resolution process in this area"*<sup>1</sup>.

The flyer for this event is attached and demonstrates that the conference was aimed at *"Brazilian and international lawyers both private or in-house, government officials, law professors, business executives at investment management firms, company representatives, sports federation leaders, bankers, academics, economists and politicians."*<sup>2</sup>

Prior to Dr. Tawil's appointment, dot Sport Limited successfully challenged the appointment of Mr. Jonathan Taylor as sole panelist, on the basis that Mr. Taylor's legal practice was closely related to the activities of the objector and its constituent sports federations. In this context, Dr. Tawil should clearly have disclosed this information about his interest in sporting arbitration and his presence at the conference. We quote from the Applicant Guidebook (§3.5.4) on the Selection of Expert Panels "Experts must be independent of the parties to a dispute resolution proceeding. Each DRSP will follow its adopted procedures for requiring such independence, including procedures for challenging

<sup>1</sup> <http://www.int-bar.org/conferences/conf338/>

<sup>2</sup> <http://www.int-bar.org/conferences/conf338/>

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[www.famousfourmedia.com](http://www.famousfourmedia.com)



and replacing an expert for lack of independence." The ICC's own rules state that: "Before an appointment, a prospective expert shall sign a statement of independence and disclose in writing to the Centre [ICC] any facts or circumstances which might be of such a nature as to call into question the expert's independence in the eyes of the parties<sup>3</sup>".

We note that Dr. Tawil was a member of the of the Conflicts of Interest Subcommittee which monitored developments concerning the [IBA Guidelines on Conflicts of Interest in International Arbitration](#) (the 'Guidelines'), adopted by the IBA Council in May 2004. To that extent, Dr. Tawil has no excuse for not disclosing this interest in the circumstances of his succession to Mr. Taylor. We quote section 3 of the Guidelines:

*"(a) If facts or circumstances exist that may, in the eyes of the parties, give rise to doubts as to the arbitrator's impartiality or independence, the arbitrator shall disclose such facts or circumstances to the parties, the arbitration institution or other appointing authority (if any, and if so required by the applicable institutional rules) and to the co-arbitrators, if any, prior to accepting his or her appointment or, if thereafter, as soon as he or she learns about them..."*

***(c) Any doubt as to whether an arbitrator should disclose certain facts or circumstances should be resolved in favour of disclosure."***

The failure to disclose is further exacerbated by the controversy surrounding the terms of his recusal from a recent matter involving a US oil company. "Chapter 3: Legal vultures: Law firms driving demand for investment arbitration...In another case of a US oil company against Ecuador, the investor-appointed arbitrator, Guido Tawil, resigned following allegations of an "extremely close connection and relationship" with King & Spalding, the oil company's counsel"<sup>4</sup>. King & Spalding was ranked amongst the 20 busiest investment arbitration law firms actively promoting investment treaty disputes in 2011 by Corporate Europe Observatory<sup>5</sup>.

In summary, when there has been previous controversy involving the Expert over the links between big business and boosting arbitration practice and in the specific context of the recusal of the prior choice of expert precisely on the grounds of conflict of interest with the objector, it was imperative that Dr. Tawil should have disclosed his presence at the conference. It is clear that his mind has been recently focused on the prospect of creating business opportunities by close connections with industry, and very specifically, the organized sporting industry (of which SportAccord, the Objector, is a part. This has given rise to doubts as to the arbitrator's impartiality or independence, prior to accepting his appointment as Expert.

## REQUEST

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<sup>3</sup> Article 7(4) of ICC Expertise Rules Section III: Appointment Of Experts

<sup>4</sup> [http://corporateeurope.org/trade/2012/11/chapter-3-legal-vultures-law-firms-driving-demand-investment-arbitration#footnote63\\_smh55ia](http://corporateeurope.org/trade/2012/11/chapter-3-legal-vultures-law-firms-driving-demand-investment-arbitration#footnote63_smh55ia)

<sup>5</sup> Ibid.

On 8 January 2014, the Board Governance Committee of ICANN, in response to a reconsideration request in respect of the decision of the Expert, indicated that we must first raise issues of impartiality with the ICC<sup>6</sup>. Further, neither the ICC Practice Note on the Administration of Cases under the New gTLD Dispute Resolution Procedure, nor the ICC Rules for Expertise, appear to specify that challenges to the appointment of an Expert must occur prior to the judgment being rendered.

We hereby request that the ICC reconsider whether in fact the appointment of Dr Tawil was valid in the light on the information at hand.

We further request that the ICC require that Dr Tawil provide details of his interest, or the interest of any member of his firm (M & M Bomchil Abogados) in the subject of commercialization of the Olympics and/or sporting arbitration cases. In particular, he should disclose any links or commercial dealings he or his firm has or has had or has at any time applied for with Sport Accord or any of its member federations (including in particular the International Olympic Committee).

We hereby reserve our rights, in particular our right to further challenge the validity of the appointment of Dr Tawil as Expert, should any further information come to light.

Yours faithfully



**Peter Young**

**For and on behalf of dot Sport Limited**

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<sup>6</sup> at page 13 <http://www.icann.org/en/groups/board/governance/reconsideration/determination-sport-08jan14-en.pdf> communicated to dot Sport Limited on 13 January 2014



# Olympic-Size Investments: Business Opportunities and Legal Framework

21-23 February 2011

Sofitel Copacabana Hotel,  
Rio de Janeiro, Brazil



the global voice of  
the legal profession

A conference presented  
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## Final Programme

# Programme

## Conference Co-Chairs

Gilberto Giusti *Pinheiro Neto Advogados, São Paulo*  
Hendrik Haag *Hengeler Mueller, Frankfurt; Council Member, IBA Legal Practice Division*

## Host Committee

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Pinheiro Neto Advogados  
Tauil & Chequer Advogados associado a Mayer Brown LLP  
TozziniFreire Advogados  
Ulhôa Canto Rezende e Guerra Advogados  
Veirano Advogados Associados  
Vieira Rezende Barbosa e Guerreiro Advogados  
Xavier Bernardes Bragança Sociedade de Advogados

## Monday 21 February

1400 – 1700

Visit to the Maracanã Stadium  
*(Please note that this visit has been cancelled)*

1900 – 2200

Welcome dinner cordially offered by the city of Rio de Janeiro and hosted by Mr Eduardo Paes, Mayor of the city of Rio de Janeiro  
*At the City Palace (Palácio da Cidade)*  
*(Shuttle service from Sofitel Copacabana at 1830)*

## Tuesday 22 February

0800 – 1700 - Foyer

Registration at Sofitel Copacabana Hotel

0845 – 0900 - Rooms Rio de Janeiro I and II

### Welcome remarks

Michael Reynolds Allen & Overy LLP, Brussels; IBA Vice-President

0900 – 0915 - Rooms Rio de Janeiro I and II

### Directive remarks from the conference Co-Chairs

Gilberto Giusti

Hendrik Haag

0915 – 1000 - Rooms Rio de Janeiro I and II

### Opening address

Eduardo Paes Mayor of the city of Rio de Janeiro

1000 – 1115 - Rooms Rio de Janeiro I and II

### Procurement and construction

This panel will discuss the role of the legal professional during the progress of the investments and the legal structure surrounding the construction issues during a country's preparation for a major event such as the Olympic Games and/or the World Cup, events that can generate profits of millions of dollars to the host country. The work of lawyers must be focused on accomplishing contracts and resolving any possible conflicts that may arise. The panel will approach a more practical point of view, establishing the steps that a country needs to take in order to succeed in hosting these major events.

### Session Co-Chairs

Horacio Bernardes Neto *Xavier Bernardes Bragança Sociedade de Advogados, São Paulo; Vice-Chair, IBA Bar Issues Commission and Council Member, IBA Public and Professional Interest Division*

Mark Lane *Psent Masons, London; Co-Chair, IBA International Construction Projects Committee*

### Speakers

Rodrigo Bueno *Construtora Norberto Odebrecht SA, São Paulo*

Todd Crider *Simpson Thacher & Bartlett LLP, New York*

Roberto Hernández-García *COMAD SC, Mexico City; Co-Chair, IBA International Construction Projects Committee*

José Luis Vittor *McDermott WW & Emery LLP, Houston*

Diego Muñoz Tamayo *Muñoz Tamayo & Asociados, Bogotá*

1115 – 1145 - Foyer

Coffee break

Lunches and coffee breaks kindly sponsored by

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# Programme continued

## Tuesday 22 February

1145 – 1300 - Rooms Rio de Janeiro I and II

### Energy – challenges of creating an efficient and sustainable energy model for an Olympic city

This panel will discuss issues that affect the future of energy in light of the challenges that Brazil faces as host of world class sport events: re-thinking energy policies; developing and implementing renewable energies; the challenges of Pre-salt exploration; the development of energy projects from the legal perspective.

#### Session Co-Chairs

Brian Bradshaw *Morgan Lewis & Bockius LLP, Houston*  
Daniela Ribeiro *Vieira Rezende Barbosa e Guerreiro Advogados, Rio de Janeiro*

#### Speakers

Carlos de Maria y Campos *Gálvez Abogados, Mexico City*  
Jaime Herrera *Passé Herrera & Ruiz, Bogotá*  
Helder Queiroz *Institute of Economics – Economy Institute of the Federal University of Rio de Janeiro, Rio de Janeiro*  
Fernando Quicías Dorado *Pérez-Llorca, Madrid*

1300 – 1430 - Rooms Copacabana and Flamengo  
Lunch

#### Keynote Speaker

Gold Olympic medalist coaching the Brazilian men's volleyball team, two-time bronze Olympic medalist coaching the Brazilian women's volleyball team, silver Olympic medalist playing in the Brazilian men's volleyball team and countless other international titles.  
Bernardo Rocha de Rezende (Bernardinho) *Coach of Brazil men's volleyball team, Rio de Janeiro*

1430 – 1545 - Rooms Rio de Janeiro I and II

### The services sector moved by major sport-hosting events

This panel will provide participants with in-depth information from players who have expertise in the major sports events sector. Some of the issues that will be brought before the panel for discussion include key sensitivities that are likely to have a significant impact on business, as well as key success factors within the control of sector operators which should be followed.

#### Session Co-Chairs

Rossana Fernandes Duarte *TozziniFreire Advogados, São Paulo*  
Juan José Lopez-de-Silanes *Basham Ringe y Correa SC, Mexico City*  
Conference Coordinator, *IBA Real Estate Committee*

#### Speakers

Luiz Henrique Lessa *Brazilian Association for Real Estate and Tourism Development – ADRT, Ponta Verde*  
Mauro Miranda *Janes Lang LaSalle, São Paulo*  
Paulo Sérgio de Almeida *Brazilian Ministry of Labour and Employment, Brasília*  
Josier Marques Vilar *Rio de Janeiro Hospitals and Health Centres Association, Rio de Janeiro*  
Luis Wever *Odgers Berndtson, São Paulo*

1545 – 1615 - Foyer  
Coffee break

1615 – 1730 - Rooms Rio de Janeiro I and II

### The quest for optimizing the dispute resolution process in major sport-hosting events

The panel will debate the trends and best practices of resolving disputes in challenging environments with time-sensitive deadlines. Panellists will address issues related to arbitration, dispute boards, expert determination, mediation and electronic discovery on infrastructure projects for big international sports events. The experiences of Atlanta, Barcelona and the London Olympic Games will

be discussed. The panel will also address the unique aspects of sports disputes and the potential use of a fast-track dispute resolution process in this area.

#### Session Co-Chairs

Julio Cesar Bueno *Pinheiro Neto Advogados, São Paulo*; Vice-Chair, *IBA Project Establishment Subcommittee and Website Officer, IBA Latin American Regional Forum*  
Guido Tawil *M&M Borchini, Buenos Aires*; Council Member, *IBA Legal Practice Division*

#### Speakers

Virginia Allan *Uria & Menéndez, Madrid*  
Jerry Brodsky *Peckar & Abramson, Miami, FL*  
Adrian Hughes *QC Thirty Nine Essex Street Chamber, London*  
David W Rinkin *Debevoise & Plimpton LLP, New York*; *IBA Secretary General*

1900 – 2200

### Cocktail reception offered by the Host Committee

At late *Clube do Rio de Janeiro*  
(Shuttle service from *Sofitel Copacabana at 1815*)

## Wednesday 23 February

0800 – 1800 - Foyer

Registration at *Sofitel Copacabana Hotel*

0900 – 0915 - Rooms Rio de Janeiro I and II

### Reopening remarks from the immediate past Co-Chair of the Latin American Regional Forum

Jaime Herrera

0915 – 1115 - Rooms Rio de Janeiro I and II

### Taxation - double session

#### 1. Challenges and incentives of structuring projects

The tax challenges of structuring projects, including: tax obstacles and tax incentives to be considered when contracting the construction and financing; the perspective of the investors.

#### Session Co-Chairs

Raquel Novais *Machado Meyer Sendacz e Opice Advogados, São Paulo*; Vice-Chair, *IBA Taxes Committee*  
Carola Van Den Bruinhorst *Loyers & Loeff, Amsterdam*; Council Member, *IBA Legal Practice Division*

#### Speakers

Claire Kennedy *Bennett Jones LLP, Toronto, ON*  
Gláucia Maria Lauletta *Fraschina Mattos Filho Veiga Filho Marrey Jr e Quiroga Advogados, São Paulo*  
Sonia Velasco *Cuatrecasas, Gonçalves Pereira SLP, Barcelona*; Conference Coordinator, *IBA Taxes Committee*

#### 2. Customs/importing and exporting

- Free trade of goods and services and the WTO rules
- The Convention on contracts for the International Sale of Goods - CISG
- Customs issues within Mercosur

#### Session Co-Chairs

Jaime Carey *Carey & Cia, Santiago*; Council Member, *IBA Legal Practice Division*  
Gustavo M Brigagão *Ulhoa Canto Rezende e Guerra Advogados, Rio de Janeiro*

# Programme continued

## Speakers

Lauro Gama Jr *Binenbojm Gama & Carvalho Britto Advogados, Rio de Janeiro*  
Eduardo Grebler *Grebler Advogados, São Paulo*

## Keynote Speaker

Renato Villela *Secretary of Finance of the State of Rio de Janeiro, Rio de Janeiro*

1115 – 1145 - Foyer  
Coffee break

1145 – 1300 - Rooms Rio de Janeiro I and II

### **The challenges of financing infrastructure for major events**

Recent experience in the financing of infrastructure - both stadia and urban infrastructure, such as airports, roads, telecommunications etc. in connection with recent stagings of the Olympic Games, the football World Cup and other major sporting events, the do's and don'ts, the differences of financing infrastructure in Latin America, the views from BNDES and from the private banking sector; how to get involved in infrastructure financing in Brazil, challenges to overcome and pitfalls to avoid.

## Session Co-Chairs

Robert L Nelson Jr *Akin Gump Strauss Hauer & Feld LLP, San Francisco, CA and Abu Dhabi, Vice-Chair, IBA Project Finance Subcommittee*  
Ricardo Veirano *Veirano Advogados Associados, São Paulo, Vice-Chair, IBA Latin American Regional Forum*

## Speaker

Antonio Felix de Araújo Cintra *TazziniFreire Advogados, São Paulo*

1300 – 1430 - Rooms Copacabana and Flamengo  
Lunch

1430 – 1545 - Rooms Rio de Janeiro I and II

### **Capital markets: going public with infrastructure projects in Brazil**

A roundtable with local and foreign capital markets specialists to discuss market opportunities and regulatory challenges relating to infrastructure projects in Brazil.

## Session Co-Chairs

Francisco Antunes Maciel *Müssnich Barbosa Müssnich & Aragão Advogados, Rio de Janeiro*  
Petra Zijp *NautaDuijth NV, Amsterdam, Co-Chair, IBA Capital Markets Forum*

## Speakers

Julian Chediak *Motta Fernandes Rocha Advogados, Rio de Janeiro*  
Nelson Eizirik *Carvalho e Eizirik Advogados, Rio de Janeiro*  
Paul Schnell *Skadden Arps Slate Meagher & Flom LLP, New York*  
Otavio Yazbek *Brazilian Securities Commission - CVM, Rio de Janeiro*

1545 – 1615 - Foyer  
Coffee break

1615 – 1730 - Rooms Rio de Janeiro I and II

### **Environment - legacy to the future**

This panel will analyse the need to develop the Olympic project with an environmentally friendly focus, trying to minimise the adverse impact of the urban transformation, infrastructures and landscaping in the host city. We will develop aspects such as the investments planned for the conservation of the environment to comply with environmental protection standards set by the International Olympic Committee, the necessary adjustments to existing environmental legislation needed to convert Rio de Janeiro into a 'green city', as well as the requirements of different infrastructure investments in order to be environmentally friendly. In so doing the Olympics will leave a lasting legacy for Rio de Janeiro and Brazil.

## Session Co-Chairs

José Antonio Fichtner *Andrade & Fichtner Advogados, Rio de Janeiro*  
Eduardo Sanguinetti *Sanguinetti Fodere Bragard Abogados, Montevideo, Co-Chair, Latin American Regional Forum*

## Speakers

Luiz Fernando Sant'Anna *Demarest & Almeida Advogados, São Paulo*  
Gabriel R Macchiavello *Rattagan Macchiavello Arocena & Peria Robirosa Abogados, Buenos Aires*  
Pedro Teixeira *ThyssenKrupp CSA, Rio de Janeiro*

1730 – 1800 - Rooms Rio de Janeiro I and II

### **Final remarks from the conference Co-Chairs**

2000 – 2300

### **Cocktail and closing party - Carnival show**

*At Unidas da Tijuca Samba School*

*(Shuttle service from Sofitel Copacabana at 1930)*

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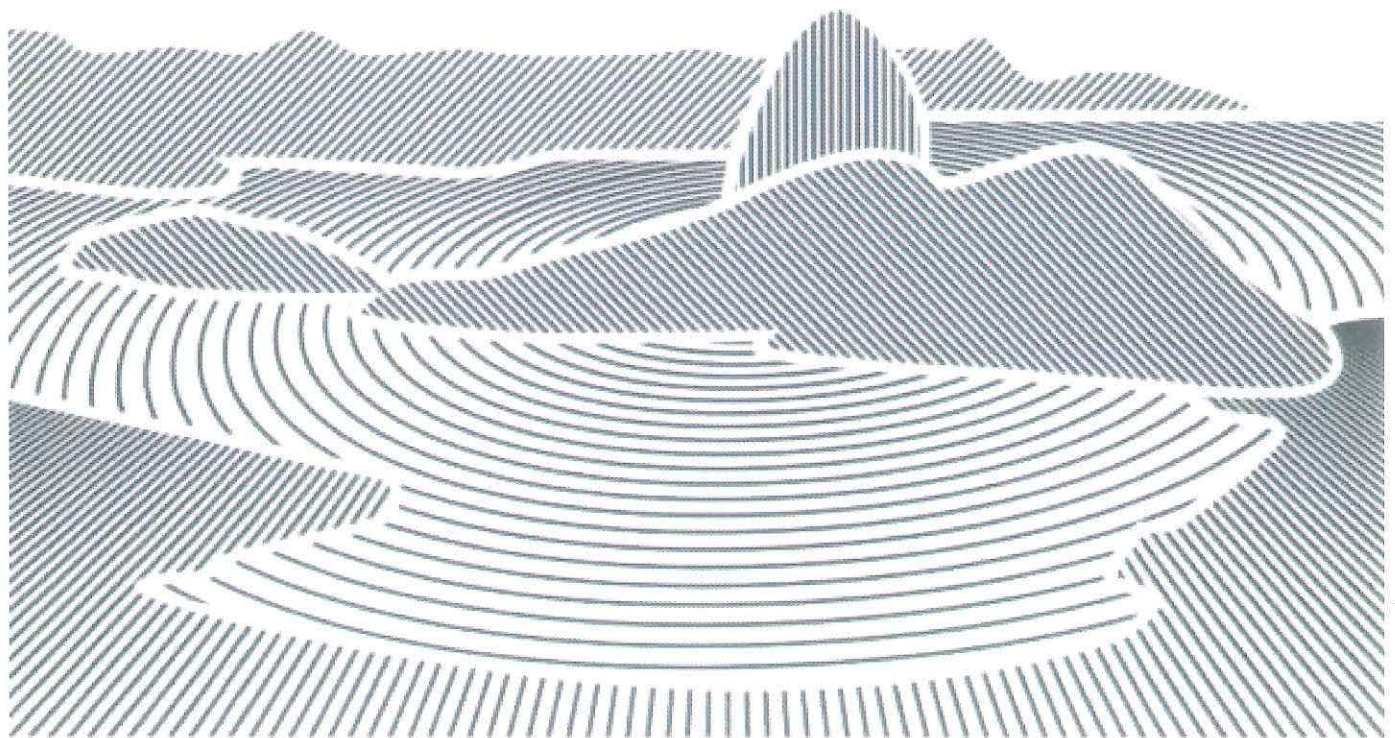


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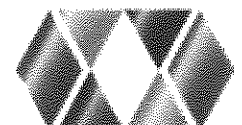
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Grouped into two divisions – the **Legal Practice Division** and the **Public and Professional Interest Division** – the IBA covers all practice areas and professional interests, providing members with access to leading experts and up-to-date information. Through the various committees of the divisions, the IBA enables an interchange of information and views among its members as to laws, practice and professional responsibilities relating to the practice of business law around the globe. Additionally, the IBA's high-quality publications and world-class conferences provide unrivalled professional development and network building opportunities for international legal practitioners and professional associates.

The IBA's **Bar Issues Commission** provides an invaluable forum for IBA member organisations to discuss all matters relating to law at an international level.

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The Latin American Regional Forum covers all countries in Latin America as well as Mexico, Puerto Rico and Spanish-speaking areas of the Caribbean. The forum provides a focus for all activities in the region. It organises sessions at IBA conferences and in particular has been instrumental in ensuring that a Latin American perspective is addressed during relevant annual sessions. The Forum is closely affiliated with the **North American Regional Forum** as the regions are geographically proximate and share many issues.

International Bar Association

Contact Information Redacted



# **Annex 17.**

**Janssen, Jan**

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**From:** Peter Young  
**Sent:** Jeudi 6 février 2014 15:42  
**To:** Chris LaHatte (chris.lahatte@icann.org)  
**Cc:** Contact Information Redacted  
**Subject:** Complaint in respect of .SPORT community objection  
**Attachments:** ICANN ICC SPORT Determination Ombudsman Request\_6 Feb 2014.docx; Exhibit 4.zip; Exhibit 1..pdf; Exhibit 2 B..pdf; Exhibit 2 A..pdf; Exhibit 3.pdf

Dear Chris

I hope you are well.

Please find attached our complaint in respect of the .SPORT objection determination plus supporting documents.

Thank you for your assistance in this matter.

Kind regards

Peter

### **ICANN decisions/processes referred to:**

- 1) Expert Determination of the New gTLD Community Objection regarding the string .SPORT (Application ID 1-1174-59954) by the International Centre for Expertise in CASE No. EXP / 471 / ICANN /88) received on 25 October 2013 ("**Determination**") attached as Exhibit 1.
- 2) Reconsideration Request by Dot Sport Limited ("**Applicant**") of 8 November 2013 ("**Request**") attached as Exhibit 2.
- 3) Determination of the Board Governance Committee ("**Board**") Reconsideration Request of Dot Sport Limited on 8 January 2013 ("**Decision**") attached as Exhibit 3.
- 4) Correspondence with the ICC regarding the impartiality of the Expert attached as Exhibit 4.

References to Guidebook or Applicant Guidebook are references to the gTLD Applicant Guidebook of 4 June 2012 (Version 2012-06-04)

### **Standing**

The Ombudsman role was created in recognition of the need for the ICANN community to have an effective mechanism for a merits based review of administrative decisions of ICANN or its designees that affected the rights or interests of a member of the various ICANN communities.

It is fundamental to the fulfilment of the purpose for which the Ombudsman was created that it should monitor fairness throughout the execution of ICANN responsibilities. Accordingly, it is a cornerstone of the Ombudsman's function that it may legitimately review a decision of an ICANN designated Expert in the Objections procedures, in order to gauge that the fairness principle prevails.

As an applicant for the .sport TLD , the Applicant is incontrovertibly a member of the ICANN community of TLD applicants and is subject to ICANN processes and standards under which it has the incontrovertible right to be treated fairly (as set out in the body of Request, hereby incorporated). Accordingly, the Applicant has standing and requests leave to bring to the attention of the Ombudsman the Determination (as defined above) and further requests that the Ombudsman, within his official capacity, brings the request to the Board (as defined above), which considered the Request (as defined above), that it reconsiders its Decision and subsequently recommends that the .Sport Determination be set aside and the matter reconsidered by a new Expert.

### **Grounds**

The grounds on which we request your intervention, are:

- the Illegal application of a standard by an ICANN designated expert in the Determination, resulting in the wrong burden of proof being applied and an unfair process with resulting damage to the Applicant.
- the incorrect statement of fact and incorrect understanding of the nature of how the expert in the Determination failed to apply the applicable standard by the Board, and lack of

requisite due diligence, which led to the Board unlawfully recommending that the Applicants' Request be rejected in its Decision.

- the wilful and/or arbitrary shifting of the burden of proof constituting an ultra vires use of the ICANN designee's (the expert's) powers and a serious violation of process
- Inconsistency as between decisions where differing standards of proof applied resulting in manifest unfairness to the Applicant

Further reasons and grounds supporting the Ombudsman's intervention are provided at **Schedule 1**.

### **Background**

By way of background, both the Applicant and SportAccord ("**Objector**") applied for the .SPORTS string, and are in the same contention set. The Objector won its Community Objection against the Applicant. The Applicant made a reconsideration request on 8 November 2013, in which it brought to the Board's attention, that the Expert in the Determination failed to apply the requisite ICANN standards, processes and policies in reaching the determination by:

- (a) creating a new standard for determining the likelihood of material detriment;
- (b) failing to apply the existing standard for cause of the material detriment to a community; and
- (c) creating a new standard for examining the alleged material detriment.

### **Actual harm to the Applicant**

The measureable damage suffered by the Applicant by the expert's incorrect definition of the term "likelihood" as "future possible harm" in the Determination (unlawfully replacing the correct ICANN standard) is that the Applicant has potentially lost the right to operate the TLD.

A community objection was won unlawfully, which means that the Objector has been put in the unfairly favourable position of having won the TLD without having to meet the strict criteria necessary for fulfilling a community application.

### **Decision**

In the Decision, the Board found:

- 1) "In the context of the New gTLD Program, the reconsideration process does not call for the BGC to perform a substantive review of expert determinations"

Yet the Board, in direct contradiction of its stated intent, went on to consider substantive issue of the meaning of standard, as set out in 2) or 3).

- 2) The Board went on to substantively determine and reject the Requester's determination on the basis that), that "the Requester's interpretation of the meaning of "likelihood" is not supported by the Guidebook. The Board found "**The Requester claims that the Panel**

**erroneously interpreted the standard for assessing the “likelihood of material detriment” as requiring a “potential” harm, which is a lesser standard than the “probability” of harm that is purportedly required in the Guidebook. (Request, Section 10(b)(iv)(a).)**

We simply and unconditionally did not make that claim in section 10(b)(iv)(a) or anywhere else in the Request. Despite the quotation marks around the term "potential", the Applicant never once used the apparently quoted word. When attempting to persuade in an official capacity (in this case an ICANN Board) that one has made a thorough review of the meaning of the term at stake, then surely the very least that official should do is to make a credible attempt to demonstrate that it has exercised due care in performing the review. The Applicant will not here go into the semantics of "potential" and "possible" and "likelihood", but needless to say, as the Request hinged on the incorrect interpretation of a term an ICANN standard, resulting in the incorrect and considerably lessened burden of proof being applied in favour of the Objector: the fact that the Board fundamentally misunderstood the Applicant's position through failing to exercise due care, must surely mean that the Decision cannot stand.

"3) There is more evidence of lack of due care. The Board also found that: "The Requester [i.e., the Applicant] has failed to establish how the Panel's interpretation of “likelihood” is a violation or contradiction of the Guidebook. **Contrary to the Requester's assertion, the Guidebook does not specifically define “likelihood of material detriment”** but provides a set of factors that can be used to make a determination, and **the Requester's interpretation of the meaning of “likelihood” is not supported by the Guidebook.**"

Again, there is not a single instance in the Request where the Applicant makes the assertion that the Guidebook specifically defines "likelihood". If due consideration and heed had been paid to the reading of the determination, the reader would have observed that the opposite conclusion was true: " it was the .sport Expert who offered the definition.

The Board's decision is so obviously factually incorrect and has so fundamentally misunderstood the Applicant's position, that it cannot stand as a reasoned consideration of the Applicant's request as a matter of due process.

## **Determination**

### **Incorrect Application of the ICANN Standard**

The appointed expert in the Determination, Guido Tawil, ("**Expert**") defined the “likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted” as "future possible damage".

The Applicant hereby incorporates all the arguments set out in the Request as set out in Exhibit 2. However, given that the Board in its Decision did not consider the actual arguments of the Applicant in its Decision (for the reasons stated above), the Applicant hereby provides a longer reasoning in order to make the point more strongly.

The 'reasoning' provided by the Expert was as follows:



"First the Appointed Expert finds that the ICANN Guidebook does not call for "**actual damage**" for an objection to be accepted. It established a lower bar, namely a "**likelihood of material detriment**" **logical consequence** of the impossibility of assessing any damage when the Applicant has yet to start operating the gTLD string.

**Therefore** the standard the Appointed Expert should apply to the issue is the "**chance**" that detriment will occur, which differs from the standard of "actual damage" invariably applied in litigation or arbitration. **In other words**, the standard of a "likelihood of material detriment is in the Appointed Expert's opinion equivalent to "**future possible damage**" (our emphasis)".

With respect, what the Expert is in fact concluding in the quoted paragraph, is that, because ICANN established a lower bar of likelihood, he is therefore establishing the even lower bar of "future possible chance". There is nothing logical about this conclusion at all. The equivalent would be to assert that A=B because A is not equal to C.

### **Applicable standard**

The Guidebook does not define "likelihood" because there is no need to define "likelihood" any more than there is a need to define the term "likely". There is an obvious, ordinary meaning of the word "likelihood" which should have been applied. The overwhelming linguistic evidence available to any researcher is that the ordinary meaning of the word "likelihood" is "probability". We adopt the discussion of the meaning of the word "likelihood" by the Federal Mines Safety and Health Review Commission, as illustrative:

"Looking at the standard in question at a purely linguistic level, **the word "likelihood" is generally understood by the reasonable man to mean "probability"**. ""Likelihood" is defined in Webster's New Collegiate Dictionary (1979, G & C Merriam Co.) as "**probability**" and in the Random House College Dictionary (Rev. ed., 1980) as "the state of being likely or probable; probability." Again, in Webster's Third New International Dictionary (Unabridged ed., 1976, G & C Merriam Co.) its primary definition is "**probability**". **Review of Words and Phrases and other texts and precedents again reveals that "likely" means "probably" and "likelihood" means "probability."** **It also appears that the adjective "reasonably" used to modify the subject word imparts no significant change of meaning to the base word.** For example, in connection with a similar phrase, "reasonably to be expected" the Interior Department's Board of Mine of Mine Operations Appeals has held that use of the word "reasonably" in the 1969 Mine Act's Section 3(j) definition of "imminent danger" simply meant that the test of imminence was objective and that the government inspector's subjective opinion need not be taken at face value. Freeman Coal Mining Corporation, 2 IBMA 197 (1973)" <http://archive.org/stream/FederalMineSafetyAndHealthReviewCommissionsVol9No4/txt/00000105.txt>

The Expert should clearly have accepted the ordinary meaning of the word (as did the Expert in .basketball, for example, please refer to Schedule 3) or should have provided some substantive reasoning which would evidence that his view is correct. As noted earlier, there is nothing logical about stating that because "actual damage" is **NOT** called for (not mentioned) therefore "likelihood" means "future possible damage". By any stretch of the imagination, this reasoning cannot constitute sufficient grounds to displace the ordinarily held meaning of the word. Further analysis of the meaning of the word "likelihood" is attached as **Schedule 2**.

For the Expert, therefore, to have substitute his own subjectively derived meaning of the word "likelihood", is manifestly unfair to the Applicant: the burden of proof shifted from the Objector having to establish "likely" (i.e. probable) **material** harm to "possible harm" and a direct result of that shift was that the Objector has a far lower burden of proof to discharge than what the ICANN standard established; and the ultimate outcome of the determination is that the Applicant lost the TLD.

The Expert also ignored the Applicant Guidebook requirements for a showing of material detriment specifically created by the application or at least linked to it. Among the requirements for proof is the objector's burden to provide tangible proof that its community and its reliance on the DNS is likely to be adversely affected by the application for the string in question. While the Expert is clearly aware that the objector needs to prove that "the application creates a likelihood of material detriment...<sup>1</sup>", none of the factors that were considered included anything about the application itself. The Expert did not identify a single objectionable or lacking aspect in the application that creates a likelihood of material detriment. The likely actual merits or demerits of the application were entirely ignored in the context of detriment which might be caused by the success of the application. In other words, the expert failed to apply the required obligatory test which would make the application the cause of the material detriment.

#### **Ultra vires use of the ICANN expert's powers**

The Guidebook equally does not state that the Expert is free to assign whatever meaning he wishes to the given standard. Rather, his role is to apply the *existing* standard. ***It is fundamental to natural justice that an adjudicator cannot be given carte blanche to interpret a standard according to his personal inclinations. He must invariably seek recourse in legal or at very least linguistic precedent in order to provide a "ratio" or reasoned basis for his determination.***

Researching some corroborating source of law (as the Expert clearly should have done) in order to identify some sources from which the meaning of "likelihood" can ever be equated with "future possible chance", the Applicant repeatedly drew a blank. On the other hand, the Applicant had considerably more success in attempting to provide evidence to the contrary: that the jurisprudence of three of the longest established systems of law (which are based on the English language), have categorically found that (i) "likelihood" cannot mean "possibility" and (ii) that the burden of proof in cases attempting to establish the "likelihood" of a matter happening was at least the "preponderance of evidence" or the higher test of the "balance of probabilities".

For instance, US trademark law has emphatically determined that "likelihood" is not the same as "possibility". "During an extensive bench trial, A&H argued that Victoria's Secret should be enjoined from using The Miracle Bra mark for swimwear. Finding a "possibility of confusion," the District Court granted relief to A&H. Following an appeal to this Court that clarified that likelihood of confusion (instead of possibility of confusion) was the correct standard, the District Court concluded that A&H had failed to show by a preponderance of the evidence that Victoria's Secret's The Miracle Bra swimwear mark created a likelihood of either direct or reverse confusion with the Miraclesuit product." 237 F.3d 198: A&h Sportswear, Inc; Mainstream Swimsuits, Inc., Appellants v.victoria's

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<sup>1</sup> Applicant Guidebook §3.5.4

Secret Stores, Inc.; Victoria's Secret Catalogue Inc U.S. Court of Appeals, Third Circuit - 237 F.3d 198  
Argued: April 26, 2000 Filed December 01, 2000.

Canadian jurisprudence has established, with respect to the burden of proof and: "the meaning of "likelihood" that the test at this stage of proceedings is closer to the level of on a balance of probabilities rather than the old test of "substantial", which was closer to beyond a reasonable doubt. Children's Aid Society of Ottawa-Carleton v. T. and T. (June 7, 2000) Ottawa Docket No. FL1545/2000 (Ont.Sup.Ct.), confirmed by Vogelsang J. in Children's Aid Society of London and Middlesex v. C.(K.) and G.(B.) (September 12, 2000) London Docket No. C182/96 (Ont.Sup.Ct.(Fam.Ct.)) and the decision of Timms. J. in Children's Aid Society of Simcoe v. M.(D.) (June 5, 2000) Barrie Docket No.681/00 (Ont.Sup.Ct.)"

Looking to English case law, the panel in In Re C D (Original Respondent and Cross-Appellant) (Northern Ireland) Appellate Committee, determined that "What to my mind is unquestionably the most useful and accurate statement of the position is that made by Lord Hoffmann in Secretary of State for the Home Department v Rehman [2003] 1 AC 153, para 55. It bears repetition as few such statements do:

**"The civil standard of proof always means more likely than not.** The only higher degree of probability required by the law is the criminal standard. But, as Lord Nicholls of Birkenhead explained in In re H (Minors) (Sexual Abuse: Standard of Proof) [1996] AC 563, 586, some things are inherently more likely than others. It would need more cogent evidence to satisfy one that the creature seen walking in Regent's Park was more likely than not to have been a lioness than to be satisfied to the same standard of probability that it was an Alsatian. **On this basis, cogent evidence is generally required to satisfy a civil tribunal that a person has been fraudulent or behaved in some other reprehensible manner. But the question is always whether the tribunal thinks it more probable than not."**

It is clear from the above text in bold that Lord Hoffman, unequivocally equates the terms "more likely" to "more probable".

In all legal traditions, the assignment of the burden of proof is an extremely serious matter, certainly not one that can be taken arbitrarily or wilfully. The Supreme Court of the United States referred to the standards of proof in legal cases in the following manner:

"Generally speaking, the evolution of this area of the law has produced across a continuum three standards or levels of proof for different types of cases. At one end of the spectrum is the typical civil case involving a monetary dispute between private parties. Since society has a minimal concern with the outcome of such private suits, plaintiff's burden of proof is a mere preponderance of the evidence. The litigants thus share the risk of error in roughly equal fashion.

In a criminal case, on the other hand, the interests of the defendant are of such magnitude that historically and without any explicit constitutional requirement they have been protected by standards of proof designed to exclude as nearly as possible the likelihood of an erroneous judgment. In the administration of criminal justice, our society imposes almost the entire risk of error upon itself."

In other words, the allocation of the burden of proof is a fundamental of the legal system. The burden cannot be lightly discharged, the standard cannot be lightly shifted.

Consider what the Expert actually accepted as being sufficient to discharge the burden of proof:

"In this regard, the Appointed Expert agrees with Applicant that many detriments alleged by Objector are purely hypothetical, such as the risk of cybersquatting, ambush marketing or the misuse of sport themes for purposes foreign to sport values. Notwithstanding so, the Appointed Expert is of the opinion that Objector has proved several links between potential detriments that the Sport Community may suffer and the operation of the gTLD by an unaccountable registry, such as the sense of official sanction or the disruption of some community efforts."

It is beyond the understanding of the Applicant as to how, in the foregoing paragraph, the Expert has sufficiently distinguished the "purely hypothetical" "risk of cybersquatting, ambush marketing or the misuse of sport themes" from apparently not hypothetical future "sense of official sanction or the disruption of community efforts". In order to make this distinction credible, the Applicant would have expected to see references have been made as to the evidence which was presented as "proof". None was presented. The basis of the reasoning presented by the Expert appears to be: "I state, therefore it is".

While attempting to find a comparable legal equivalent for the standard which the Expert has adopted, the Applicant came closer to the standard of "some credible evidence", which is used in child protection cases, "which standard does not require the fact-finder to weigh conflicting evidence, and merely requires the investigator or prosecutor to present the bare minimum of material credible evidence to support the allegations against the subject, or in support of the allegation" see *Valmonte v. Bane*, 18 F.3d 992 (2nd Cir. 1994)".

If the Expert is prepared to adopt a standard which is used for the protection of minors whose welfare is in imminent danger, then it must find some basis in jurisprudence somewhere in order to establish that that is what the ICANN standard has in contemplation: **however, the word used is not possible, it is likelihood**. One cannot depart from that simple "plain as vanilla" fact. The ordinary meaning of the word likelihood is probable: another incontrovertible fact. The legal meaning and the required standard of proof with respect to the meaning of "likelihood" is not "possible" but evidence, that at the very least "on the preponderance of the evidence" (on the majority of the evidence presented) or alternatively "the balance of probabilities" is that the allocation of the fTLD to this Applicant is likely to result in **material harm**. That the Expert has done so without caring to ground his determination in legal reasoning, when the ordinary meaning of the word is completely other than what he has so adjudged, is utterly unfair to the Applicant.

The essential role of the Ombudsman is to identify unfairness in the exercise of a public or quasi-public function. The ICANN ombudsman is the observer of ICANN actions (or omissions), whether exercised by ICANN or an ICANN designee.

On the basis that "likelihood" means "future possible harm", the Expert allowed substantially the same speculative evidence that was presented to the Expert in .basketball to constitute sufficient evidence to discharge the burden of proof. The Expert in .basketball, on the other hand, decisively

rejected "speculative allegation" as constituting sufficient to discharge the burden of the objector's proof.

### **Other defects in reasoning**

The Expert exceeded his mandate in other areas also. Many of these defects were reported in the letter of a group of gTLD Applicants to ICANN which appeared as Annex 2 to the Request.

### **Independence of the Expert**

The illogical nature of the Determination gave the Applicant reason to investigate further the impartiality of the Expert. So far, we have identified that the Expert has some interest in and experience of the area of Olympic investments (bearing in mind that the International Olympic Committee is a member of SportAccord). We put this to the ICC who have so far resisted our request for further information from the Expert. In our view, on a plain reading of the ICC's own rules of procedure, there appears to be nothing precluding a challenge to an Expert even after a determination has been rendered. We have insufficient evidence at this time in respect of such a challenge, but it is legitimate to request further clarification. We attach our correspondence in this regard at Exhibit 4.

### **Summary**

The Ombudsman may legitimately review a decision of an ICANN designated Expert in the Objections procedures.

We would like the Ombudsman to advise the Board to review its Decision and to advise the ICC to reappoint an expert to reconsider the .sport objection as the Determination was fundamentally contrary to stated ICANN process.

## **Schedule 1**

In the United Kingdom, the established grounds for reversing an administrative decision by way of judicial review is as follows: illegality, irrationality (unreasonableness) (both substantive grounds) and procedural impropriety. The same set of facts may give rise to two or all three grounds for judicial review.

Illegality, in Lord Diplock's words, means that the decision maker "must understand correctly the law that regulates his decision-making power and must give effect to it". The same law must be applied to all. This is so fundamental to any system of adjudication it can hardly be worth saying.

In the tradition in which commonlaw lawyers are trained, Questions of legality are also hard-edged. If an administrative decision-maker applies the wrong law or misdirects itself as to the law, the decision-maker has acted illegally and, subject to questions of materiality and discretion, the court can and should intervene.

As Forbes J said in *R v Central Arbitration Committee, ex parte BTP Tioxide* "A tribunal either misdirects itself in law or not according to whether it has got the law right or wrong, and that depends on what the law is and not what a lay tribunal might reasonably think it was. In this field, there are no marks for trying hard but getting the answer wrong".

Procedural fairness in Australia, would include, the right for "a person or body having power to decide a matter must give the affected persons an opportunity to know the case they are to meet."

"A person or body having power to decide a matter must give affect persons an opportunity to know the case they are to meet".

## Schedule 2

Note the recurring use of the word "would" in all cases in the quoted list, rather than "could". In the English language, "would" is a modal verb which is used to indicate a higher degree of certainty than "could", just as in contract drafting the present tense equivalents "can" means a degree of possibility completely outside the scope of "will". Could is (among other things)<sup>2</sup> "Used with hypothetical or conditional force" whereas would is "Used in the main clause of a conditional statement to express a possibility or likelihood". If the ICANN in this list wished to create the impression of "possibilities", it would have been simple enough to spell this out in the list, in place of would, therefore, they could have readily replaced the word "would" with "could".

"These elements include, but are not limited to, "

nature and extent of damage to the reputation of the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string;

evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely, including evidence that the applicant has not proposed or does not intend to institute effective security protection for user interests;

interference with the core activities of the community that would result from the applicant's operation of the applied-for gTLD string;

dependence of the community represented by the objector on the DNS for its core activities;

nature and extent of concrete or economic damage to the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string; and

level of certainty that alleged detrimental outcomes would occur" (our emphasis);

If we look further at the list of suggestions, the phrases "nature and extent of damage" and, interestingly, the element at (vi), relates to the "level of certainty that alleged detrimental outcome would occur". Why raise the spectre of "level of certainty", if the intention of ICANN was merely to say the "possibility that alleged detrimental outcome would occur".

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<sup>2</sup> <http://www.thefreedictionary.com/would> <http://www.thefreedictionary.com/could>

### Schedule 3

Comparative table of expert determinations.

<p>CASE NO. EXP/442/ICANN/59 Re: Federation Internationale De Basketball (Switzerland) Vs/ Dot Basketball Limited (Gibraltar) (Consolidated With Case No. Exp/503/Icann/120 Federation Internationale De Basketball (Switzerland) Vs/ Little Hollow, Llc (USA)</p>	<p>CASE No. EXP / 471 / ICANN /88</p>
<p>The .Basketball objector, Federation of International Basketball Associations, made these allegations of "likelihood of material harm"</p>	<p>In comparison, SportAccord (representatives of Olympic Committee), made the following near-identical allegations:</p>
<ul style="list-style-type: none"> <li>* Ambush marketing</li> <li>* Ticket scalping</li> <li>* Cybersquatting and domaining</li> <li>* Selling unofficial tournament and team merchandise, especially around tournaments</li> <li>* Association between .basketball and gambling</li> <li>* Loss of control educating about antidoping campaigns</li> </ul>	<ul style="list-style-type: none"> <li>Ambush marketing</li> <li>* Ticket scalping</li> <li>* Cybersquatting, typo-squatting and brand-jacking</li> <li>* Illegal or undesirable gambling</li> <li>* loss of credibility of community-based governance models and community-based communication policies for anti-doping, anti-drug, anti-racism</li> <li>* misuse of sport themes for pornography</li> </ul>
<p>"What is material to my determination is the Objector's failure to put on evidence proving that the Application creates a likelihood of material detriment to a significant portion of the Basketball Community. Rather, the Objection sets forth a series of speculative allegations with no evidence to support a finding that any material detriment to the Basketball Community would likely come to pass if ".BASKETBALL" were delegated to the Applicant. This is insufficient to meet the Objector's burden of proof on this issue."</p> <p>This finding was in stark contrast to the finding by Guido Tawil on .sport, who determined that: "the ICANN Guidebook does not call for "actual damage" for an objection to be accepted. It establishes a lower bar, namely a "likelihood of material detriment", logical consequence of the impossibility of assessing any damage when the Applicant has yet to start operating the gTLD string.</p> <p>Therefore, the standard that the Appointed Expert should apply to this issue is the "chance" that detriment will occur, which differs from the</p>	<p>"This finding was in stark contrast to the finding by Guido Tawil on .sport, who determined that: "the ICANN Guidebook does not call for "actual damage" for an objection to be accepted. It establishes a lower bar, namely a "likelihood of material detriment", logical consequence of the impossibility of assessing any damage when the Applicant has yet to start operating the gTLD string.</p> <p>Therefore, the standard that the Appointed Expert should apply to this issue is the "chance" that detriment will occur, which differs from the standard of "actual damage" invariably applied in litigation or arbitration. In other words, the standard of a "likelihood of material detriment" is, in the Appointed Expert's opinion, equivalent to future "possible" damage."</p>



standard of "actual damage" invariably applied in litigation or arbitration. In other words, the standard of a "likelihood of material detriment" is, in the Appointed Expert's opinion, equivalent to future "possible" damage.	
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Jennifer Kirby (the Expert in .basketball objection) found that "speculative allegations" were not sufficient to constitute "likelihood of material detriment" and found for the Applicant.

Guido Tawil found that speculative allegations were sufficient to constitute the 'possibility' of material defendant and found for the Objector.

For further analysis, please see: <http://domainnamewire.com/2014/01/09/uh-oh-basketball-community-objection-fails-while-sport-prevailed/>

**Expert in .basketball decision uses different interpretation of guidelines to come up with a different conclusion than Expert in .sport.**

An International Chamber of Commerce Expert has determined that community objections filed against two applications for .basketball have failed. Comparing this decision to a recent one upholding a community objection to .sport, it appears we may have another case of inconsistent rulings.

The .basketball community objection was filed by Fédération Internationale de Basketball (FIBA), which has applied for .basketball. If filed cases against the two rival applicants, Famous Four and Donuts. The cases were consolidated.

In the .sport case, SportAccord filed the complaint against rival applicant Famous Four and won.

In both cases, the Experts agreed with the objectors on everything up to the part about delegating the string to the applicants having a *likelihood of material detriment* on the community. That's where the Experts differed.

**First, let's take a look at what FIBA said would happen if the applicants got .basketball:**

- \* Ambush marketing
- \* Ticket scalping
- \* Cybersquatting and domaining
- \* Selling unofficial tournament and team merchandise, especially around tournaments
- \* Association between .basketball and gambling
- \* Loss of control educating about antidoping campaigns

**Now, here's what SportAccord argued would happen for .sport:**

- \* Ambush marketing
- \* Ticket scalping

- \* Cybersquatting, typo-squatting and brand-jacking
- \* Illegal or undesirable gambling
- \* loss of credibility of community-based governance models and community-based communication policies for anti-doping, anti-drug, anti-racism
- \* misuse of sport themes for pornography

These look very similar, don't they? We don't know exactly what "proof" each party submitted, but I suspect it was fairly similar.

Yet the Expert for .basketball determined FIBA didn't provide evidence of a likelihood of material detriment. The Expert in the .sport decision determined that SportAccord did.

Actually, that's not quite what happened. The Experts came to their conclusions using two different interpretations of the standards. Here's Expert Jennifer Kirby on .basketball:

What is material to my determination is the Objector's failure to put on evidence proving that the Application creates a likelihood of material detriment to a significant portion of the Basketball Community. Rather, the Objection sets forth a series of speculative allegations with no evidence to support a finding that any material detriment to the Basketball Community would likely come to pass if ".BASKETBALL" were delegated to the Applicant. This is insufficient to meet the Objector's burden of proof on this issue.

In other words, FIBA threw out a bunch of conjecture about what might happen, but didn't show a likelihood of material detriment, which is the standard in the guidebook.

Compare that to Expert Dr. Guido Santiago Tawil in .sport:

First, the Appointed Expert finds that the ICANN Guidebook does not call for "actual damage" for an objection to be accepted. It establishes a lower bar, namely a "likelihood of material detriment", logical consequence of the impossibility of assessing any damage when the Applicant has yet to start operating the gTLD string.

Therefore, the standard that the Appointed Expert should apply to this issue is the "chance" that detriment will occur, which differs from the standard of "actual damage" invariably applied in litigation or arbitration. In other words, the standard of a "likelihood of material detriment" is, in the Appointed Expert's opinion, equivalent to future "possible" damage.

Did you catch that? Kirby used the guidebook's language about showing a likelihood of material detriment. Tawil interpreted that to be a "chance" of detriment, or "possible" detriment.

Tawil is correct that you can't prove actual damages. But he applies a completely different requirement in .sport than Kirby used in .basketball.

Expert Jennifer Kirby basically agreed with FIBA's complaint until it came to the issue of whether the applicants getting .basketball would cause a likelihood of material detriment to the basketball community.

-End-

# **Annex 18.**

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**From:** Chris LaHatte <chris.lahatte@icann.org>  
**Sent:** vendredi 7 février 2014 04:44  
**To:** Peter Young  
**Subject:** RE: Complaint in respect of .SPORT community objection  
**Signed By:** chris.lahatte@icann.org

Dear Peter

Thank you for this email and annexures. I will commence an investigation, and discuss with you any further material I need in due course.

Regards

Chris LaHatte  
Ombudsman  
Blog <https://omblog.icann.org/>  
Webpage <http://www.icann.org/en/help/ombudsman>

**Confidentiality**

All matters brought before the Ombudsman shall be treated as confidential. The Ombudsman shall also take all reasonable steps necessary to preserve the privacy of, and to avoid harm to, those parties not involved in the complaint being investigated by the Ombudsman. The Ombudsman shall only make inquiries about, or advise staff or Board members of the existence and identity of, a complainant in order to further the resolution of the complaint. The Ombudsman shall take all reasonable steps necessary to ensure that if staff and Board members are made aware of the existence and identity of a complainant, they agree to maintain the confidential nature of such information, except as necessary to further the resolution of a complaint

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Contact Information Redacted

**From:** Peter Young  
**Sent:** Friday, February 07, 2014 5:42 AM  
**To:** Chris LaHatte  
**Cc:** Ren Marr  
**Subject:** Complaint in respect of .SPORT community objection

Dear Chris

I hope you are well.

Please find attached our complaint in respect of the .SPORT objection determination plus supporting documents.

Thank you for your assistance in this matter.

Kind regards

Peter

# **Annex 19.**

# PRESS RELEASE

Famous Four Media: Statement concerning .Sport

**Wednesday, 26 March 2014, Gibraltar:**

## **Background**

On 31 October 2013, Famous Four Media reported on its surprise at the decision of the Panellist Professor Dr. Guido Tawil, partner in M&M Bomchil abogados, appointed by the International Centre for Expertise, in the case of SportAccord v dot Sport Limited EXP 471/ICANN/88, being a community objection by SportAccord (a rival applicant) to the gTLD registry application of dot Sport Limited (represented by Famous Four Media).

Famous Four Media was not alone in finding the determination irregular in a number of respects. For example, Dr. Tawil re-interpreted a key ICANN standard, inexplicably turning the ordinary meaning of the term "likelihood" to "possible" in the context of deciding the 'likelihood of material detriment' to the community in question. Famous Four Media submitted a Reconsideration Request with ICANN on 8 November 2013 in which, amongst other matters, we raised the question of Dr. Guido Tawil's alignment with Sport Accord interests.

## **Requests for checks of appointment of Guido Tawil**

Furthermore, we requested that ICANN ask the relevant Dispute Resolution Service Provider, the International Chamber of Commerce (ICC), to review its appointment of Dr. Tawil. ICANN rejected the Reconsideration Request on 8 January 2014.

Famous Four Media wrote to the ICC to question Guido Tawil directly about his links with SportAccord or the International Olympic Committee ("IOC"). The ICC declined to do so.

## **SportAccord and IOC**

The IOC and SportAccord are inextricably linked. Three of the members of SportAccord's Executive Council are designated by the Association of Olympic Federations (Gian Franco Kasper, Pat McQuaid and Marisol Casado). On its own website Sport Accord states that it enjoys "a close collaborative relationship with the IOC. SportAccord fully recognises the IOC and the Olympic Movement's

authority; it is and will remain a loyal partner in the achievements of the Olympic Movement objectives" - see more at: <http://www.sportaccord.com/en/what-we-do/dfsu/?idContent=16323#sthash.G6CFf0Wu.dpuf>. The IOC plays a key supporting role to several project areas of SportAccord. The sharing of values and knowledge allows for a more complex approach in addressing a wide range of topics such as anti-doping, illegal betting, match-fixing, sustainable sports events, sports for all and IF recognition.<sup>1</sup>

### **Commercial relationship between Guido Tawil and the IOC**

Famous Four Media can now reveal that it has evidence of direct commercial relationships between Guido Tawil, the M&M Bomchil law firm and the IOC. Guido Tawil is a Senior Partner of the law firm M&M Bomchil.

#### 1. Guido Tawil, DirectTV and IOC broadcasting rights

One of Guido Tawil's 'significant clients' (according to the Chambers & Partners law directory) is DirecTV (<http://www.chambersandpartners.com/19/572/editorial/9/1>).

On 7 February 2014, just 3 months after having provided his decision in *SportAccord v dot Sport Limited EXP 471/ICANN/88* DirecTV secured a rights deal covering Latin America for the 2014 winter Olympic Games in Sochi, Russia and the 2016 summer Olympics in Rio de Janeiro, Brazil. DirecTV will broadcast the Olympics in Argentina, Chile, Colombia, Ecuador, Peru, Uruguay and Venezuela. The deal covers television, online and mobile platforms.<sup>2</sup>

#### 2. DirectTV, Torneos y Competencias S.A. and Guido Tawil

DirectTV Latin America is the principal shareholder in **Torneos y Competencias S.A. (TyC)**, also referred as "**Torneos**"). TyC is another sports communications firm in the Latin American region and is headquartered in Buenos Aires. ([http://en.wikipedia.org/wiki/Torneos\\_y\\_Competencias](http://en.wikipedia.org/wiki/Torneos_y_Competencias)

TyC is also a major client of M&M Bomchil law firm. What is more, the President of TyC is Marcelo Bombau, who is also a Senior Partner in M&M Bomchil and is therefore a business partner of Guido

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<sup>1</sup> <http://www.sportaccord.com/en/what-we-do/dfsu/?idContent=16323>

<sup>2</sup> <http://www.sportbusiness.com/tv-sports-markets/directv-seals-olympics-deal-latin-america>



Tawil. (Source: [m.chambersandpartners.com/firm/2373/9](http://m.chambersandpartners.com/firm/2373/9); see also [http://en.wikipedia.org/wiki/Torneos\\_y\\_Competencias](http://en.wikipedia.org/wiki/Torneos_y_Competencias) page last modified on 8 February 2014.)

In the M. & M. Bomchil Attorneys Firm Brochure from 2008, the Executive Director of TyC, Luis Nofal, endorses M&M Bomchil. Marcelo Bombau is also a Board Member of the Fundacion Torneos y Competencias along with the son and daughter of the Founder, Luis Nofal. TyC shareholders include DirecTV Latin America (33.2%) and Luis Nofal Sports Holding SA (by Luis Nofal, 23.53%).

### 3. TyC and IOC broadcasting rights

TyC has a long standing business relationship with IOC having secured broadcasting rights for the Olympics on 5 consecutive occasions since the Atlanta Games in 1996. It most recently won the Argentinian television rights for the Vancouver 2010 Winter Olympics and London 2012 Olympic Games [http://www.sportspromedia.com/news/new\\_broadcast\\_deals\\_for\\_tyc](http://www.sportspromedia.com/news/new_broadcast_deals_for_tyc).

Despite a professional career and M&M Bomchil's close personal and commercial links built with companies that have secured the highly sought after rights to broadcast the Olympics, Dr. Tawil declared no conflict of interest prior to accepting his appointment as independent arbitrator.

In the context of the foregoing research, there is no question that Dr. Guido Tawil should have declared his conflict prior to accepting the appointment and recused himself.

Famous Four Media is considering all options open to it in the light of this new evidence. In addition, Famous Four Media intends to press for greater transparency surrounding the appointment of Dr. Tawil and the rationale for his decision.

#### **Contact**

Peter Young, Chief Legal Officer

Contact Information Redacted

#### **About Famous Four Media**

Famous Four Media Limited was set up in 2011 by a small group of recognized domain name experts and successful financiers to actively provide products and services to TLD Registry operators under ICANN's new generic Top Level Domains ("gTLD") program. Drawing on the best from both Registries and Registrars, Famous Four Media's management team has extensive experience in the domain



name industry having successfully launched, operated, marketed and run generic TLDs under previous rounds and having managed some of the largest corporate and retail domain name registrars in the world. The 59 gTLD applications, that are currently under Famous Four Media Limited management, include some of the most interesting and valuable domain suffixes, such as .accountant, .BID, .DATE, .DOWNLOAD, .FAITH, .LOAN, .MEN, .REVIEW, .SCIENCE, .TRADE, .WEBCAM and .WIN

## **Annex 20.**



Contact  
Information  
Redacted

www.marksmen.com  
License PI 23992

**PRIVILEGED AND CONFIDENTIAL**

December 5, 2014

**Flip Petillion, Esq.**  
Crowell & Moring, LLP  
Contact Information Redacted

**Re: RESEARCH PROJECT**  
**Registrant/Company Info:**  
**Provided address/phone:**  
**Client Matter: N/A**  
**File Number: 76730**

Dear Mr. Petillion:

Our office received your request, instructing us to investigate **Dr. Guido Santiago Tawil, partner at M&M Bomchil** and any connection he and the law firm may have to **DirectTV or the International Olympic Committee**.

**1. Dr. Guido Santiago Tawil**

The profile for **Dr. Guido Santiago Tawil** on the M&M Bomchil firm website is at <http://www.bomchil.com/cv.aspx?AbogadoID=462>.

Excerpts from his biography illustrate his background :

*Guido Santiago Tawil is one of our senior partners. He heads the Administrative Law & Economic Regulation and Arbitration practices of our firm.*

*Since joining our firm as partner in 1993, he has represented some of the most important domestic and foreign companies in matters related to telecommunications, electricity and gas generation, transportation and distribution, postal services, water and sewage services, public works, airports, IT, grains production and trading, among others. [...]*

*Mr. Tawil and his team have successfully represented bidders during the concession and privatization processes of most of those services in Argentina and other Latin American countries and he continues advising the companies supplying such services in all matters related to economic regulation, court and administrative processes, and contractual negotiations. [...]*

*Several local publications have considered Mr. Tawil as one of the most relevant Argentine lawyers in any area of law. In addition, international publications such as Chambers and Partners, Latin Lawyer, Who's Who Legal, and Global Counsel have distinguished Mr. Tawil as one of the leading Argentine lawyers in the economic regulation, energy and dispute resolution areas. Global Arbitration Review distinguished in 2006 Mr. Tawil as the only lawyer then based in Latin America to be included in the*

## **2. Bomchil and history with DirecTV**

According to the website at <http://www.legal500.com/c/argentina/tmt>, DirecTV is a client of M&M Bomchil. The firm profile here (no date provided) states in part:

*The boutique-like expertise, combined with the benefits of a full-service firm **makes the team at M & M Bomchil one of the undeniable front-runners in the Argentine telecoms sector. The team has an outstanding list of clients including AMX Argentina (Claro, Telmex Group), Bloomberg, Directv Argentina, Liberty Global, Nextel Communications and Telecom Argentina.** Headline work saw the team advise a major telecommunications company on a review of its presentations to the competition and telecom authorities in the wake of the acquisition of a controlling interest by a foreign investment fund. **The practice also assisted foreign pay-TV programmers and distributors on their compliance with the regulatory framework enacted under the 2009 Audiovisual Communication Services Act, a measure that's implementation was delayed by a judicial injunction obtained by local Clarín Group. Marcelo Bombau leads on media and entertainment matters, and Francisco Gutiérrez on the telecommunications side.***

The website at <http://globalcompetitionreview.com/surveys/article/34690/argentina/>, specifically reviews the Competition area of Argentine law firms and references Bomchil in a profile dated December 3, 2013. It states in part:

*M & M Bomchil is often named by competitors as one of the most active firms in an otherwise slow market. Well-respected Marcelo den Toom, a Who's Who Legal nominee, leads the competition practice and works with senior associate Mercedes de Artaza and three associates. Two administrative law partners, Francisco M Gutiérrez and Héctor María Huici, help on antitrust matters in telecoms and energy cases. The firm benefits from referrals from its strong corporate practice, but den Toom says around half of his clients turned to the firm specifically for his competition expertise.*

*Bomchil has been advising companies in behavioural investigations, including ABB, AB InBev, Carrefour and Telecom Argentina. **The firm obtained the overturning of an injunction against cable TV provider DirecTV at the appeal court and is now representing the company before the Supreme Court. On the merger front, Bomchil is advising Air Products in its purchase of gas company Indura; Shell in its acquisition of several oil and gas exploration areas; Carrefour in the takeover of local stores; PepsiCo in the acquisition of a local cookies company; and Liberty Global in a joint venture in the pay-TV market.** He is advising the investment group of wealthy Argentinian businessman Eduardo Eurnekian in the acquisition of Banco Interfinanzas and Endesa in the sale of a stake in a gas pipeline to an investment fund. **He also counselled AB InBev and Grupo Modelo on the Argentine aspects of their proposed merger.***

The firm's own website references work for both DirecTV and Liberty Media as early as 2007. This is the oldest reference we found. The webpage (from Spanish via Google translate) at <http://www.bomchil.com/publicacion.aspx?PublicacionID=204>

***On 17 December 2007 the Ministry of Domestic Trade authorized the share exchange agreement between Liberty Media Corporation (LMC) and News Corporation (News), through which the first transferred to the second their shareholdings in News in exchange for 100% of the shares in a new company called Greenlady, owner of 100% of the shares of three sport signals transmitted in the United States and 38.5% of DirecTV Group, Inc. (with activities in Argentina, among others several countries in the region).***

*In evaluating operating the authorities adopted strict criteria, focusing his analysis mainly on the potential relationships between DirecTV and Pramer, a company of Argentina programming activity in Latin America and part of Liberty Global (company that shares shareholders CML). However the approach, the transaction -analizada within the relevant market paga- TV did not generate any competitive concerns, in stark contrast to the recent approval of the merger between Cablevision and Multicanal, this last operation that consolidated the position of both companies cable local market leaders.*

*M. & M. Bomchil represented Liberty Media Corporation in the presentation of the operation with the National Commission for Protection of Competition.*

In a separate reference on the firm website, this case is summarized as:

***1. We advised Liberty Media Corporation in the merger control proceeding related with a share exchange with News Corporation involving a change in control of DirecTV, the main satellite-TV operator in Argentina.***

A brief search for **Greenlady** and DirectTV yields records at the U.S. Securities and Exchange Commission website (<http://www.sec.gov>), which shows that Greenlady Corp. and Greenlady II, LLC (DE corps) are subsidiaries of DirectTV.

### **3. Bomchil, DirecTV and Torneos y Competencias S.A. (TyC)**

The Bomchil website at <http://www.bomchil.com/publicacion.aspx?PublicacionID=90> states under "List of recent Assignments - Entertainment":

*Recently we advised:*

*Torneos y Competencias S.A., company specialized in the production and marketing of events and sports programing, in various matters of corporate restructuring.*

*VLG Acquisition Corp. and Liberty Media Corporation in the sale of VLG Argentina LLC, owner of 50% of Cablevisión S.A, is a major cable operator in Argentina.*

*Likewise:*

*1. We represented Liberty Media International Holdings LLC in the implementation of share transfers in Torneos y Competencias S.A. These transfers were required by the Argentine antitrust authorities with regards to the formation of Fox Pan American Sports LLC.*

*2. We participated in the representation of Liberty Programming Argentina LLC in the sale of 20% of the shares in Torneos y Competencias S.A., in contractual, financial and antitrust matters.*

A D&B Worldbase report indicates that Torneos y Competencias S.A. (TyC), Balcarce 510, Buenos Aries, Argentina, (DUNS:97-109-6037) was founded in 1984, has approximately 242 employees. **The company also uses the name "TyC" and the president is listed as Marcelo Eduardo Bombau.**

Lexis-Nexis shows in several records that:

*Torneos y Competencias S.A. is wholly owned by Torneos y Competencias BV, of Netherlands*

*Torneos y Competencias BV is wholly owned by DirectTV of El Segunda, California.*

Marcelo Eduardo **Bombau is listed on the Bomchil website as a partner in the firm**, specializing in Entertainment, Customs and foreign commerce law and Mergers and Acquisitions. No mention of his association with Torneos y Competencias S.A. is listed in his Biography. His biography at [www.bomchil.com](http://www.bomchil.com) states in part:

*The Mergers and Acquisitions field has been at the core of his activities, giving advice on difficult negotiations and actively participating in due diligence processes, negotiations and structuring of complex businesses. [...]*

*Mr. Bombau is member of the board of directors of several local companies usually representing foreign investors.*

### **4. TyC and Olympics**

TyC has a long history of broadcasting the Olympics in Argentina. The webpage at [http://www.sportspromedia.com/news/new\\_broadcast\\_deals\\_for\\_tyc](http://www.sportspromedia.com/news/new_broadcast_deals_for_tyc) states in part that TyC has held broadcast rights in Argentina since 1996.

#### ***New broadcast deals for TyC***

*17 November 2009 |*

*Argentinian sports broadcaster TyC Sports has announced two broadcast rights deals with the Olympic Games and the International Association of Athletics Federation (IAAF).*

***TyC won the Argentinian television rights for the Vancouver 2010 Winter Olympics and London 2012 Olympic Games. The deal will provide TyC with its fifth consecutive summer Games, having held the broadcast rights in Argentina for every Summer Olympic Games since Atlanta 1996.***

An article at <http://nextviatam.com/tyc-launches-new-sport-channel-in-brazil/?lang=en> and dated February 6, 2013, states that TyC launched a new sports channel in Brazil called Sports+ and mentions the 2016 Olympics in Brazil. A further profile of TyC is also included:

***TyC launches new sport channel in Brazil***

by NexTV Latam | February 6, 2013

***The Argentine producing firm Torneos y Competencias (TyC) has launched a new sport channel in Brazil through the main DTH operator of the country, Sky. Sports+ is a new addition of the Brazilian sport line-up and subscribers will be able to enjoy more than 400 games of different sports. The channel is available in channels 28 (SD) and 228 (HD) of Sky's line-up.***

***Sports+ programming includes the broadcasting of South American Qualifying Games for the Soccer World Cup Brazil 2014, the UEFA Champions League, the Liga Española and Copa del Rey, NBA's regular season, Basketball Euro League, ATP 500 tennis tournaments and the Australian Rugby Tournament 2013. The channel will also offer action and adventure movies as well as sport documentaries.***

***TyC's project in the South American country, through its subsidiary Time Out, is closely related to the arrival of the Soccer World Cup Brazil 2014 and the Olympic Games of to be held in Rio de Janeiro in 2016. This initiative enables the firm to expand its scope and market share after losing very important part of its business in Argentina when the National Government and the Argentine Soccer Association decided to remove broadcasting rights of the Argentine First League Soccer games.***

***TyC had already done its best to diversify its business by starting to produce fiction for TV. The firm produced the Argentine miniseries 'Impostores', the series 'Maltratadas' and even the singing reality show 'La voz argentina', broadcasted by the free-to-air TV channel Telefé. TyC also owns the regional sport pay-TV channel TyC Sports and produces programming of Fox Sports in eight South American countries.***

Pending further advisement from you, we have concluded our investigation on publicly available sources. If you have further need of our services on this or any other matter, please contact us.

Best Regards,



Bill Shanks

Marksmen Contact: Bill Shanks  
Contact Information Redacted

jcs

## **Annex 21.**



**Please see Errata attached at the end of this document.**

**DETERMINATION OF THE BOARD GOVERNANCE COMMITTEE (BGC)**

**RECONSIDERATION REQUEST 13-16**

**8 JANUARY 2014**

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The Requester seeks reconsideration of the 23 October 2013 Expert Determination in favor of SportAccord's community objection to the Requester's application for the .SPORTS gTLD.

**I. Brief Summary**

Both the Requester dot Sport Limited ("Requester" or "dot Sport") and SportAccord applied for the .SPORTS string, and are in the same contention set. SportAccord won its Community Objection against the Requester's application. The Requester claims that the Panel failed to apply the requisite ICANN standards, processes and policies in reaching the Determination by: (a) creating a new standard for determining the *likelihood* of material detriment; (b) failing to apply the existing standard for cause of the material detriment to a community; and (c) creating a new standard for examining the alleged material detriment. The Requester also claims that the Expert violated established policy or process by failing to disclose material information relevant to his appointment in. As a result, the Requester asks ICANN to reject the Expert Determination, and send the .SPORT matter back to a new panel that the ICC must show has been given substantial training in the Guidebook processes and standards. In the alternative, the Requester asks that ICANN request a formal accounting of the Expert's current or prospective links with SportAccord or any of its member federation, and that the ICC demonstrate that the Expert was given reasonable training in the Guidebook processes and standards.

With respect to the first claim, the Requester failed to demonstrate that the Panel applied the wrong standard and there is no indication that: (a) the Panel created a new standard for determining the likelihood of material detriment; (b) the Panel ignored the causation requirement for evaluating the likelihood of material detriment; and (c) the Panel created a new test for examining material detriment.

With respect to the second claim, the Requester provides no evidence demonstrating that the Expert failed to follow the applicable ICC procedures for independence and impartiality. Rather, the Requester is challenging the merits of the Expert's disclosure. Such challenges should be brought to the ICC under the ICC Rules of Expertise, not through the Reconsideration process.

Therefore, it the BGC is recommending that Request 13-16 be denied.

## **II. Facts.**

### **A. Background Facts.**

The Requester and SportAccord applied for the .SPORTS string, and are in the same contention set.

On 13 March 2013, SportAccord filed a Community Objection with the ICC<sup>1</sup> to the Requester's application asserting that there is "substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted." (Applicant Guidebook ("Guidebook"), § 3.2.1; New gTLD Dispute Resolution Procedure ("Procedure"), Art. 2(e).)

On 21 May 2013, the Requester filed a response to SportAccord's Objection.

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<sup>1</sup> International Centre for Expertise of the International Chamber of Commerce.

On 29 July 2013, the ICC appointed Professor Dr. Guido Santiago Tawil as the expert (“Expert” or “Panel”) to consider SportAccord’s Objection and notified the parties of the appointment. The ICC provided the parties with the Expert’s *curriculum vitae* as well as his Declaration of Acceptance and Availability, Statement of Impartiality and Independence.

On 23 October 2013, the Panel rendered an “Expert Determination” in favor of SportAccord. The Panel determined that SportAccord had standing to object as an “established institution which has an ongoing relationship with a clearly delineated community.” (Determination, Pg. 12, ¶ 82.) Based on the submissions and evidence provided by the parties, the Panel determined that SportAccord established that there is substantial opposition from a significant portion of the community to which the Requester’s application for the .SPORTS string may be targeted. The Panel deemed SportAccord to be the prevailing party and the Requester to be the losing party. (Determination, Pg. 24, ¶ 164.)

On 8 November 2013, the Requester filed Request 13-16, seeking reconsideration of the Expert Determination.

**B. Requester’s Claims.**

Requester seeks reconsideration on the following grounds:

First, the Requester claims that the Panel failed to apply the requisite ICANN standards, processes and policies in reaching the Determination. Specifically, the Requester contends the Panel:

- Created a new standard for determining the *likelihood* of material detriment;
- Failed to apply the existing standard for cause of the material detriment to a community; and
- Created a new standard for examining the alleged material detriment.

(Request, Section 10b(iv)(a)-(d).) The Requester further asserts that the Panel’s alleged failure to apply the proper standard is evidence that the Expert was not qualified to render a determination on SportAccord’s objection, and thus, the ICC’s failure to appoint an appropriately qualified expert demonstrates a process violation sufficient to void the Expert Determination.

(Request, Sections 9 & 10b(iv)(e).)

Second, the Requester alleges that the Expert failed to disclose material information about his interest in sporting arbitration and the organized sporting industry (of which SportAccord is a part), as well as his co-chairing of a panel entitled “The quest for optimizing the dispute resolution process in major sport-hosting events,” which the Requester suggests gives rise to doubts as to the Expert’s impartiality and independence. The Requester claims that the Expert’s failure to disclose these interests constitutes a breach of the relevant dispute resolution procedures as well as a breach of the ICANN policy on transparency as set out in Article 3, Section 1 of the Bylaws, which states that ICANN shall operate “in an open and transparent manner and consistent with procedures designed to ensure fairness.” (Request. Section 8.)

### **III. Issues.**

As noted above, the Requester asks ICANN to consider: (i) whether the Panel failed to follow the requisite ICANN standards, processes and policies in rendering the Expert Determination; and (ii) whether the Expert failed to disclose material information relevant to his appointment which should invalidate the Expert Determination.

In view of the claims set forth in Request 13-16, the issues for reconsideration are:

- A. Whether the Panel applied the wrong standard in contravention of established ICANN policy or process by:
  - 1. Creating a new standard for determining the *likelihood* of material detriment in the Determination;

2. Failing to apply the existing standard for cause of the likelihood of material detriment to a community; and
  3. Creating a new standard for examining the alleged material detriment.
- B. Whether the Expert failed to disclose material information relevant to his appointment in violation of established policy or process.

#### **IV. The Relevant Standards for Evaluating Reconsideration Requests and Community Objections.**

ICANN's Bylaws provide for reconsideration of a Board or staff action or inaction in accordance with the specified criteria.<sup>2</sup> (*See* Bylaws, Art. IV, § 2.) Dismissal of a request for reconsideration relating to staff action or inaction is appropriate if the BGC<sup>3</sup> concludes, and the Board or the NGPC<sup>4</sup> agrees to the extent that the BGC deems that further consideration by the Board or NGPC is necessary, that the requesting party does not have standing because the party failed to satisfy the reconsideration criteria set forth in the 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 dispute resolution service providers, such as the ICC, where it can be stated that the Panel failed to follow the established policies or

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<sup>2</sup> Article IV, Section 2.2 of ICANN's Bylaws states in relevant part that any entity may submit a request for reconsideration or review of an ICANN action or inaction to the extent that it has been adversely affected by:

- (a) one or more staff actions or inactions that contradict established ICANN policy(ies); or
- (b) one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or
- (c) one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.

<sup>3</sup> Board Governance Committee.

<sup>4</sup> New gTLD Program Committee.

processes in reaching the expert determination, or that staff failed to follow its policies or processes in accepting that determination.<sup>5</sup>

In the context of the New gTLD Program, the reconsideration process does not call for the BGC to perform a substantive review of expert determinations. Accordingly, here the BGC is not to evaluate the Panel's conclusion that there is substantial opposition from a significant portion of the community to which the Requester's application for .SPORTS may be targeted. Rather, the BGC's review is limited to whether the Panel violated any established policy or process, which the Requester suggests was accomplished when the Panel "derogated substantially" from the applicable standard for evaluating community objections. (Request, Section 8.)

The standards for evaluating community objections include a four-part test to help an expert panel determine whether there is substantial opposition from a significant portion of the community to which the string may be targeted. For an objection to be successful, the objector must prove that:

- The community invoked by the objector is a clearly delineated community; and
- Community opposition to the application is substantial; and
- There is a strong association between the community invoked and the applied-for gTLD string; and
- The application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted.

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<sup>5</sup> See BGC Recommendation on Reconsideration Request 13-5 at <http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-booking-01aug13-en.doc>.

(Guidebook, Section 3.5.4.) Section 3.5.4 also includes a list of factors that could be used to evaluate each of the four criteria. (*See id.*) The factors relevant to Requester's claims are discussed below.

**V. Analysis and Rationale.**

**A. Requester Failed To Demonstrate That The Panel Applied The Wrong Standards In Contravention Of Established Policy Or Process.**

The Requester contends that the Panel applied the wrong standard in evaluating SportAccord's community objection to Requester's application for .SPORTS. Specifically, the Requester claims that the Panel: (i) created a new standard for determining the "likelihood of material detriment"; (ii) failed to apply the existing standard for cause of the likelihood of material detriment to a community; and (iii) created a new test for examining the alleged material detriment. (Request, Section 10b(iv)(a)-(d).)

**1. The Panel did not Create a New Standard for Determining the Likelihood of Material Detriment.**

The Requester claims that the Panel erroneously interpreted the standard for assessing the "likelihood of material detriment" as requiring a "potential" harm, which is a lesser standard than the "probability" of harm that is purportedly required in the Guidebook. (Request, Section 10(b)(iv)(a).) The Requester's conclusions in this respect are not supported.

As noted above, to prevail on a community objection, the objector must, among other things, establish that the "application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted." (Guidebook, Section 3.5.4.) The Guidebook includes a list of factors that could be used by a panel in making this determination. The factors include but are not limited to the following:

- Nature and extent of damage to the reputation of the community represented by the objector that would result from the applicant’s operation of the applied-for gTLD string;
- Evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely, including evidence that the applicant has not proposed or does not intend to institute effective security protection for user interests;
- Interference with the core activities of the community that would result from the applicant’s operation of the applied-for gTLD string;
- Dependence of the community represented by the objector on the DNS for its core activities;
- Nature and extent of concrete or economic damage to the community represented by the objector that would result from the applicant’s operation of the applied-for gTLD string; and
- Level of certainty that alleged detrimental outcomes would occur.

(Guidebook, Section 3.5.4.)

Here, the Panel correctly referenced the above standard (Determination, Pgs. 22-23;

¶¶ 153-154) and noted:

Therefore, the standard that the Appointed Expert should apply to this issue is the “chance” that detriment will occur, which differs from the standard of “actual damage” invariably applied in litigation or arbitration. In other words, the standard of a “*likelihood of material detriment*” is, in the Appointed Expert’s opinion, equivalent to future “possible” damage.

(Determination, Pg. 23, ¶ 156.)

The Requester has failed to establish how the Panel’s interpretation of “likelihood” is a violation or contradiction of the Guidebook. Contrary to the Requester’s assertion, the Guidebook does not specifically define “likelihood of material detriment” but provides a set of factors that can be used to make a determination, and the Requester’s interpretation of the meaning of “likelihood” is not supported by the Guidebook. Nevertheless, and notwithstanding the Panel’s agreement with Requester that many detriments alleged by SportAccord were “purely



hypothetical” (such as the risk of cybersquatting, ambush marketing, or the misuse of sport themes for purposes foreign to sport values), the Panel concluded that there was a “strong likelihood of material detriment to the rights or legitimate interests of the Sport Community if the application ... is allowed to proceed.” (Determination, Pg. 24, ¶ 163 (emphasis added).) The Panel determined that SportAccord “proved several links between potential detriments” that the community may suffer and the operation of the .SPORTS string by Requester (such as the sense of official sanction or the disruption of some community efforts.) (Determination, Pg. 23, ¶¶ 157-58.) The Requester’s argument therefore does not support reconsideration because the Requester has failed to demonstrate how the Panel’s actions contradict any established policy or process.

**2. The Panel did not Fail to Apply the Existing Standard for Cause of the Likelihood of Material Detriment to a Community.**

The Requester alleges that the Panel ignored the requirement that the objector prove that the application “specifically created” or is the “cause” of the likelihood of material detriment. The Requester claims that the Panel “did not identify a single objectionable or lacking aspect in the application that creates a likelihood of material detriment.” (Request, Section 10b(iv)(b).) Requester’s arguments here are likewise unsupported.

Based on the Expert Determination, it appears that the Panel’s analysis of the detriment element centered on whether the Requester’s application for the .SPORTS string was likely to cause a material detriment – *i.e.*, whether the Requester’s operation of the .SPORTS gTLD was likely to create the detriment alleged by SportAccord. (Determination, Pgs. 20-24, ¶¶ 137-163.) More specifically, SportAccord asserted that the Requester’s application for .SPORTS lacked accountability to the sport community and that such an application would generate numerous detriments to the interests of the community. (Determination, Pgs. 20-21, ¶¶ 137-145.) The

Requester challenged SportAccord’s assertions by claiming, among other things, that any alleged detriments were hypothetical and would not result from the Requester’s operation of the .SPORTS string. (Determination, Pgs. 21-22, ¶¶ 146-151.) As explained above, the Expert agreed with the Requester that many detriments alleged by SportAccord were purely hypothetical, but concluded that SportAccord was able to prove that Requester’s operation of the .SPORTS string was linked to potential detriments that the sport community may suffer. (Determination, Pg. 23, ¶¶ 157-58.) Thus, there is no support for the Requester’s claim that the Panel ignored the causation requirement for evaluating the likelihood of material detriment.

**3. The Panel did not Create a New Test for Examining the Alleged Material Detriment.**

The Requester asserts that the Panel created a new test for examining the alleged material detriment. To support this assertion, the Requester claims that the Panel applied the wrong test by considering both the Requester’s intent to act in accordance with the interests of the sport community and the economic damage that SportAccord (as opposed to the sport community) may suffer if the Requester’s application is allowed to proceed. (Request, Section 10b(iv)(c)-(d).) The Requester claims that SportAccord was never required to prove intention to cause material detriment; rather, it was required to prove that the application was likely to cause material detriment.

Turning first to the Requester’s claim that the Panel erred by considering the Requester’s intent to act in accordance with the interests of the sport community, “[e]vidence that the applicant is not acting or does not intend to act in accordance with the interests of the community” is one of the expressed factors set forth in the Guidebook that a panel may consider in evaluating detriment. (Guidebook, Section 3.5.4.) The Panel was therefore correct in addressing this factor.

With respect to the Requester's claim that the Panel improperly considered the economic damage to SportAccord (as opposed to the Sport Community), there is no support for this assertion. In setting forth the parties' positions on detriment, the Panel noted that SportAccord "focuses on the actual and certain damages that the Sport Community would suffer [if .SPORT] is operated by a registry without appropriate community-based accountability." (Determination, Pg. 21, ¶ 144 (emphasis added).) It is clear from SportAccord's focus on the alleged damages to the sport community and the Panel's evaluation of the alleged damages as presented that the Panel was referencing the community represented by SportAccord (and not SportAccord itself) in the Expert Determination. Based on the parties' submissions, the Panel concluded:

Regarding the economic damage that SportAccord may suffer, the Appointed Expert is of the view that although the figures and calculations on negative externalities provided by the Objector may have been exaggerated, the risk of economic damages which would be inflicted to Objector due to the operation of the gTLD by an unaccountable registry shows a reasonable level of certainty and could not be avoided if the application is allowed to proceed.

Therefore, the Appointed Expert is not in a position to accept Applicant's argument that Objector's alleged detriment only relies on the fact that Applicant would be delegated [.SPORT] instead of Objector.

(Determination, Pg. 24, ¶¶ 160-161 (footnote omitted.) One of the factors that a panel may consider in evaluating detriment is the "nature and extent of concrete or economic damage to the community represented by the objector ...." (Guidebook, Section 3.5.4.) As such, the Panel's evaluation does not appear inconsistent with the standards set forth in the Guidebook.

Because there is no support for the Requester's claim that the Panel applied the wrong standard in evaluating SportAccord's community objection, there is also no support for the Requester's contention that the Expert Determination should be voided due to the ICC's alleged failure to appoint an appropriately qualified expert.

**B. The Expert’s Purported Failure To Disclose A Possible Conflict Of Interest Does Not Support Reconsideration.**

The Requester also claims that the Expert Determination should be void because the Expert failed to disclose information about his purported “interest in sporting arbitration and his presence at [a sporting event] conference” in February 2011. (Request, Section 8.) In particular, Requester relies on the Expert’s alleged participation as co-chair of a panel at the conference entitled “The quest for optimizing the dispute resolution process in major sport-hosting events.” (Request, Section 8.) The Requester contends that the Expert’s participation at the conference reflects his “recent[] focus on the prospect of creating business opportunities by close connections with ... the organized sporting industry (of which SportAccord is a part)” and constitutes a conflict of interest that should have been disclosed prior to accepting the appointment. (Request, Section 8.) The Requester asks that ICANN request a formal account from the Expert of whether he has any links, including current or prospective links, with the objector or any of its member federations.

Section 3.4.4 of the Guidebook provides that the ICC will “follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an expert for lack of independence.” (Guidebook, Section 3.4.4.) The ICC Rules of Expertise<sup>6</sup> would therefore govern any challenges to the independence of experts appointed to evaluate community objections. Requester provides no evidence demonstrating that the Expert failed to follow the applicable ICC procedures for independence and impartiality prior to his appointment. Article 7(4) of the ICC Rules for Expertise and Article 3(3) of its Appendix I provide that “a prospective expert shall sign a statement of independence and disclose in writing to the Centre [ICC] any

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<sup>6</sup> <http://www.iccwbo.org/Products-and-Services/Arbitration-and-ADR/Expertise/ICC-Rules-for-Expertise/>.

facts or circumstances which might be of such nature as to call into question the expert's independence in the eyes of the parties.” (Request, Section 8; ICC Expertise Rules, Art. 7(4) & Appendix I.) The Panelist submitted his *curriculum vitae* as well as his Declaration of Acceptance and Availability, Statement of Impartiality and Independence. (Determination, Pg. 4.) Requester seeks to challenge the merits of said disclosure. However, from the Request, it does not appear that the Requester has sought to challenge the Expert's independence under the ICC Rules of Expertise. Although the alleged conflict of interest was discovered after the Expert rendered a determination, the ICC Rules of Expertise would still govern any issues relating to the independence of experts. The reconsideration process is for the consideration of policy- or process-related complaints. Without the Requester attempting to challenge the Expert through the established process set forth in the Guidebook and the ICC Rules of Expertise, there can be no policy or process violation to support reconsideration – *i.e.*, reconsideration is not the appropriate mechanism to raise the issue for the first time.<sup>7</sup>

## **VI. Decision.**

Based on the foregoing, the BGC concludes that the Requester has not stated proper grounds for reconsideration, and therefore denies dot Sport Limited's Request for Reconsideration. As there is no indication that Panel violated any policy or process in reaching the determination sustaining SportAccord's community objection, this Request should not proceed. If the Requester believes that it has somehow been treated unfairly in the process, the Requester is free to ask the Ombudsman to review this matter.

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<sup>7</sup> Notably, the Requester demonstrated familiarity with the ICC Rules of Expertise by successfully challenging and replacing the first expert appointed to the matter. (Request, Section 8.)

In accordance with Article IV, Section 2.15 of the Bylaws, the BGC's determination on Request 13-16 shall be final and does not require Board consideration. Article IV, Section 2, Paragraph 16 of the Bylaws provides that the BGC is delegated with authority by the Board to make a final determination and recommendation for all Reconsideration Requests brought regarding staff action or inaction and that the BGC's determination on such matters is final and establishes precedential value. (Bylaws, Art. IV, § 2.15.) The BGC has the discretion, but is not required, to recommend the matter to the Board for consideration and action, as the BGC deems necessary. (*See id.*) As discussed above, Request 13-16 seeks reconsideration of action or inaction taken by staff. After consideration of this particular Reconsideration Request, the BGC concludes that its determination on this matter is sufficient and that no further consideration by the Board is warranted.

## ERRATA SHEET

The Recommendation of ICANN's Board Governance Committee ("BGC") on Reconsideration Request 13-16, which was published on 8 January 2014, is a true record of the BGC's Recommendation, with the following exceptions:

Page	Paragraph	Corrections
1	1	<u>“.SPORTS” should read “.SPORT”</u>
1	2	<u>“.SPORTS” should read “.SPORT”</u>
2	4	<u>“.SPORTS” should read “.SPORT”</u>
3	2	<u>“.SPORTS” should read “.SPORT”</u>
6	1	<u>“.SPORTS” should read “.SPORT”</u>
7	1	<u>“.SPORTS” should read “.SPORT”</u>
9	1	<u>“.SPORTS” should read “.SPORT”</u>
9-10	2 <sup>nd</sup> full para.	<u>Each reference to “.SPORTS” should read “.SPORT”</u>

Date: 28 July 2014

# **Annex 22.**





International Chamber of Commerce

*The world business organization*

International Centre for Expertise • Centre international d'expertise

FAMOUR FOUR MEDIA LIMITED

Mr. Peter Young

Contact information Redacted

By email: Contact Information Redacted

21 January 2014

Dear Sir,

The International Centre for Expertise ("Centre") of the International Chamber of Commerce ("ICC") acknowledges receipt of your letter dated 15 January 2014, sent on behalf of DOT SPORT LIMITED.

We note that DOT SPORT LIMITED has acted as the Applicant in a matter filed with the Centre pursuant to the New gTLD Dispute Resolution Procedure contained in the Attachment to Module 3 of the ICANN gTLD Applicant Guidebook ("Procedure") as well as the ICC Rules for Expertise ("Rules"). We also note that said matter had the case reference EXP/471/ICANN/88.

The Centre has taken duly note of the comments provided in your letter. In particular, we have taken note of the request to "*reconsider whether in fact the appointment of Dr Tawil was valid in the light on the information at hand*".

We note, however, that the Expert has rendered the Expert Determination in case EXP/471/ICANN/88 and that it was notified to the parties by letter dated 25 October 2013.

Subsequently, this matter has been closed.

Accordingly, the Expert is no longer in place in this matter and does not have any current functions in connection to this matter. In such situation, neither the Procedure nor the Rules provide a basis for a challenge or a request for the replacement of an Expert.

Yours faithfully,

Špela Košak  
Deputy Manager  
ICC International Centre for Expertise

## **Annex 23.**

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**From:** Chris LaHatte <chris.lahatte@icann.org>  
**Sent:** lundi 31 mars 2014 08:03  
**To:** Cherine Chalaby; Akram Atallah; Christine Willett  
**Cc:** Ren Marr; Charles Melvin; Geir Rasmussen; KOSAK Spela; Peter Young; TUMPEL Hannah; Amy Stathos  
**Subject:** RE: .SPORT and Dr. Guido Tawil EXP/471/ICANN/88  
**Signed By:** chris.lahatte@icann.org

I have been asked to consider whether new material, which has just come to hand, justifies a recommendation by me to the New gTLD Committee, that they not accept the decision of the expert, Dr. Guido Tawil, in the matter of the .sports objection. The history of this matter is that Famous Four Media are an applicant for the .sports string. There was a successful objection by an organisation called SportAccord, and the result according to the AGB would be that the application then comes to an end. Famous Four Media have a number of issues with the decision, including the logic and methodology of the decision itself, but also that the expert was not independent. I do not have any power to interfere with a decision on the merits, as I have made clear on the number of prior occasions. However the issue in this case is whether the expert should have recused himself because of connections between the successful objector and his law practice. Under the AGB, parties have the opportunity to challenge a proposed expert when nominated by ICC.

The process itself is outlined in a letter from ICC through Hannah Tümpel Senior Counsel and Manager, dated 29<sup>th</sup> March 2014 which stated:-

*“Based on the information received from the candidates, the Centre then made a proposal to the Standing Committee with regard to the appointment of an Expert in a specific case. Together with the proposal, the Expert’s CV and DASI would be communicated to the Standing Committee.  
Following the appointment, the Expert’s CV and DASI were sent to the parties. In this regard, we refer you to the Centre’s letter in case EXP/471/ICANN/ 88 dated 30 July 2013.  
In cases where the candidate signaled in the DASI any circumstances which in the eyes of the parties might put into question his or her independence, the Centre either didn’t proceed with the appointment process of this candidate or invited the parties’ comments on the specific candidate’s DASI prior to finalizing the appointment. In the latter case, the parties were invited to submit their comments, if any, pursuant to Article 7(4) of the Rules.  
Pursuant to Article 11(4) of the Rules, a party also had the possibility to object to the appointment of an Expert should it find that the Expert did not have the necessary qualifications or is not fulfilling the expert’s functions in accordance with these Rules or in a timely fashion. In this regard the Practice Note set a specific time limit for such objections.  
Part II Page 19 Para 5.”*

And later, citing the disclosure from Dr. Tawil:-

*“Nothing to disclose: I am impartial and independent and intend to remain so. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my independence in the eyes of any of the parties and no circumstances that could give rise to reasonable doubts as to my impartiality”.*

Famous Four Media maintain that the disclosure was inadequate because:-

*“After the reviewing the decision, it seemed to us that no reasonable expert of his professed stature and experience could decide in the manner that he did. This led us to undertake further searches. We initially found, after several hours of google searches, a link to a conference in Rio At which he sat on a panel, entitled “Olympic Sized Opportunities” hosted by the IBC. As you know, this caused us to write to the ICC requesting that they seek further disclosure of Dr. Tawil in sporting matters such as arbitrations, sporting bodies as clients etc. The ICC declined to offer any further information or to assist us further. Last week, in the hours leading up to our press release, one of our team decided to broaden the search to members of Dr. Tawil’s practice. After several further hours of searching, again using publicly available information from Google, she uncovered the link between the senior partner of Dr. Tawil’s firm, and TyC Sports.”*

And

*“Guido Tawil is a Senior Partner of the law firm M&M Bomchil.”*

*“Guido Tawil, DirecTV and IOC broadcasting rights*

*One of Guido Tawil’s ‘significant clients’ (according to the Chambers & Partners law directory) is DirecTV (<http://www.chambersandpartners.com/19/572/editorial/9/1>). On 7 February 2014, just 3 months after having provided his decision in Sport Accord v dot Sport Limited EXP 471/ICANN/88 DirecTV secured a rights deal covering Latin America for the 2014 winter Olympic Games in Sochi, Russia and the 2016 summer Olympics in Rio de Janeiro, Brazil. DirecTV will broadcast the Olympics in Argentina, Chile, Colombia, Ecuador, Peru, Uruguay and Venezuela. The deal covers television, online and mobile platforms.”*

*“DirecTV, Torneos y Competencias S.A. and Guido Tawil DirecTV Latin America is the principal shareholder in Torneos y Competencias S.A. (TyC, also referred as “Torneos”). TyC is another sports communications firm in the Latin American region and is headquartered in Buenos Aires. ([http://en.wikipedia.org/wiki/Torneos\\_y\\_Competencias](http://en.wikipedia.org/wiki/Torneos_y_Competencias)) TyC is also a major client of M&M Bomchil law firm. What is more, the President of TyC is Marcelo Bombau, who is also a Senior Partner in M&M Bomchil and is therefore a business partner of Guido Tawil. (Source: [www.chambersandpartners.com/firm/2373/9](http://www.chambersandpartners.com/firm/2373/9); see also [http://en.wikipedia.org/wiki/Torneos\\_y\\_Competencias](http://en.wikipedia.org/wiki/Torneos_y_Competencias) page last modified on 8 February 2014.) In the M. & M. Bomchil Attorneys Firm Brochure from 2008, the Executive Director of TyC, Luis Nofal, endorses M&M Bomchil. Marcelo Bombau is also a Board Member of the Fundación Torneos y Competencias along with the son and daughter of the Founder, Luis Nofal. TyC shareholders include DirecTV Latin America (33.2%) and Luis Nofal Sports Holding SA (by Luis Nofal, 23.53%).*

3. TyC and IOC broadcasting rights

*TyC has a long standing business relationship with IOC having secured broadcasting rights for the Olympics on 5 consecutive occasions since the Atlanta Games in 1996. It most recently won the Argentinian television rights for the Vancouver 2010 Winter Olympics and London 2012 Olympic Games [http://www.sportspromedia.com/news/new\\_broadcast\\_deals\\_for\\_tyc](http://www.sportspromedia.com/news/new_broadcast_deals_for_tyc). Despite a professional career and M&M Bomchil’s close personal and commercial links built with companies that have secured the highly sought after rights to broadcast the Olympics, Dr. Tawil declared no conflict of interest prior to accepting his appointment as independent arbitrator.”*

ICC have declined to provide any further information, relying upon the procedure as outlined in the letter of 29th March 2014. Their position is that any objections should have been made at the beginning of the process, as outlined above. Their position is summarized in the letter as:-

*“The Centre and the Standing Committee have acted accordingly. Further, while this matter was open, none of the parties objected to the appointment of the Expert. Finally, the Centre and the Standing Committee acted in accordance with the Rules and the Procedure, as well as all other relevant requirements in this process.”*

I made a direct enquiry of Famous Four Media about the extent of due diligence which they undertook in relation to the appointment of the expert. Their response was that they did a Google search of him, and found nothing further. They state that:-

*“We did undertake some due diligence on the expert prior to his appointment being finalised, but of course we were entitled to rely on his certificate of impartiality. Any searches at that time consisted entirely of Google searches. Whilst there was a good amount of information on Dr. Tawil, there was no apparent link with sport or sporting bodies. After a full day of such searches, these were discontinued because there seemed to be no reason to object to his appointment.”*

I was concerned about this issue because the failure to undertake due diligence would in my view prevent any subsequent challenge to the appointment. In this case there appears to have been both an adequate search, but also the entirely reasonable reliance upon the certificate of impartiality.

Subsequent to this, and following the adverse decision, they undertook further checks much more recently which have disclosed the material which I have quoted above.

For the purposes of this issue, I have used the most useful guide published by the International Bar Association, IBA Guidelines on Conflicts of Interest in International Arbitration (2004). This guide categorises potential conflicts of interest into three categories, red orange and green. The categories described in the red category are matters where the arbitrator should not act (although this is further refined into a non-waivable red list and a waivable red list), the orange categories are ones where the arbitrator must disclose, but can act where the parties are aware of the disclosure and consent and finally, the green category describes relationships which do not need to be disclosed. However disclosure is critical to the effectiveness of identifying red and orange categories. The parties must be able to make an informed choice based on such disclosure.

For guidance as to the test and the application I have relied on the Commonwealth jurisprudence relating to conflict of interest. The appellate courts in the United Kingdom, Australia and New Zealand have followed each other’s opinions in this matter. The governing principle that, subject to qualifications relating to waiver or necessity, a Judge is disqualified if a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide. As that judgment proceeds to observe, that principle gives effect to the requirement that justice should both be done and be seen to be done, a requirement which reflects the fundamental importance of the principle that the tribunal (in the present case, the Court of Appeal) be independent and impartial. Unless the judicial system is seen as independent and impartial the public will not have confidence in it and the judiciary who serve in it. Cases such as *Helow v Secretary of State for Home Department* [2008] 1 WLR 2416; [2009] 2 All ER 1031; (2008) 152 SJLB 29 (HL), *Ebner v The Official Trustee in Bankruptcy* [2000] HCA 63; (2000) 205 CLR 337; 75 ALJR 277 (HC) and *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd* [2010] 1 NZLR 35 cite these principles.

Further, the issue is not whether there is actual bias caused by the arbitrator having a red or orange list conflict, but whether there is in the eyes of the reasonable bystander, an appearance of bias. So each case ultimately depends on an examination of the specific facts, and whether on those facts, there is an appearance of bias. In this case the law firm of which he is a partner, has been identified as acting for a substantial client in the sport communication industry. That client has been regularly involved in obtaining rights for broadcasting Olympic events and for that purpose has negotiated with the International Olympic Committee. In the expert determination, SportAccord is described as the umbrella organisation for both Olympic and non-Olympic International sports federations. The Olympic movement is described as being a stakeholder in SportAccord. So there appears little doubt that SportAccord is a body representing among others, the International Olympic

Committee. The issue which then needs to be resolved is whether the clients of the law firm of Dr. Tawil, who have a clear commercial relationship with the International Olympic Committee, have a close enough relationship so that the red or orange category requires prior disclosure to satisfy the test of the reasonable lay observer. Perhaps this can be expressed another way, as to whether acting for a client with a commercial interest in the Olympic movement, should have been disclosed. In the eyes of the reasonable lay observer, does this create a perception of bias? It is a reasonable deduction that this client will be a supporter of the Olympic movement, even if for its commercial purposes of making a profit from the broadcasting rights. Is SportAccord is directly identified as representing the Olympic movement for purposes of the objection to the string?

In terms of the IBA guidelines, in the Waivable Red List, paragraph 2.3.7 describes "The arbitrators law firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties". In this case can the client who is in a commercial relationship with the objectors stakeholder, be described as an affiliate of one of the parties? The guide book goes on to say:-

*"In addition, a later challenge based on the Fact that an arbitrator did not disclose such facts or circumstances should not result automatically in either non appointment, later disqualification or a successful challenge to any award. In the view of the Working Group, nondisclosure cannot make an arbitrator partial or lacking independence; only the facts or circumstances that he or she did not disclose can do so."*

I am concerned that in this case, there has been no direct comment from Dr. Tawil. I am also concerned that the ICC have taken a stance that it is too late for Famous Four Media to challenge the decision on the basis of material recently disclosed. My concern is, that this may create a reasonable appearance of bias. My view is that the commercial relationship ought to have been disclosed, to give the applicant Famous Four Media an opportunity to make a considered choice as to the suitability of this appointment. Transparency is the best way to ensure that parties are able to make the best choices.

It is therefore my recommendation to the board, that there should be a rehearing of the objection with a different expert appointed.

Regards

Chris LaHatte  
Ombudsman

Blog <https://omblog.icann.org/>

Webpage <http://www.icann.org/en/help/ombudsman>

Confidentiality

All matters brought before the Ombudsman shall be treated as confidential. The Ombudsman shall also take all reasonable steps necessary to preserve the privacy of, and to avoid harm to, those parties not involved in the complaint being investigated by the Ombudsman. The Ombudsman shall only make inquiries about, or advise staff or Board members of the existence and identity of, a complainant in order to further the resolution of the complaint. The Ombudsman shall take all reasonable steps necessary to ensure that if staff and Board members are made aware of the existence and identity of a complainant, they agree to maintain the confidential nature of such information, except as necessary to further the resolution of a complaint



## **Annex 24.**



## Reconsideration Request Form

Version of 11 April 2013

ICANN's Board Governance Committee is responsible for receiving requests for reconsideration from any person or entity that has been materially affected by any ICANN staff action or inaction if such affected person or entity believes the action contradicts established ICANN policies, or by actions or inactions of the Board that such affected person or entity believes has been taken without consideration of material information. Note: This is a brief summary of the relevant Bylaws provisions. For more information about ICANN's reconsideration process, please visit <http://www.icann.org/en/general/bylaws.htm#IV> and <http://www.icann.org/en/committees/board-governance/>.

This form is provided to assist a requester in submitting a Reconsideration Request, and identifies all required information needed for a complete Reconsideration Request. This template includes terms and conditions that shall be signed prior to submission of the Reconsideration Request.

Requesters may submit all facts necessary to demonstrate why the action/inaction should be reconsidered. However, argument shall be limited to 25 pages, double-spaced and in 12 point font.

*For all fields in this template calling for a narrative discussion, the text field will wrap and will not be limited.*

Please submit completed form to [reconsideration@icann.org](mailto:reconsideration@icann.org).

### **1. Requester Information**

**Name:** dot Sport Limited

**Address:** Contact Information Redacted

**Email:** Contact Information Redacted

**Phone Number (optional):** Contact Information Redacted

(Note: ICANN will post the Requester's name on the Reconsideration Request page at <http://www.icann.org/en/committees/board-governance/requests-for-reconsideration-en.htm>. Requestors address, email and phone number will be removed from the posting.)

### **2. Request for Reconsideration of (check one only):**

Board action/inaction

Staff action/inaction

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

- (i) Board Rejection of Reconsideration Request 13-16 on 8 January 2014 available at <https://www.icann.org/en/groups/board/governance/reconsideration/13-16/determination-sport-08jan14-en>; and/or
- (ii) Community Objection Determination by expert Guido Tawil ("Expert") a Senior Partner of M&M Bomchil on 23 October 2013 available at <http://www.iccwbo.org/products-and-services/arbitration-and-adr/expertise/icann-new-gtld-dispute-resolution/expert-determination/> as a result of his failure to disclose his conflict of interest through his direct commercial interest in the broadcast rights of the Objector and the International Olympic Committee ("Conflict") during his acceptance of the appointment as Expert on 25 July 2013 and his appointment as Expert by the ICC under false circumstances on 29 July 2013, attached as Exhibit 1 and Exhibit 2. The failure to disclose is a failure to follow multiple ICANN policies both pursuant to the Applicant Guidebook and ICANN Bylaws; and/or
- (iii) Decision of International Chamber of Commerce ("ICC") of 29 July 2013 to appoint Guido Tawil as Expert on the basis of false information provided to the ICC by Guido Tawil.<sup>1</sup>

**4. Date of action/inaction:**

As set out above.

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

In respect of the conflict of interest, we discovered the existence of such on 25 March 2014.

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

We believe we have lost the Community Objection as a direct result of a lack of impartiality of the appointed Expert, Guido Tawil.

As an innocent party, acting in good faith, we have lost large amounts of money: application fees, legal fees, Dispute Resolution Procedures ("DRP") fees, as a result of our good faith adherence to the rules set out in the Applicant Guide Book.

We have lost the right to an impartial community objection hearing.

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

- The entire ICANN community is angered by the lack of consistency and the obvious unfairness of many of the determinations ostensibly conducted under the DRP. Innocent parties, acting in good faith, have lost large amounts of money: application fees, legal fees, DRP fees, etc. In addition, they have unfairly lost the right to participate

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<sup>1</sup> ICANN has already determined that the reconsideration process can be properly invoked for challenges to the actions of the DRSP.

in the auction process lined up for Contention Sets.

- The ICANN Board will be adversely affected by inaction and could lose credibility due to the behavior of the ICC and the Expert. Transparency, accountability and the disclosure and proper handling of conflict of interests is one of the sacred tenets of ICANN Board practice. The NGPC was created precisely because of conflicts of interest.  
<http://www.icann.org/en/news/in-focus/accountability/expected-standards>

See No. 2 on the list of expected standards for the Board to:

- **Act** in accordance with ICANN's Bylaws. In particular, participants undertake to act within the mission of ICANN and in the spirit of the values contained in the Bylaws.
- **Adhere** to ICANN's conflict of interest policies.  
<http://www.icann.org/en/groups/board/governance/coi>

This conflict of interest policy applies to the ICC (and by extension, Guido Tawil) because it applies to the Board.

- Stakeholders in the .sport registry have lost the opportunity of the registry being operated by us.
- Our shareholders have lost the business opportunity of the .sport registry being operated by us.

## **8. Detail of Board or Staff Action – Required Information**

**Staff Action:** If your request is in regards to a staff action or inaction, please provide a detailed explanation of the facts as you understand they were provided to staff prior to the action/inaction presented to the staff and the reasons why the staff's action or inaction was inconsistent with established ICANN policy(ies). Please identify the policy(ies) with which the action/inaction was inconsistent. The policies that are eligible to serve as the basis for a Request for Reconsideration are those that are approved by the ICANN Board (after input from the community) that impact the community in some way. When reviewing staff action, the outcomes of prior Requests for Reconsideration challenging the same or substantially similar action/inaction as inconsistent with established ICANN policy(ies) shall be of precedential value.

**Board action:** If your request is in regards to a Board action or inaction, please provide a detailed explanation of the material information not considered by the Board.

Information provided at Annex 1.

If that information was not presented to the Board, provide the reasons why you did not submit the material information to the Board before it acted or failed to act. "Material information" means facts that are material to the decision.

The information in Annex 1 was not known to the Requester before 25 March 2014.

If your request is in regards to a Board action or inaction that you believe is based upon

inaccurate, false, or misleading materials presented to the Board and those materials formed the basis for the Board action or inaction being challenged, provide a detailed explanation as to whether an opportunity existed to correct the material considered by the Board. If there was an opportunity to do so, provide the reasons that you did not provide submit corrections to the Board before it acted or failed to act. No such prior opportunity existed, as the Expert deliberately presented inaccurate, false, or misleading materials to the Board designate (ICC) the falseness of which the Requester asked the ICC to investigate, without success, but which the Requester has itself now investigated, with success.

Reconsideration requests are not meant for those who believe that the Board made the wrong decision when considering the information available. There has to be identification of material information that was in existence of the time of the decision and that was not considered by the Board in order to state a reconsideration request. Similarly, new information – information that was not yet in existence at the time of the Board decision – is also not a proper ground for reconsideration. Please keep this guidance in mind when submitting requests.

The information presented in Annex 1 is not new information. It is information which was in existence at the time of the actions/inactions set out in points 3(i) to 3(iv), above

**Provide the Required Detailed Explanation here:**

## **Background**

On 23 October 2013 the Panelist Dr. Guido Tawil, partner in M&M Bomchil Abogados, appointed by the International Centre for Expertise in the case of SportAccord v dot Sport Limited EXP 471/ICANN/88 ("Determination"), found in favour of the Objector, SportAccord in a community objection by SportAccord to the gTLD registry application of dot Sport Limited. The International Olympic Committee was specifically named as a party interested in the proceedings, and is a supporter of the SportAccord community application for the .sport string.

Famous Four Media were not alone in finding the Determination irregular in a number of respects. For example, Dr. Tawil re-interpreted a key ICANN standard, inexplicably turning the ordinary meaning of the term "likelihood" to "possible" in the context of deciding the 'likelihood of material detriment' to the community in question.

## **Reconsideration Request 13-16**

Dot Sport Limited submitted a Reconsideration Request to ICANN on 8 November 2013 in which, amongst other matters, we raised the question of whether Dr. Guido Tawil had any connection to the Objector or any of its constituent member organisations.

Furthermore, we requested that ICANN ask the relevant Dispute Resolution Service Provider, the International Chamber of Commerce ("ICC"), to review its appointment of Dr. Tawil. ICANN rejected the Reconsideration Request on 8 January 2014.

Furthermore, Famous Four Media wrote to the ICC on two occasions to request that the ICC question Dr. Tawil directly about his links with SportAccord or the International Olympic Committee ("IOC"). The ICC repeatedly declined to do so.

### **SportAccord and IOC**

It should be noted that the IOC was named as an interested party in the Objection.

SportAccord is effectively controlled by the IOC. The IOC and SportAccord are inextricably linked. Two of the six members of the Executive Council (Marisol Casado and Franco Kasper) are also members of the IOC. Five of the eight members of the Council of SportAccord are directly appointed by three out of the only four sport associations officially recognised by the IOC on their website: ASOIF, AIOWF, ARISF<sup>2</sup>; the fourth sport association officially recognised by the IOC being SportAccord itself

"International Sports Federations seeking IOC recognition must ensure that their statutes, practice and activities conform with the Olympic Charter." However, conformity is not limited to just abstract documentary and/or legal conformity. The IOC is deeply entwined in the day to day operations and mission of SportAccord. On its own website Sport Accord states that it enjoys "a close collaborative relationship with the IOC". The IOC plays a key supporting role to several project areas of SportAccord: "The sharing of values and knowledge allows for a more complex approach in addressing a wide range of topics such as anti-doping, illegal betting, match-fixing, sustainable sports events, sports for all and IF recognition".<sup>3</sup> The relevant portion

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<sup>3</sup> <http://www.sportaccord.com/en/what-we-do/dfsu/?idContent=16323>

of the SportAccord website is abstracted below. More at:

<http://www.sportaccord.com/en/what-we-do/dfsu/?idContent=16323#sthash.G6CFf0Wu.dpuf>

## INTERNATIONAL OLYMPIC COMMITTEE

SportAccord holds a **close collaborative relationship** with the International Olympic Committee (IOC).

SportAccord fully recognises the IOC and the Olympic Movement's authority; it is and will remain a loyal partner in the achievements of the Olympic Movement objectives.

The IOC plays a key supporting role to several project areas of SportAccord. The sharing of values and knowledge allows for a more complex approach in addressing a wide range of topics such as anti-doping, illegal betting, match-fixing, sustainable sports events, sports for all and IF recognition.

The SportAccord Doping-Free Sport Unit's (DFSU) **strategic alliance** with the International Olympic Committee (IOC) began in 2005. The IOC and World Anti-Doping Agency's (WADA) funding for the DFSU enables the DFSU to provide expert advice and support its members, signatories of the Code, in becoming Code compliant, maintaining this status and implementing best practices in anti-doping.

An advisory board composed of three representatives (SportAccord, WADA and IOC), provides guidance, advice and recommendations on the global vision, strategies and operational plans of the DFSU. This board meets at least once a year.

The IOC plays a vital role in the work of the Sports' Social Responsibility Unit. Its financial support enables the development of specific services for SportAccord members as well as assistance, training and support in harnessing the power of sport to contribute to the positive social change. This contribution ranges across six special projects utilising sport for: child & youth development, the environment, gender, health, persons with disabilities, peace.

Specifically in the Sport and Health project, SportAccord collaborates with the IOC in the World Conference on Sport for All. The **15<sup>th</sup> World Conference** held in Peru in April 2013, aimed at promoting health, fitness and well-being as well as encouraging people of all ages and abilities to participate in sports activities and experience the Olympic values.

Additionally, the IOC is fully in line with SportAccord's commitment to develop a Sustainable Event Management Strategy. Currently under development, an IOC-SportAccord education tool, to be released November 2012, will contribute to overcoming the knowledge gap regarding sustainability within the sports movement. This service will complement the **Online Reporting Tool** which provides a sustainability summary report used not only for communication and marketing purposes but also as basis for a solid sustainability policy.

Through this instrumental partnership, the IOC insures the continuous improvement of SportAccord's support in sports' social responsibility issues. The members obtain a case specific attention to their demands as SportAccord becomes increasingly relevant for each and every member, independently of its sport, size or location.

### Commercial relationship between Guido Tawil and the IOC

The Requester has uncovered evidence of direct commercial relationships between Guido Tawil, the M&M Bomchil law firm and the IOC. Guido Tawil is a Senior Partner of the law firm M&M Bomchil.

1. Guido Tawil, DirecTV and IOC broadcasting rights

One of Guido Tawil's 'significant clients' (according to the Chambers & Partners law directory) is **DirectTV** (<http://www.chambersandpartners.com/19/572/editorial/9/1>). On 7 February 2014, just 3 months after having provided his decision in SportAccord v dot Sport Limited EXP 471/ICANN/88 DirecTV secured a highly lucrative and sought after broadcasting rights deal covering Latin America for the 2014 winter Olympic Games in Sochi, Russia and the 2016 summer Olympics in Rio de Janeiro, Brazil. DirecTV will broadcast the Olympics in Argentina, Chile, Colombia, Ecuador, Peru, Uruguay and Venezuela. The deal covers television, online and mobile platforms.

2. DirectTV, Torneos y Competencias S.A. and Guido Tawil

Direc TV Latin America is the principal shareholder in Torneos y Competencias S.A. ("TyC", also referred as "Torneos"). TyC is another sports broadcasting firm in the Latin American region and is headquartered in Buenos Aires. ([http://en.wikipedia.org/wiki/Torneos\\_y\\_Competencias](http://en.wikipedia.org/wiki/Torneos_y_Competencias)

TyC is also a major client of M&M Bomchil law firm. What is more, the President of TyC is Marcelo Bombau, who is also a Senior Partner in M&M Bomchil and is therefore a business partner of Guido Tawil. (Source: [m.chambersandpartners.com/firm/2373/9](http://m.chambersandpartners.com/firm/2373/9); see also [http://en.wikipedia.org/wiki/Torneos\\_y\\_Competencias](http://en.wikipedia.org/wiki/Torneos_y_Competencias) page last modified on 8 February 2014.) In other words, Guido Tawil's business partner in the same law firm, has a direct commercial interest in a direct recipient of IOC broadcasting rights. Guido Tawil's own legal practice and business is built around a company for whom IOC broadcasting rights are a core aspect of its business.

In the M. & M. Bomchil Attorneys Firm Brochure from 2008, the Executive Director of TyC, Luis Nofal, endorses M&M Bomchil. Marcelo Bombau is also a Board Member of the Fundacion

Torneos y Competencias along with the son and daughter of the Founder, Luis Nofal. TyC shareholders include DirecTV Latin America (33.2%) and Luis Nofal Sports Holding SA (by Luis Nofal, 23.53%).

### 3. TyC and IOC broadcasting rights

TyC has a long standing business relationship with IOC having secured broadcasting rights for the Olympics on 5 consecutive occasions since the Atlanta Games in 1996. It most recently won the Argentinian television rights for the Vancouver 2010 Winter Olympics and London 2012 Olympic Games [http://www.sportspromedia.com/news/new\\_broadcast\\_deals\\_for\\_tyc](http://www.sportspromedia.com/news/new_broadcast_deals_for_tyc).

### 4. Summary of Interests

4.1 TyC, is a major client and source of income of Guido Tawil. IOC broadcasting rights are a core aspect of its business

4.2 TyC is run by a business partner of Guido Tawil. IOC broadcasting rights are a core aspect of his business

4.3 Guido Tawil's firm was involved in TyC obtaining IOC broadcasting rights.

4.4 DirecTV is a major client and source of income of Guido Tawil. IOC broadcasting rights are a core aspect of it business

4.5 DirecTV Latin America acquired Olympic broadcasting rights 3 months following the decision made by Guido Tawil

4.6 DirecTV is the principal shareholder in TyC.

4.7 It is understood that Guido Tawil's firm was involved in DirecTV Latin America obtaining IOC broadcasting rights.

### 5. Falsifying declaration in the Conflicts of Interest form

We extract from the Statement of Impartiality and Independence which Giudo Tawil signed on 25 July 2013 (N°: EXP/471/ICANN/88)



**ICC EXPERT  
DECLARATION OF ACCEPTANCE AND AVAILABILITY,  
STATEMENT OF IMPARTIALITY AND INDEPENDENCE**

Family Name(s): Tawil

Given Name(s): Guido Santiago

*Please tick all relevant boxes.*

**1. ACCEPTANCE**

I agree to serve as expert under and in accordance with ICANN's gTLD Applicant Guidebook, including the New gTLD Dispute Resolution Procedure ("**Procedure**"), the Rules for Expertise of the ICC ("**Rules**") including Appendix III to the ICC Rules and supplemented by the ICC Practice Note on the Administration of Cases. I confirm that I am familiar with these rules and documents. I accept that my fees and expenses will be fixed exclusively by the ICC International Centre for Expertise ("**Centre**") (Article 3 Appendix III to the ICC Rules).

**NON-ACCEPTANCE**

I decline to serve as expert in this case.  
*(If you tick here, simply date and sign the form without completing any other sections.)*

**2. AVAILABILITY**

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this proceeding diligently, efficiently and in accordance with the time limits provided in the Procedure, subject to any extensions granted by the Centre pursuant to Article 21(a) of the Procedure.

3. **INDEPENDENCE AND IMPARTIALITY**

*(Tick one box and provide details below and/or, if necessary, on a separate sheet.)*

In deciding which box to tick, you should take into account, having regard to Article 11(1) of the Rules and Article 13(c) of the Procedure, whether there exists any past or present relationship, direct or indirect, between you and any of the parties, their related entities or their lawyers or other representatives, whether financial, professional or of any other kind. Any doubt must be resolved in favour of disclosure. Any disclosure should be complete and specific, identifying *inter alia* relevant dates (both start and end dates), financial arrangements, details of companies and individuals, and all other relevant information.

**Nothing to disclose:** I am impartial and independent and intend to remain so. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my independence in the eyes of any of the parties and no circumstances that could give rise to reasonable doubts as to my impartiality.

**Acceptance with disclosure:** I am impartial and independent and intend to remain so. However, mindful of my obligation to disclose any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the parties or that could give rise to reasonable doubts as to my impartiality, I draw attention to the matters below and/or on the attached sheet.

Date: July 25, 2013

Signature:



We note that the duty of disclosure includes any:

- i. **Relationship whether financial, professional or of any other kind**
- ii. That is either ***past or present*** and that is
- iii. ***direct or indirect*** between
- iv. ***you*** [Guido Tawil] and any ***parties their related entities or their lawyers***

We further note that the standard of disclosure is so high that

- a. ***any doubt must be resolved in favour of disclosure***
- b. Disclosure includes anything that ***might be called into question***
- c. Guido Tawil was required to have made ***due enquiry*** and that
- d. Guido Tawil is a jurist and can not argue ignorance as to the meaning or standard of this duty

The research we have provided in this section would have clearly necessitated that Guido Tawil tick the box "Acceptance with Disclosure". Guido Tawil had and has multiple financial and professional relationships both direct and indirect with the IOC which is clearly a related entity to SportAccord. By ticking the box "nothing to disclose", he has provided false statement that:

- there are no facts of circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my independence in the eyes of any of the parties and
- no circumstances that could give rise to reasonable doubts as to my impartiality.
- clearly he knew that his key client would benefit from IOC rights; and he either knew and withheld the information (or made no due enquiry as to whether or not) any member of his law firm would have stood to gain by this.

### **Recommendation of the Ombudsman**

On 31 March 2014, the Ombudsman (with whom we shared the new material discovered on 25 March 2014) advised the Board as follows:

*"I am concerned that in this case, there has been no direct comment from Dr. Tawil. I am also concerned that the ICC have taken a stance that it is too late for Famous Four Media to challenge the decision on the basis of material recently disclosed. My concern is, that this may create a reasonable appearance of bias. My view is that the commercial relationship ought to have been disclosed, to give the applicant Famous Four Media an opportunity to make a considered choice as to the suitability of this appointment. Transparency is the best way to ensure that parties are able to make the best choices.*

*It is therefore my recommendation to the board, that there should be a rehearing of the objection with a different expert appointed."*

### **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?)

- (i) Revoke the designation of authority of Guido Tawil as Expert for undisclosed conflict of

interest and/or obvious bias in deciding the Determination.

- (ii) Reject the finding of the Expert Determination, dismiss the Objection and provide a refund of the fees of the ICC to dot Sport Limited
- (iii) Instruct the ICC to give a full account of how the Expert's resume came to be considered by the ICC and what the consideration process was.
- (iv) Instruct the Expert to give an account of why he failed to disclose his deep professional involvement in two major clients involved in multi-million deals for broadcast rights to the Olympic games over the last decade, which would clearly indicate his professional alignment with SportAccord interests.

Alternatively, dot Sport Limited would request that the matter be referred, at no cost to dot Sport Limited, to a new fully independent panel of **THREE** Experts selected under an entirely transparent process, for a de novo review and determination<sup>4</sup>. This matter should not be reheard by a single Expert alone, since this has repeatedly proven (not just in the .SPORT decision) to be unreliable and lead to inconsistent decision making; or

Refer the community objections against dot Sport's .SPORT application back to an accountability mechanism established by ICANN to deal with incorrect, inconsistent or otherwise improper determinations.

**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:*

- a. there must be a loss or injury suffered (financial or non-financial):*
  - (i) Loss of gTLD application fee
  - (ii) Loss of Objection fee
  - (iii) Loss of opportunity to participate in an impartial and fair hearing
  - (iv) Loss of opportunity to participate in a Contention Set Auction for the .SPORT top level domain ("TLD")
- b. that is a directly and causally connected to the Board or staff action or inaction that is the basis of the Request for Reconsideration.*
  - (i) Guido Tawil provided false information at the time of submitting his conflict of interest form.

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<sup>4</sup> Indeed, this is a likely consequence of paragraph 2.4.3.2 of the AGB: *"In a case where ICANN determines that a Panelist has failed to comply with the Code of Conduct, the results of that Panelist's review for all assigned applications will be discarded and the affected applications will undergo a review by new panelists."*

This is a clear breach of ICANN policy<sup>5</sup> and the Applicant Guidebook. The AGB provides extensive guidance, at paragraph 2.4.3, in the Code of Conduct for Panelists:

*Panelists shall conduct themselves as thoughtful, competent, well prepared, and impartial professionals throughout the application process. Panelists are expected to comply with equity and high ethical standards while assuring the Internet community, its constituents, and the public of objectivity, integrity, confidentiality, and credibility. Unethical actions, **or even the appearance of compromise, are not acceptable.***

Dr Tawil has fallen short of the requirements in a number of respects. First, there is obvious apparent bias, as has been found by the Ombudsman. Second, as we stated in our previous Reconsideration Request, the determination was received within the ICANN community as a poorly decided one, lacking in appropriate reasoning and imposing new standards for a community objection not defined in the AGB. This exacerbates the appearance of bias in this case.

- (ii) The Requester would not have approved Guido Tawil as Expert under any circumstances, had he disclosed his alignment of both direct and indirect interests with the IOC and SportAccord.
  - (iii) The Board may not have rejected the previous Reconsideration Request had the information about Dr. Guido Tawil's bias been known at the time.
  - (iv) The Ombudsman has specifically recommended to the Board that the decision of the Expert should be disregarded and there be a rehearing.
- c. *The requestor must be able to set out the loss or injury and the direct nature of that harm in specific and particular details.*

See point 10(a)(i) - (iii) above.

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.)

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

Yes

No

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<sup>5</sup> <http://www.icann.org/en/news/in-focus/accountability/expected-standards>

**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.**

N/A

**Do you have any documents you want to provide to ICANN?**

If you do, please attach those documents to the email forwarding this request. Note that all documents provided, including this Request, will be publicly posted at <http://www.icann.org/en/committees/board-governance/requests-for-reconsideration-en.htm>.

### **Terms and Conditions for Submission of Reconsideration Requests**

The Board Governance Committee has the ability to consolidate the consideration of Reconsideration Requests if the issues stated within are sufficiently similar.

The Board Governance Committee may dismiss Reconsideration Requests that are querulous or vexatious.

Hearings are not required in the Reconsideration Process, however Requestors may request a hearing. The BGC retains the absolute discretion to determine whether a hearing is appropriate, and to call people before it for a hearing.

The BGC may take a decision on reconsideration of requests relating to staff action/inaction without reference to the full ICANN Board. Whether recommendations will issue to the ICANN Board is within the discretion of the BGC.

The ICANN Board of Director's decision on the BGC's reconsideration recommendation is final and not subject to a reconsideration request.



\_\_\_\_\_  
Signature

2 April 2014  
Date

## **Annex 25.**

**Please see Errata attached at the end of this document.**

**RECOMMENDATION OF THE BOARD GOVERNANCE COMMITTEE (BGC)**

**RECONSIDERATION REQUEST 14-10**

**21 JUNE 2014**

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The Requester, dot Sport Limited, seeks reconsideration of: (i) the Expert Determination, and ICANN's acceptance of that Determination, upholding SportAccord's Community Objection to the Requester's application for .SPORTS; (ii) the ICC's<sup>1</sup> designation of the Expert Panelist who presided over the underlying objection; and (iii) the BGC's<sup>2</sup> Determination denying Reconsideration Request 13-16.

**I. Brief Summary.**

The Requester and SportAccord both applied for .SPORTS and are in the same contention set. SportAccord filed a Community Objection to the Requester's application. The Expert Panel ("Expert" or "Panel") rendered an Expert Determination in favor of SportAccord. The Requester then filed Reconsideration Request 13-16, suggesting that, among other reasons, the Expert allegedly violated established policy or process by failing to disclose material information relevant to his appointment. On 8 January 2014, the BGC denied Request 13-16, finding, among other things, that the Requester had provided no evidence demonstrating that the Expert had failed to follow the applicable ICC procedures for independence and impartiality.

The Requester, in this second Reconsideration Request for the same matter, now claims that on 25 March 2014, it discovered additional evidence that the Expert had a conflict of interest. Specifically, the Requester claims that it just recently discovered that the Expert now has, and

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<sup>1</sup> International Centre for Expertise of the International Chamber of Commerce

<sup>2</sup> Board Governance Committee.



previously has had, financial and professional relationships, both direct and indirect, with an entity that is “related” to SportAccord. The Requester claims the Expert should have, but did not disclose those relationships in the underlying objection proceeding.

The Requester’s claims are unsupported. First, the Request is untimely. Request 14-10 challenges Board and staff actions that occurred on or prior to 13 January 2014, yet was received on 2 April 2014, well past the 15-day deadline to file a reconsideration request. While the Requester claims that this second Reconsideration Request is appropriate because the Requester only recently discovered the Expert’s alleged conflict of interest, as is discussed below, such a claim does not justify an untimely reconsideration request. Second, the allegedly newly discovered information relating to a purported conflict of interest does not support reconsideration. Therefore, the BGC recommends that the Request be denied.

## **II. Facts.**

### **A. Background Facts.**

Both dot Sport Limited (“Requester”) and SportAccord applied for .SPORTS and are in the same contention set.

On 13 March 2013, SportAccord filed a Community Objection (“Objection”) to the Requester’s application, asserting that there was “substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.” (Applicant Guidebook (“Guidebook”), § 3.2.1; New gTLD Dispute Resolution Procedure (“Procedure”), Art. 2e.)

On 29 July 2013, the ICC appointed Dr. Guido Santiago Tawil as the expert (“Expert” or “Panel”) to consider SportAccord’s Objection and notified the parties of the appointment.

On 23 October 2013, the Panel rendered an Expert Determination in favor of SportAccord (“Expert Determination”).

On 2 November 2013, the Requester filed Reconsideration Request 13-16, seeking reconsideration of the Expert Determination on the grounds that: (i) the Panel applied the wrong standard in contravention of established ICANN policy or process; and (ii) the Expert failed to disclose material information relevant to his appointment in violation of established policy or process.

On 8 January 2014, the Board Governance Committee (“BGC”) denied Request 13-16.

On 25 March 2014, the Requester purportedly discovered additional facts regarding an alleged commercial relationship between the Expert and the International Olympic Committee (“IOC”), an entity that the Requester contends “effectively control[s]” SportAccord.<sup>3</sup> (Request, § 8, Pg. 5.) Specifically, the Requester claims that it discovered that: (i) one of the Expert’s clients, DirecTV, acquired broadcasting rights for the Olympics from the IOC on 7 February 2014 (after the Expert Determination and the BGC’s Determination on Request 13-16 were issued); and (ii) a partner in the Expert’s law firm is the president of Torneos y Competencias S.A. (“TyC”), a company which has a history of securing Olympic broadcasting rights and of which DirecTV Latin America is the principal shareholder. The Requester forwarded that information to the Ombudsman, with whom it had previously filed a complaint.

On 31 March 2014, the Ombudsman issued a draft report on the Requester’s complaint, which was later withdrawn pending consultation with other relevant parties.

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<sup>3</sup> In support of its contention, the Requester offers only that (1) two of the six members of SportAccord’s Executive Council are also members of the IOC, and (ii) “[f]ive of the eight members of the Council of SportAccord are directly appointed by three out of the only four sport associations officially recognized by the IOC on their website.” (Request, § 8, Pg. 5.) The Requester also points out that SportAccord’s website states that SportAccord enjoys a “close collaborative relationship” with the IOC. (*Id.*)

On 2 April 2014, the Requester filed Reconsideration Request 14-10, seeking reconsideration of: (i) the denial of Reconsideration Request 13-16; (ii) the Expert Determination; and (iii) the ICC's appointment of the Expert.<sup>4</sup>

Recognizing that pursuant to Article V, Section 2 of the ICANN Bylaws, a complaint lodged with the Ombudsman cannot concurrently be pursued while another accountability mechanism on the same issue is ongoing, ICANN has been advised that the Ombudsman sought confirmation from the Requester as to whether it was aware of these limitations in the Bylaws and how it wished to proceed. ICANN was advised on or about 13 May 2014 that the Requester confirmed that it was fully aware of these Bylaws provisions and that it would like to pursue this Reconsideration Request rather than the Ombudsman's request.

**B. The Requester's Claims.**

The Requester makes three claims. First, the Requester claims that the BGC failed to consider material information in rejecting Reconsideration Request 13-16, namely the allegedly newly-discovered information regarding the Expert's alleged conflict of interest. Second, the Requester claims the Expert violated ICANN policy and process by failing to reveal his alleged conflict of interest. Finally, the Requester claims that the ICC violated ICANN policy and process in appointing the Expert.

**C. Relief Requested.**

The Requester asks that ICANN: (i) revoke the designation of authority of Guido Tawil as Expert for undisclosed conflict of interest and/or obvious bias; (ii) reject the Expert

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<sup>4</sup> Although the Requester only requests reconsideration of the ICC's appointment of the Expert, it also appears to object to the ICC's response to the Requester's newly-discovered information, stating that the Requester's representative "wrote to the ICC on two occasions to request that the ICC question [the Expert]" about the alleged conflict of interest, but that the ICC "repeatedly declined to do so." (Request, § 8, Pg. 5.) However, this claim is untimely, and the Requester has not identified any policy or procedure that the ICC allegedly violated that would support reconsideration.

Determination and refund the Requester the ICC fees it paid; (iii) instruct the ICC to give a full account of how the Expert's resume came to be considered by the ICC and what the consideration process entailed; and (iv) instruct the Expert to give an account of why he failed to disclose his alleged conflict of interest. (Request, § 9, Pg. 12.)

Alternatively, the Requester asks that the Objection be referred for *de novo* review to a new panel composed of three experts. (*Id.*)

### **III. Issues.**

In view of the claims set forth in Request 14-10, the issues are as follows:

- A. Whether the Board failed to consider material information in rejecting Reconsideration Request 13-16, namely the allegedly newly-discovered information regarding the Expert's alleged conflict of interest;
- B. Whether the Expert violated any ICANN policy and process by failing to disclose his alleged conflict of interest; and
- C. Whether the ICC violated any ICANN policy and process in appointing the Expert.

### **IV. The Relevant Standards for Evaluating Reconsideration Requests and Community Objections.**

ICANN's Bylaws provide for reconsideration of a Board or staff action or inaction in accordance with specified criteria.<sup>5</sup> (Bylaws, Art. IV, § 2.) Requester is challenging both Board

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<sup>5</sup> Article IV, § 2.2 of ICANN's Bylaws states in relevant part that any entity may submit a request for reconsideration or review of an ICANN action or inaction to the extent that it has been adversely affected by:

- (a) one or more staff actions or inactions that contradict established ICANN policy(ies); or
- (b) one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or
- (c) one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.

and staff action or inaction. Dismissal of a request for reconsideration is appropriate if the BGC recommends, and the Board or the NGPC<sup>6</sup> agrees, that the requesting party does not have standing because the party failed to satisfy the reconsideration criteria set forth in the Bylaws for challenges of a Board or staff action or inaction. (Bylaws, Art. IV, § 2.9.)

ICANN has previously determined that the reconsideration process can properly be invoked for challenges to expert determinations rendered by panels formed by third party dispute resolution service providers, such as the ICC, where it can be stated that the Panel failed to follow the established policies or processes in reaching the expert determination, or that staff failed to follow its policies or processes in accepting that determination.<sup>7</sup>

Reconsideration requests must be submitted within fifteen days of either “the date on which information about the challenged Board action is first published in a resolution [including rationale]” or “the date on which the party submitting the request became aware of, or reasonably should have become aware of, the challenged staff action.” (Bylaws, Art. IV, § 2.5.)

## **V. Analysis and Rationale.**

### **A. The Request is Untimely**

The Request is untimely. Reconsideration requests must be submitted within 15 days of either “the date on which information about the challenged Board action is first published in a resolution [including rationale]” or “the date on which the party submitting the request became aware of, or reasonably should have become aware of, the challenged staff action.” (Bylaws, Art. IV, § 2.5.) The Requester seeks reconsideration of the appointment of the Expert, and of the Expert Determination (which is to be evaluated as a staff action or inaction) that was issued on

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<sup>6</sup> New gTLD Program Committee.

<sup>7</sup> See <http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-booking-01aug13-en.doc>, BGC Recommendation on Reconsideration Request 13-5.

23 October 2013. The Requester also seeks reconsideration of the BGC's determination on Reconsideration Request 13-16, which was issued on 8 January 2014 and posted on 13 January 2014. The instant Request, however, was received on 2 April 2014, over six months after the Expert was appointed, nearly six months following the issuance of the Expert Determination, and nearly three months following the BGC's determination on Request 13-16.

The Requester claims that its belated discovery of new evidence of a conflict of interest on the part of the Expert justifies a tolling of the 15-day deadline for reconsideration requests. (*Id.*, § 5, Pg. 2.) Specifically, Requester claims that on 25 March 2014 it discovered that: (i) one of the Expert's clients, DirecTV, acquired broadcasting rights for the Olympics on 7 February 2014, following the issuance of the Expert Determination ("DirecTV Contract"); and (ii) a partner in the Expert's law firm is the president of TyC, a company which has a history of securing Olympics broadcasting rights and of which DirecTV Latin America is the principal shareholder ("TyC Relationship"). In other words, the Requester suggests that an alleged connection between the Expert (or his law firm) and DirecTV, a "recipient of IOC broadcasting rights," creates a conflict of interest because SportAccord and the IOC enjoy a "close collaborative relationship." (*Id.*, § 8, Pg. 5-8.)

The Requester's argument does not support reconsideration. The Requester does not explain how it suddenly became aware of this information on 25 March 2014, or explain why it could not reasonably have become aware of the information at an earlier date. The only recent event that the Requester claims creates an alleged conflict of interest is the DirecTV Contract, but that contract was signed on 7 February 2014, almost two months prior to the filing of the instant Request (and nearly five months after the Expert issued the Determination). Requester's only other evidence for an alleged conflict is the TyC Relationship, a business relationship that

appears to be decades old. Further, all of the Requester's evidence regarding the DirecTV Contract and the TyC Relationship is based on publicly available information from Internet sites such as Wikipedia, Chambers and Partners, and a public sports website, which could have been discovered prior to 25 March 2014.

The Requester does not explain why it failed to discover the alleged conflicts earlier. Because the Requester could have become aware of the alleged conflicts earlier, the Requester's belated discovery of publicly-available information does not justify tolling the 15-day time limit. (Bylaws, Art. IV, § 2.5; *see also id.* at Art. IV, § 2.2 (reconsideration based on alleged failure to consider material information is inappropriate where the requester could have submitted, but did not submit, the information for the Board's consideration).)

Notwithstanding the foregoing, which alone is sufficient basis to deny this Request, the allegedly newly-discovered information does not support reconsideration, for the reasons discussed below.

**B. The “Newly-Discovered” Evidence Does Not Support Reconsideration.**

The Requester cites to two pieces of “newly-discovered” evidence that allegedly establish the Expert's conflict of interest: (1) the DirecTV Contract; and (2) the TyC Relationship. Neither supports reconsideration.<sup>8</sup>

**1. The DirecTV Contract is Not Evidence of a Conflict of Interest Sufficient to Support Reconsideration.**

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<sup>8</sup> In support of its Request, the Requester references a 31 March 2014 communication the Ombudsman sent to the Board regarding the Expert's alleged conflict of interest, in which the Ombudsman expressed concern and recommended “a rehearing of the objection with a different expert appointed.” (Request, § 8, Pg. 11.) However, the Ombudsman's communication, by itself, does not support reconsideration because it does not constitute Board action. Moreover, the Ombudsman's communication has subsequently been withdrawn. As such, it would be premature for the BGC to consider the Ombudsman's comments on any alleged conflict of interest issues.

In support of its claim that there is a “direct commercial relationship” between the IOC and the Expert, the Requester relies on the DirecTV Contract, stating that “on 7 February 2014, just 3 months after having provided his decision in SportAccord v. dot Sport Limited EXP 471/ICANN/88[,] Direct TV[, one of the Expert’s clients,] secured a highly lucrative and sought after broadcasting rights deal covering Latin America for the 2014 winter Olympic Games in Sochi, Russia and the 2016 summer Olympic Games in Rio de Janeiro, Brazil.” (*Id.*, § 8, Pg. 7.) The Requester concedes that the purported “direct commercial relationship” arose more than three months *after* the Expert Determination was rendered on 23 October 2013. The Requester does not even attempt to establish that the belated 7 February 2014 DirecTV Contract somehow affected the Expert’s 23 October 2013 Determination. As a result, the Requester’s claim that the Expert or the ICC violated established processes or procedures by failing to disclose this information at the time of the Expert’s appointment is not supported because the DirecTV Contract did not exist until well after the Expert was appointed and after the Expert Determination was issued.

The BGC likewise could not have considered this information on 8 January 2014, when it rendered its determination on Request 13-16, because the DirecTV Contract had not yet been executed. Because the Requester has failed to demonstrate that the Expert or the ICC violated established policies or procedures or that the BGC failed to consider material information, reconsideration is not appropriate. (Bylaws, Art. IV, § 2.)

## **2. The TyC Relationship Does Not Support Reconsideration.**

The Requester also alleges a “newly discovered” conflict of interest based on the TyC Relationship. (Request, § 8, Pgs. 7-8.) Specifically, the Requester claims that Direct TV Latin America is the principal shareholder of TyC, another sports broadcasting firm in the Latin



American region. (*Id.*, § 8, Pg. 7.) The Requester states that TyC is “a major client of M&M Bomchil law firm,” where the Expert is a partner. (*Id.*) The Requester further states that the President of TyC is also a Senior Partner in M&M Bomchil and “is therefore a business partner of Guido Tawil [the Expert].” (*Id.*) The Requester alleges the existence of a conflict of interest based on its claim that TyC “has a longstanding business relationship with IOC having secured broadcasting rights on 5 consecutive occasions since the Atlanta Games in **1996**,” and that TyC “most recently won the Argentinean television rights for the Vancouver 2010 Winter Olympics and London 2012 Olympic Games.” (*Id.* at § 8, Pg. 8 (emphasis added).)

In this regard, the Requester claims that the Expert should have disclosed the TyC Relationship and, having failed to do so, has violated Section 2.4.3 of the Guidebook. (*Id.* at § 10, P. 13.) The Requester’s claim does not support reconsideration. Section 2 of the Guidebook “describes the evaluation procedures and criteria used to determine whether applied-for gTLDs are approved for delegation.” Section 2.4.3 of the Guidebook, upon which the Requester relies, sets forth the “Code of Conduct Guidelines for Panelists” for purposes of the initial evaluation process for new gTLD applications. The Expert that the Requester challenges here was not appointed pursuant to Section 2.4.3 of the Guidebook. Instead, the Expert was appointed to hear a community objection filed by SportAccord. The selection of expert panels for purposes of an objection proceeding, such as the one invoked by SportAccord here, is governed by a different section of the Guidebook, namely Section 3, which discusses dispute resolution procedures.

Specifically, Section 3.4.4 of the Guidebook is the relevant provision that governs the selection of expert panels for purposes of the objection procedures at issue here. Section 3.4.4 provides that the ICC will “follow its adopted procedures for requiring such independence,

including procedures for challenging and replacing an expert for lack of independence.”

(Guidebook, Section 3.4.4.) The ICC Rules of Expertise would therefore govern any challenges to the independence of experts appointed to evaluate community objections. Requester provides no evidence demonstrating that the Expert failed to follow the applicable ICC procedures for independence and impartiality prior to his appointment or that the ICC failed to require the Expert to do so. As the BGC noted in its determination on Request 13-16, the Expert submitted to the ICC, and to the parties, his *curriculum vitae*, as well as his Declaration of Acceptance and Availability and Statement of Impartiality and Independence in accordance with the ICC Rules of Expertise. (13-16 Determination at Pgs. 12-13.) As such, reconsideration is not appropriate with respect to the Expert’s disclosure.

Reconsideration is also unwarranted with respect to the BGC’s failure to consider the TyC Relationship in its determination on Request 13-16. The Requester failed to submit evidence of the alleged conflict of interest based on the TyC Relationship to the BGC for consideration in support of Reconsideration Request 13-16. Reconsideration is appropriate for “actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, *except where the part submitting the request could have submitted, but did not submit, the information for the Board’s consideration at the time of the action or refusal to act.*” (Bylaws, Art. IV, § 2.2(b)) (emphasis added). As discussed above, the TyC Relationship appears to be decades-old, and the Requester gives no explanation for why it could not have submitted information regarding the relationship to the BGC at the time the BGC considered Request 13-16. Because the Requester did not submit the evidence for the BGC’s consideration with Request 13-16, the BGC was not able to consider the alleged conflict in its determination of that request. The Requester’s failure to provide the evidence to the

BGC's consideration does not constitute a failure on the part of the BGC to consider material evidence and does not constitute a basis for reconsideration of Request 13-16.

## **VI. Recommendation.**

Based on the foregoing, the BGC concludes that the Requester has not stated proper grounds for reconsideration, and therefore recommends that Reconsideration Request 14-10 be denied without further consideration.

In terms of timing of the BGC's Recommendation, it notes that Section 2.16 of Article IV of the Bylaws provides that the BGC shall make a final determination or recommendation with respect to a Reconsideration Request within thirty days following receipt of the request, unless impractical. (Bylaws, Art. IV, § 2.16.) To satisfy the thirty-day deadline, the BGC would have to have acted by 2 May 2014. Due to the Requester's invocation of multiple accountability mechanisms on parallel tracks, including the complaint the Requester lodged with the Ombudsman and the instant Reconsideration Request, additional time was required to confer with the Requester and to clarify which accountability mechanism the Requester intended to pursue, delaying of the BGC's consideration of this matter. Moreover, due to the volume of Reconsideration Requests received within recent months, the first practical opportunity for the BGC to take a decision on this Request was on 21 June 2014; it was impractical for the BGC to do so sooner. Upon making that determination, ICANN staff notified the Requester of the BGC's anticipated timing for its review of Request 14-10.

## ERRATA SHEET

The Recommendation of ICANN's Board Governance Committee ("BGC") on Reconsideration Request 14-10, which was published on 21 June 2014, is a true record of the BGC's Recommendation, with the following exceptions:

Page	Paragraph	Corrections
1	1	<u>“.SPORTS” should read “.SPORT”</u>
1	2	<u>“.SPORTS” should read “.SPORT”</u>
2	2	<u>“.SPORTS” should read “.SPORT”</u>
10	2	<u>“.SPORTS” should read “.SPORT”</u>

Date: 28 July 2014

## **Annex 26.**

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## Approved Resolutions | Meeting of the New gTLD Program Committee

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18 Jul 2014

### 1. [Main Agenda](#)

- a. [Name Collision Occurrence Management Framework](#)
- b. [Reconsideration Request 14-10, dot Sport Limited Rationale for Resolution 2014.07.18.NG01](#)

### 1. Main Agenda:

- a. Name Collision Occurrence Management Framework  
No resolution taken.
- b. Reconsideration Request 14-10, dot Sport Limited  
Whereas, dot Sport Limited filed Reconsideration

## Acceptance Initiative

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- ▶ Policy

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- ▶ Public Comment

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- ▶ Contact

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- ▶ Help

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Request 14-10 asking the New gTLD Program Committee ("NGPC") to reconsider: (i) the Expert Determination, and ICANN's acceptance of that Determination, upholding SportAccord's Objection to the Requester's application for .SPORTS; (ii) the International Centre for Expertise of the International Chamber of Commerce's designation of the Expert Panelist who presided over the objection proceedings; and (iii) the Board Governance Committee's ("BGC's") Determination denying Reconsideration Request 13-16.

Whereas, the BGC considered the issues raised in Reconsideration Request 14-10.

Whereas, the BGC recommended that the Request be denied because the Requester has not stated proper grounds for reconsideration, and the NGPC agrees.

Resolved (2014.07.18.01), the NGPC adopts the BGC Recommendation on Reconsideration Request 14-10, which can be found at <https://www.icann.org/en/system/files/files/recommendation-sport-21jun14-en.pdf> [PDF, 147 KB].

## Rationale for Resolution 2014.07.18.NG01

### i. **Brief Summary**

SportAccord filed a Community Objection against Dot Sport Limited's (the "Requester") application for .SPORTS and prevailed. The Requester then filed Request 13-16, suggesting that, among other reasons, the Expert Panel ("Expert" or "Panel") allegedly violated established policy or process by failing to disclose material information relevant to his appointment. On 8 January 2014, the BGC denied Request 13-16, finding, among other things, that the Requester had provided no evidence demonstrating that the Expert had failed to follow the applicable ICC procedures for independence and impartiality.

The Requester, in this second Reconsideration Request for the same matter, now claims that on 25 March 2014, it discovered additional evidence that the Expert had a conflict of interest. Specifically, the Requester claims that it recently discovered that the Expert now has, and previously has had, financial and professional relationships with an entity that is "related" to SportAccord. The Requester claims the Expert should have but did not disclose those relationships in the objection proceeding.

The Requester's claims are unsupported. First, the Request is untimely. Request 14-10 challenges Board and staff actions that occurred on or prior to 13 January 2014, yet was received on 2 April 2014, well past the 15-day deadline to file a reconsideration request. While the Requester claims that this second Reconsideration Request is appropriate because the Requester only recently discovered the Expert's alleged conflict of interest, as is discussed below, the Requester's claim does not justify an untimely reconsideration request. Second, the allegedly newly discovered information relating to a purported conflict of interest does not support reconsideration. Therefore, the BGC has recommended that Reconsideration Request 14-10 be denied. The NGPC agrees.

## ii. Facts

### 1. Relevant Background Facts

Both dot Sport Limited (the "Requester") and SportAccord applied for .SPORTS and are in the same contention set.

On 13 March 2013, SportAccord filed a Community Objection ("Objection") to the Requester's application, asserting that there was "substantial opposition to the gTLD application from a significant portion of the community to which the



gTLD string may be explicitly or implicitly targeted." (Applicant Guidebook ("Guidebook"), § 3.2.1; New gTLD Dispute Resolution Procedure ("Procedure"), Art. 2e.)

On 29 July 2013, the ICC appointed Dr. Guido Santiago Tawil as the expert ("Expert" or "Panel") to consider SportAccord's Objection. On 23 October 2013, the Panel rendered an Expert Determination in favor of SportAccord ("Expert Determination")<sup>1</sup>.

On 8 November 2013, the Requester filed Request 13-16<sup>2</sup>, seeking reconsideration of the Expert Determination, claiming that the Panel applied the wrong standard in contravention of established ICANN policy or process and the Expert failed to disclose material information relevant to his appointment in violation of established policy or process. On 8 January 2014, the Board Governance Committee ("BGC") denied Request 13-16<sup>3</sup>.

On 25 March 2014, the Requester purportedly discovered additional facts regarding an alleged commercial relationship between the Expert and the International Olympic Committee ("IOC"), an entity that the Requester contends "effectively control[s]" SportAccord.<sup>4</sup> (Request, § 8, Pg. 5.) Specifically, the Requester claims that it discovered that: (i) one of the Expert's clients, DirecTV, acquired broadcasting rights for the Olympics from the IOC on 7 February 2014 (but only after the Expert Determination and the BGC's Determination on Request 13-16 were issued); and (ii) a partner in the Expert's

law firm is the president of Torneos y Competencias S.A. ("TyC"), a company which has a history of securing Olympic broadcasting rights and of which DirecTV Latin America is the principal shareholder.<sup>5</sup> The Requester forwarded that information to the Ombudsman, with whom it had filed a complaint.

On 31 March 2014, the Ombudsman issued a draft report on the Requester's complaint, which was later withdrawn pending consultation with other relevant parties.

On 2 April 2014, the Requester filed Request 14-10<sup>6</sup>, seeking reconsideration of: (i) the denial of Request 13-16; (ii) the Expert Determination and ICANN's acceptance of it; and (iii) the ICC's appointment of the Expert.<sup>7</sup>

Recognizing that pursuant to Article V, Section 2 of the ICANN Bylaws, a complaint lodged with the Ombudsman cannot concurrently be pursued while another accountability mechanism on the same issue is ongoing, the Ombudsman advised ICANN that he sought confirmation from the Requester as to whether it was aware of these Bylaws parameters and asked how the Requester wished to proceed. ICANN was advised on or about 13 May 2014 that the Requester confirmed that it was fully aware of these Bylaws provisions and that it would like to pursue this Reconsideration Request rather than the Ombudsman's request.

## 2. Requester's Claims

The Requester makes three claims. First, the Requester claims that the

BGC failed to consider material information in rejecting Request 13-16, namely the allegedly newly-discovered information regarding the Expert's alleged conflict of interest. Second, the Requester claims the Expert violated ICANN policy and process by failing to reveal his alleged conflict of interest. Third, the Requester claims that the ICC violated ICANN policy and process in appointing the Expert.

### iii. **Issues**

The issues for reconsideration are as follows:

1. Whether the Board failed to consider material information in rejecting Reconsideration Request 13-16, namely the allegedly newly-discovered information regarding the Expert's alleged conflict of interest;
2. Whether the Expert violated any ICANN policy and process by failing to disclose his alleged conflict of interest; and
3. Whether the ICC violated any ICANN policy and process in appointing the Expert.

### iv. **The Relevant Standards for Evaluating Reconsideration Requests**

ICANN's Bylaws call for the BGC to evaluate and make recommendations to the Board with respect to Reconsideration Requests. See Article IV, Section 2 of the Bylaws. The NGPC, bestowed with the powers of the Board in this instance, has reviewed and thoroughly considered the BGC Recommendation on Request 14-10 and finds the analysis sound.<sup>8</sup>

### v. **Analysis and Rationale**

1. **The Request is Untimely.**

The BGC concluded, and the NGPC agrees, that Reconsideration Request 14-10 is untimely and does not support reconsideration. Reconsideration requests must be submitted within 15 days of either "the date on which information about the challenged Board action is first published in a resolution [including rationale]" or "the date on which the party submitting the request became aware of, or reasonably should have become aware of, the challenged staff action." (Bylaws, Art. IV, § 2.5.) The Requester seeks reconsideration of: (i) the appointment of the Expert, which occurred on 29 July 2013; (ii) the Expert Determination, which was issued on 23 October 2013; and (iii) the BGC's determination on Reconsideration Request 13-16, which was issued on 8 January 2014 and posted on 13 January 2014.

Reconsideration Request 14-10<sup>9</sup>, however, was received on 2 April 2014, which is: (i) over six months after the Expert was appointed; (ii) nearly six months following the issuance of the Expert Determination; and (iii) nearly three months following the BGC's determination on Request 13-16.

The Requester claims that on 25 March 2014 it discovered new evidence that: (i) one of the Expert's clients, DirecTV, acquired broadcasting rights for the Olympics on 7 February 2014, following the issuance of the Expert Determination ("DirecTV Contract"); and (ii) a partner in the Expert's law firm is the president of TyC, a company which has a history of securing Olympics broadcasting rights and of which DirecTV Latin America is the principal shareholder ("TyC Relationship"). In sum, the Requester suggests that an alleged connection between the Expert (or his law firm) and DirecTV, a "recipient of

IOC broadcasting rights," creates a conflict of interest because SportAccord and the IOC enjoy a "close collaborative relationship." (Request, § 8, Pg. 5-8.)

Based upon this belated discovery of new evidence, the Requester claims the 15-day deadline for reconsideration requests should be tolled. (Request, § 5, Pg. 2.) The Requester, however, does not explain how it suddenly became aware of this information on 25 March 2014, or explain why it could not reasonably have become aware of the information at an earlier date.

The only recent event that the Requester claims creates an alleged conflict of interest is the DirecTV Contract, but that contract was signed on 7 February 2014, almost two months prior to the filing of the instant Request (and nearly five months after the Expert issued the Determination). The Requester's only other evidence for an alleged conflict is the TyC Relationship, a business relationship that appears to be decades old. In addition, all of the Requester's evidence regarding the DirecTV Contract and the TyC Relationship is based on publicly available information from Internet sites such as Wikipedia, Chambers and Partners, and a public sports website, which could have been discovered long prior to 25 March 2014.

Because the Requester could have become aware of the alleged conflicts earlier, the Requester's belated discovery of publicly available information does not justify tolling the 15-day time limit. (Bylaws, Art. IV, § 2.5; see also, *id.* at Art. IV, § 2.2 (reconsideration based on alleged failure to consider material information is inappropriate where the requester could have submitted, but did not submit, the

information for the Board's consideration).)

## **2. The "Newly-Discovered" Evidence Does Not Support Reconsideration.**

The Requester cites to two pieces of "newly-discovered" evidence that allegedly establish the Expert's conflict of interest: (1) the DirecTV Contract; and (2) the TyC Relationship. Separate and apart from the timeliness issue, the BGC concluded, and the NGPC agrees, that the "newly-discovered" evidence of an alleged conflict of interest does not support reconsideration<sup>10</sup>

### **1. The DirecTV Contract is Not Evidence of a Conflict of Interest Sufficient to Support Reconsideration.**

In support of its claim that there is a "direct commercial relationship" between the IOC and the Expert, the Requester relies on the 7 February 2014 DirecTV Contract, stating that: "just 3 months after [the Expert's Determination on the SportAccord Objection,] Direct TV[, one of the Expert's clients,] secured a highly lucrative and sought after broadcasting rights deal covering Latin America for the 2014 winter Olympic Games in Sochi, Russia and the 2016 summer Olympic Games in Rio de Janeiro, Brazil." (Request, § 8, Pg. 7.) The Requester concedes that the purported "direct commercial relationship" arose more than three months after the Expert Determination, and does not even attempt to establish that the belated 7 February 2014 DirecTV Contract somehow affected the Expert's 23 October 2013

Determination.

Likewise, the BGC could not have considered this information on 8 January 2014, when it rendered its determination on Request 13-16, because the DirecTV Contract had not yet been executed.

As a result, the Requester has failed to demonstrate that the Expert or the ICC violated established policies or procedures or that the BGC failed to consider material information.

Therefore, reconsideration is not appropriate. (Bylaws, Art. IV, § 2.)

## **2. The TyC Relationship Does Not Support Reconsideration.**

The Requester also alleges a "newly discovered" conflict of interest based on the TyC Relationship. (Request, § 8, Pgs. 7-8.) Specifically, the Requester claims that DirecTV Latin America is the principal shareholder of TyC, another sports broadcasting firm in the Latin American region. (Id., § 8, Pg. 7.) The Requester states that TyC is "a major client of M&M Bomchil law firm," where the Expert is a partner. (Id.) The Requester further states that the President of TyC is also a Senior Partner in M&M Bomchil and "is therefore a business partner of [the Expert]." (Id.) The Requester alleges a conflict of interest based on its claim that TyC "has a longstanding business relationship with IOC having secured broadcasting rights on 5 consecutive occasions since the Atlanta Games in 1996," and that TyC "most recently won the Argentinean television rights for the Vancouver 2010 Winter

Olympics and London 2012 Olympic Games." (Id. at § 8, Pg. 8 (emphasis added).) In this regard, the Requester claims that the Expert should have disclosed the TyC Relationship and, having failed to do so, has violated ICANN policy and process.

Section 3.4.4 of the Guidebook governs the selection of expert panels for purposes of the objection procedures at issue here. Section 3.4.4 provides that the ICC will "follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an expert for lack of independence." (Guidebook, Section 3.4.4.) The ICC Rules of Expertise would therefore govern any challenges to the independence of experts appointed to evaluate community objections. Requester provides no evidence demonstrating that the Expert failed to follow the applicable ICC procedures for independence and impartiality prior to his appointment or that the ICC failed to require the Expert to do so. As the BGC noted in its determination on Request 13-16, the Expert submitted to the ICC, and to the parties, his curriculum vitae, as well as his Declaration of Acceptance and Availability and Statement of Impartiality and Independence in accordance with the ICC Rules of Expertise. (13-16 Determination at Pgs. 12-13.) As such, reconsideration is not appropriate with respect to the Expert's disclosure.

Reconsideration is also unwarranted with respect to the BGC's failure to consider the TyC Relationship in its



determination on Request 13-16. Reconsideration is appropriate for "actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, *except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of the action or refusal to act.*" (Bylaws, Art. IV, § 2.2(b)) (emphasis added). As discussed above, the TyC Relationship appears to be decades-old, and the Requester gives no explanation for why it did not submit, or could not have submitted, the information regarding the relationship to the BGC at the time the BGC considered Request 13-16.

The Requester's failure to submit the evidence for the BGC's consideration with Request 13-16 does not constitute a failure on the part of the BGC to consider material evidence and does not constitute a basis for reconsideration of Request 13-16.

#### vi. **Decision**

The NGPC had the opportunity to consider all of the materials submitted by or on behalf of the Requester or that otherwise relate to Request 14-10. Following consideration of all relevant information provided, the NGPC reviewed and has adopted the BGC's Recommendation on Request 14-10, which shall be deemed a part of this Rationale. The full text of Recommendation can be found at <https://www.icann.org/en/system/files/files/recommendation-sport-21jun14-en.pdf> [PDF, 147 KB] and is attached to the Reference Materials to the NGPC Submission on this

matter.

In terms of timing of the BGC's Recommendation, Section 2.16 of Article IV of the Bylaws provides that the BGC shall make a final determination or recommendation to the Board [or NGPC as appropriate] with respect to a Reconsideration Request within thirty days following receipt of the request, unless impractical. See Article IV, Section 2.16 of the Bylaws. To satisfy the thirty-day deadline, the BGC would have to have acted by 2 May 2014. Due to the Requester's invocation of multiple accountability mechanisms on parallel tracks, including the complaint the Requester lodged with the Ombudsman and the instant Reconsideration Request, additional time was required for the Ombudsman to confer with the Requester and to clarify which accountability mechanism the Requester intended to pursue, delaying the BGC's consideration of this matter. Moreover, due to the volume of Reconsideration Requests received within recent months, the first practical opportunity for the BGC to make a decision on this Request was on 21 June 2014; it was impractical for the BGC to do so sooner. Accordingly, the NGPC meeting on 18 July 2014, was the first NGPC meeting that has been scheduled following the BGC's action on Request 14-10 with sufficient time to evaluate and consider the BGC's Recommendation.

Adopting the BGC's recommendation has no financial impact on ICANN and will not negatively impact the systemic security, stability and resiliency of the domain name system.

This decision is an Organizational Administrative Function that does not require public comment.

Published on 22 July 2014

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<sup>1</sup> <https://www.icann.org/en/system/files/files/request-annex-sport-1-08nov13-en.pdf> [PDF, 142 KB]

<sup>2</sup> <https://www.icann.org/en/system/files/files/request-sport-08nov13-en.pdf> [PDF, 160 KB]

<sup>3</sup> <https://www.icann.org/en/system/files/files/determination-sport-08jan14-en.pdf> [PDF, 142 KB]

<sup>4</sup> In support of its contention, the Requester offers only that: (a) two of the six members of SportAccord's Executive Council are also members of the IOC; and (b) "[f]ive of the eight members of the Council of SportAccord are directly appointed by three out of the only four sport associations officially recognized by the IOC on their website." (Request, § 8, Pg. 5.) The Requester also points out that SportAccord's website states that SportAccord enjoys a "close collaborative relationship" with the IOC. (*Id.*)

<sup>5</sup> <https://www.icann.org/en/system/files/files/request-sport-02apr14-en.pdf> [PDF, 867 KB]

<sup>6</sup> <https://www.icann.org/en/system/files/files/request-sport-02apr14-en.pdf> [PDF, 867 KB]

<sup>7</sup> Although the Requester only requests reconsideration of the ICC's appointment of the Expert, it also appears to object to the ICC's response to the Requester's newly-discovered information, stating that the Requester's representative "wrote to the ICC on two occasions to request that the ICC question [the Expert]" about the alleged conflict of interest, but that the ICC "repeatedly declined to do so." (Request, § 8, Pg. 5.) However, this claim is untimely, and the Requester has not identified any policy or procedure that the ICC allegedly violated that would support reconsideration.

<sup>8</sup> Having a reconsideration process whereby the BGC reviews and, if it chooses, makes a recommendation to the Board/NGPC for approval, positively affects ICANN's transparency and accountability. It provides an avenue for the community to ensure that staff and the Board are acting in accordance with ICANN's policies, Bylaws, and Articles of Incorporation.

<sup>9</sup> <https://www.icann.org/en/system/files/files/request-sport-02apr14-en.pdf> [PDF, 867 KB]

<sup>10</sup> In support of its Request, the Requester references a 31 March 2014 communication the Ombudsman sent to the Board regarding the Expert's alleged conflict of interest, in which the Ombudsman expressed concern and recommended "a rehearing of the objection with a different expert appointed." (Request, § 8, Pg. 11.) However, the Ombudsman's communication, by itself, does not support reconsideration because it does not constitute Board action. Moreover, the Ombudsman's communication has subsequently been withdrawn. As such, it would be premature for the NGPC to consider the Ombudsman's comments on any alleged conflict of interest.



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# Minutes | Meeting of the New gTLD Program Committee

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18 Jul 2014

**Note: On 10 April 2012, the Board established the New gTLD Program Committee, comprised of all voting members of the Board that are not conflicted with respect to the New gTLD Program. The Committee was granted all of the powers of the Board (subject to the limitations set forth by law, the Articles of Incorporation, Bylaws or ICANN's Conflicts of Interest Policy) to exercise Board-level authority for any and all issues that may arise relating to the New gTLD Program. The full scope of the Committee's authority is set forth in its charter at <http://www.icann.org/en/groups/board/new-gTLD>.**

**A Regular Meeting of the New gTLD Program Committee of the ICANN Board of Directors was held telephonically on 18 July 2014 at 13:00 UTC.**

**Committee Chairman Cherine Chalaby promptly called the**

Security,  
Stability and  
Resiliency  
(IS-SSR)

- ▶ ccTLDs
- ▶ Internationalized Domain Names
- ▶ Universal Acceptance Initiative
- ▶ Policy
- ▶ Public Comment
- ▶ Contact
- ▶ Help

meeting to order.

In addition to the Chair the following Directors participated in all or part of the meeting: **Fadi Chehadé (President and CEO, ICANN)**, **Steve Crocker (Board Chairman)**, **Chris Disspain**, **Olga Madruga-Forti**, **Erika Mann**, **Gonzalo Navarro**, **Ray Plzak**, **George Sadowsky**, and **Mike Silber**.

**Heather Dryden**, **Bill Graham**, **Bruno Lanvin** and **Kuo-Wei Wu** sent apologies.

**Jonne Soininen (IETF Liaison)** and **Suzanne Woolf (RSSAC Liaison)** were in attendance as non-voting liaisons to the Committee.

**Secretary: John Jeffrey (General Counsel and Secretary).**

**ICANN Executives and Staff in attendance for all or part of the meeting: Akram Atallah (President, Global Domains Division); Francisco Arias (Director, Technical Services – Global Domains Division); Megan Bishop (Board Support Coordinator); Michelle Bright (Board Support Manager); Allen Grogan (Chief Contracting Counsel); Dan Halloran (Deputy General Counsel); Cyrus Namazi (Vice President, DNS Industry Engagement); Olof Nordling (Senior Director, GAC Relations); David Olive (Vice President, Policy Development); Erika Randall (Counsel); Amy Stathos (Deputy General Counsel); Christine Willett (Vice President, gTLD Operations); and Mary Wong (Senior Policy Director).**

**These are the Minutes of the Meeting of the New gTLD Program Committee, which took place on 18 July 2014.**

## 1. **Main Agenda**

- a. [Name Collision Occurrence Management](#)
- b. [Reconsideration Request 14-10, dot Sport Limited Rationale for Resolution 2014.07.18.NG01](#)

## 1. Main Agenda:

## a. Name Collision Occurrence Management Framework

The Committee continued its discussions concerning a framework to address collision occurrences between new gTLDs and existing private uses of the same strings. Akram Atallah presented the proposed Name Collision Occurrence Management Framework (the "Framework"), and engaged the Committee in a discussion of the elements of the Framework. Akram described the proposed 90-day "controlled interruption" period as the notification measure to alert parties that they may be leaking queries intended from private namespaces to the public DNS. Akram reported on the community comments on the Framework received during the ICANN meeting in London, and the proposed refinements to the Framework to address the community comments. The proposed refinements included modification of the length of time required for reporting on the handling of name collision reports.

George Sadowsky inquired whether the proposed Framework was consistent with the advice offered by the Security and Stability Advisory Committee (SSAC) in SAC062. Akram provided an overview of some of the remaining differences between the approach proposed in the Framework and the SSAC's advice. Akram explained that the noted differences are not in conflict with the SSAC recommendations but present tradeoffs that the Committee should consider. One such difference Akram noted was the proposed standard that would be established to invoke an emergency response for name collision reports, which would be limited to situations where there is a reasonable belief that the name collision presents a clear and present danger to human life. The Committee discussed the appropriateness of such a limitation, and the tradeoffs associated with its implementation.

Olga Madruga-Forti asked for clarification about how the Framework would address concerns raised by the SSAC



and the community regarding the rules and method of allocation of previously "blocked" second-level domains after the controlled interruption period is completed. The Committee discussed the issue and considered how the existing rights protection mechanisms in the New gTLD Program interact with the proposed requirements in the Framework. The Committee also considered whether changes would be needed to the existing rights protection mechanisms to address the community comments, and whether additional public comment was needed on the matter.

As part of its discussion, the Committee also contemplated next steps to begin developing the long-term plan to manage gTLD name collision issues. Ray Pizak commented on potential policy issues relating to the name collision issue, and suggested the possibility of engaging the GNSO to consider whether policy work on developing the long-term plan should be undertaken. The Committee then discussed how best to engage with the GNSO on this issue and the process to move forward with the Framework.

The Committee decided to schedule a follow-up meeting before the end of July to further consider the proposed Name Collision Occurrence Framework.

#### b. Reconsideration Request 14-10, dot Sport Limited

The Chair introduced the agenda item and provided a summary of the Board Governance Committee's recommendation on Reconsideration Request 14-10. Amy Stathos highlighted the grounds for reconsideration claimed in the request.

Mike Silber moved and Chris Disspain seconded the proposed resolution. After discussion, the Committee took the following action:

Whereas, dot Sport Limited filed

Reconsideration Request 14-10 asking the New gTLD Program Committee ("NGPC") to reconsider: (i) the Expert Determination, and ICANN's acceptance of that Determination, upholding SportAccord's Objection to the Requester's application for .SPORTS; (ii) the International Centre for Expertise of the International Chamber of Commerce's designation of the Expert Panelist who presided over the objection proceedings; and (iii) the Board Governance Committee's ("BGC's") Determination denying Reconsideration Request 13-16.

Whereas, the BGC considered the issues raised in Reconsideration Request 14-10.

Whereas, the BGC recommended that the Request be denied because the Requester has not stated proper grounds for reconsideration, and the NGPC agrees.

Resolved (2014.07.18.01), the NGPC adopts the BGC Recommendation on Reconsideration Request 14-10, which can be found at <https://www.icann.org/en/system/files/files/recommendation-sport-21jun14-en.pdf> [PDF, 205 KB].

**All members of the Committee present voted in favor of Resolution 2014.07.18.NG01. Bill Graham, Bruno Lanvin, Kuo-Wei Wu, Olga Madruga-Forti, and Erika Mann were unavailable to vote on the Resolution. The Resolution carried.**

## Rationale for Resolution 2014.07.18.NG01

### I. Brief Summary

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Objection against Dot Sport Limited's (the "Requester") application for .SPORTS and prevailed. The Requester then filed Request 13-16, suggesting that, among other reasons, the Expert Panel ("Expert" or "Panel") allegedly violated established policy or process by failing to disclose material information relevant to his appointment. On 8 January 2014, the BGC denied Request 13-16, finding, among other things, that the Requester had provided no evidence demonstrating that the Expert had failed to follow the applicable ICC procedures for independence and impartiality.

The Requester, in this second Reconsideration Request for the same matter, now claims that on 25 March 2014, it discovered additional evidence that the Expert had a conflict of interest. Specifically, the Requester claims that it recently discovered that the Expert now has, and previously has had, financial and professional relationships with an entity that is "related" to SportAccord. The Requester claims the Expert should have but did not disclose those relationships in the objection proceeding.

The Requester's claims are unsupported. First, the Request is untimely. Request 14-10 challenges Board and staff actions that occurred on or prior to 13 January 2014, yet was received on 2 April 2014, well past the 15-day deadline to file a

reconsideration request. While the Requester claims that this second Reconsideration Request is appropriate because the Requester only recently discovered the Expert's alleged conflict of interest, as is discussed below, the Requester's claim does not justify an untimely reconsideration request. Second, the allegedly newly discovered information relating to a purported conflict of interest does not support reconsideration. Therefore, the BGC has recommended that Reconsideration Request 14-10 be denied. The NGPC agrees.

## II. Facts

### A. Relevant Background Facts

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appointed Dr. Guido Santiago Tawil as the expert ("Expert" or "Panel") to consider SportAccord's Objection. On 23 October 2013, the Panel rendered an Expert Determination in favor of SportAccord ("Expert Determination")<sup>1</sup>.

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while another accountability mechanism on the same issue is ongoing, the Ombudsman advised ICANN that he sought confirmation from the Requester as to whether it was aware of these Bylaws parameters and asked how the Requester wished to proceed. ICANN was advised on or about 13 May 2014 that the Requester confirmed that it was fully aware of these Bylaws provisions and that it would like to pursue this Reconsideration Request rather than the Ombudsman's request.

#### **B. Requester's Claims**

The Requester makes three claims. First, the Requester claims that the BGC failed to consider material information in rejecting Request 13-16, namely the allegedly newly-discovered information regarding the Expert's alleged conflict of interest. Second, the Requester claims the Expert violated ICANN policy and process by failing to reveal his alleged conflict of interest. Third, the Requester claims that the ICC violated ICANN policy and process in appointing the Expert.

#### **III. Issues**

The issues for reconsideration are as follows:

1. Whether the Board failed to consider material information in rejecting Reconsideration Request 13-16, namely the allegedly newly-discovered information regarding the Expert's alleged conflict of interest;
2. Whether the Expert violated any ICANN policy and process by failing to disclose his alleged conflict of interest; and
3. Whether the ICC violated any ICANN policy and process in appointing the Expert.

#### **IV. The Relevant Standards for Evaluating Reconsideration Requests**

ICANN's Bylaws call for the BGC to evaluate and make recommendations to the Board with respect to Reconsideration Requests. See Article IV, Section 2 of the Bylaws. The NGPC, bestowed with the powers of the Board in this instance, has reviewed and thoroughly considered the BGC Recommendation on Request 14-10 and finds the analysis sound.<sup>8</sup>

#### **V. Analysis and Rationale**

##### **A. The Request is Untimely.**

The BGC concluded, and the NGPC agrees, that Reconsideration Request 14-10 is untimely and does not support reconsideration. Reconsideration requests must



be submitted within 15 days of either "the date on which information about the challenged Board action is first published in a resolution [including rationale]" or "the date on which the party submitting the request became aware of, or reasonably should have become aware of, the challenged staff action." (Bylaws, Art. IV, § 2.5.) The Requester seeks reconsideration of: (i) the appointment of the Expert, which occurred on 29 July 2013; (ii) the Expert Determination, which was issued on 23 October 2013; and (iii) the BGC's determination on Reconsideration Request 13-16, which was issued on 8 January 2014 and posted on 13 January 2014.

Reconsideration Request 14-10<sup>9</sup>, however, was received on 2 April 2014, which is: (i) over six months after the Expert was appointed; (ii) nearly six months following the issuance of the Expert Determination; and (iii) nearly three months following the BGC's determination on Request 13-16.

The Requester claims that on 25 March 2014 it discovered new evidence that: (i) one of

the Expert's clients, DirecTV, acquired broadcasting rights for the Olympics on 7 February 2014, following the issuance of the Expert Determination ("DirecTV Contract"); and (ii) a partner in the Expert's law firm is the president of TyC, a company which has a history of securing Olympics broadcasting rights and of which DirecTV Latin America is the principal shareholder ("TyC Relationship"). In sum, the Requester suggests that an alleged connection between the Expert (or his law firm) and DirecTV, a "recipient of IOC broadcasting rights,"; creates a conflict of interest because SportAccord and the IOC enjoy a "close collaborative relationship." (Request, § 8, Pg. 5-8.)

Based upon this belated discovery of new evidence, the Requester claims the 15-day deadline for reconsideration requests should be tolled. (Request, § 5, Pg. 2.) The Requester, however, does not explain how it suddenly became aware of this information on 25 March 2014, or explain why it could not reasonably have become aware of the information at an earlier date.

The only recent event that the

Requester claims creates an alleged conflict of interest is the DirecTV Contract, but that contract was signed on 7 February 2014, almost two months prior to the filing of the instant Request (and nearly five months after the Expert issued the Determination). The Requester's only other evidence for an alleged conflict is the TyC Relationship, a business relationship that appears to be decades old. In addition, all of the Requester's evidence regarding the DirecTV Contract and the TyC Relationship is based on publicly available information from Internet sites such as Wikipedia, Chambers and Partners, and a public sports website, which could have been discovered long prior to 25 March 2014.

Because the Requester could have become aware of the alleged conflicts earlier, the Requester's belated discovery of publicly available information does not justify tolling the 15-day time limit. (Bylaws, Art. IV, § 2.5; see also, *id.* at Art. IV, § 2.2 (reconsideration based on alleged failure to consider material information is inappropriate where the requester could have submitted, but did not submit, the information for the Board's

consideration).)

**B. The "Newly-Discovered"  
Evidence Does Not Support  
Reconsideration.**

The Requester cites to two pieces of "newly-discovered" evidence that allegedly establish the Expert's conflict of interest: (1) the DirecTV Contract; and (2) the TyC Relationship. Separate and apart from the timeliness issue, the BGC concluded, and the NGPC agrees, that the "newly-discovered" evidence of an alleged conflict of interest does not support reconsideration.<sup>10</sup>

**1. The DirecTV Contract  
is Not Evidence of a  
Conflict of Interest  
Sufficient to Support  
Reconsideration.**

In support of its claim that there is a "direct commercial relationship" between the IOC and the Expert, the Requester relies on the 7 February 2014 DirecTV Contract, stating that: "just 3 months after [the Expert's Determination on the SportAccord Objection,] Direct TV[, one of the Expert's clients,] secured a highly lucrative and sought after broadcasting rights

deal covering Latin America for the 2014 winter Olympic Games in Sochi, Russia and the 2016 summer Olympic Games in Rio de Janeiro, Brazil." (Request, § 8, Pg. 7.) The Requester concedes that the purported "direct commercial relationship" arose more than three months after the Expert Determination, and does not even attempt to establish that the belated 7 February 2014 DirecTV Contract somehow affected the Expert's 23 October 2013 Determination.

Likewise, the BGC could not have considered this information on 8 January 2014, when it rendered its determination on Request 13-16, because the DirecTV Contract had not yet been executed.

As a result, the Requester has failed to demonstrate that the Expert or the ICC violated established policies or procedures or that the BGC failed to

consider material information. Therefore, reconsideration is not appropriate. (Bylaws, Art. IV, § 2.)

## **2. The TyC Relationship Does Not Support Reconsideration.**

The Requester also alleges a "newly discovered" conflict of interest based on the TyC Relationship. (Request, § 8, Pgs. 7-8.) Specifically, the Requester claims that DirecTV Latin America is the principal shareholder of TyC, another sports broadcasting firm in the Latin American region. (Id., § 8, Pg. 7.) The Requester states that TyC is "a major client of M&M Bomchil law firm," where the Expert is a partner. (Id.) The Requester further states that the President of TyC is also a Senior Partner in M&M Bomchil and "is therefore a business partner of [the Expert]." (Id.) The Requester alleges a conflict of interest based on its claim that TyC "has a longstanding business relationship

with IOC having secured broadcasting rights on 5 consecutive occasions since the Atlanta Games in 1996," and that TyC "most recently won the Argentinean television rights for the Vancouver 2010 Winter Olympics and London 2012 Olympic Games." (Id. at § 8, Pg. 8 (emphasis added).) In this regard, the Requester claims that the Expert should have disclosed the TyC Relationship and, having failed to do so, has violated ICANN policy and process.

Section 3.4.4 of the Guidebook governs the selection of expert panels for purposes of the objection procedures at issue here. Section 3.4.4 provides that the ICC will "follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an expert for lack of independence." (Guidebook, Section 3.4.4.) The ICC Rules of Expertise would therefore govern any challenges to the

independence of experts appointed to evaluate community objections. Requester provides no evidence demonstrating that the Expert failed to follow the applicable ICC procedures for independence and impartiality prior to his appointment or that the ICC failed to require the Expert to do so. As the BGC noted in its determination on Request 13-16, the Expert submitted to the ICC, and to the parties, his curriculum vitae, as well as his Declaration of Acceptance and Availability and Statement of Impartiality and Independence in accordance with the ICC Rules of Expertise. (13-16 Determination at Pgs. 12-13.) As such, reconsideration is not appropriate with respect to the Expert's disclosure.

Reconsideration is also unwarranted with respect to the BGC's failure to consider the TyC Relationship in its determination on Request 13-16. Reconsideration is



appropriate for "actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, **except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of the action or refusal to act.**" (Bylaws, Art. IV, § 2.2(b)) (emphasis added). As discussed above, the TyC Relationship appears to be decades-old, and the Requester gives no explanation for why it did not submit, or could not have submitted, the information regarding the relationship to the BGC at the time the BGC considered Request 13-16.

The Requester's failure to submit the evidence for the BGC's consideration with Request 13-16 does not constitute a failure on the part of the BGC to consider material evidence and does not constitute a basis for

reconsideration of  
Request 13-16.

## VI. Decision

The NGPC had the opportunity to consider all of the materials submitted by or on behalf of the Requester or that otherwise relate to Request 14-10. Following consideration of all relevant information provided, the NGPC reviewed and has adopted the BGC's Recommendation on Request 14-10, which shall be deemed a part of this Rationale. The full text of Recommendation can be found at <https://www.icann.org/en/system/files/files/recommendation-sport-21jun14-en.pdf> [PDF, 205 KB] and is attached to the Reference Materials to the NGPC Submission on this matter.

In terms of timing of the BGC's Recommendation, Section 2.16 of Article IV of the Bylaws provides that the BGC shall make a final determination or recommendation to the Board [or NGPC as appropriate] with respect to a Reconsideration Request within thirty days following receipt of the request, unless impractical. See Article IV, Section 2.16 of the Bylaws. To satisfy the thirty-day deadline, the BGC would have to have acted by 2 May 2014. Due to the Requester's invocation of multiple accountability mechanisms on parallel tracks, including the complaint the Requester lodged with the Ombudsman and the instant Reconsideration Request, additional time was required for the Ombudsman

to confer with the Requester and to clarify which accountability mechanism the Requester intended to pursue, delaying the BGC's consideration of this matter. Moreover, due to the volume of Reconsideration Requests received within recent months, the first practical opportunity for the BGC to make a decision on this Request was on 21 June 2014; it was impractical for the BGC to do so sooner. Accordingly, the NGPC meeting on 18 July 2014, was the first NGPC meeting that has been scheduled following the BGC's action on Request 14-10 with sufficient time to evaluate and consider the BGC's Recommendation.

Adopting the BGC's recommendation has no financial impact on ICANN and will not negatively impact the systemic security, stability and resiliency of the domain name system.

This decision is an Organizational Administrative Function that does not require public comment.

The Chair called the meeting to a close.

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<sup>1</sup> <https://www.icann.org/en/system/files/files/request-annex-sport-1-08nov13-en.pdf> [PDF, 141 KB]

<sup>2</sup> <https://www.icann.org/en/system/files/files/request-sport-08nov13-en.pdf> [PDF, 159 KB]

<sup>3</sup> <https://www.icann.org/en/system/files/files/determination-sport->

[08jan14-en.pdf](#) [PDF, 184 KB]

<sup>4</sup> In support of its contention, the Requester offers only that: (a) two of the six members of SportAccord's Executive Council are also members of the IOC; and (b) "[f]ive of the eight members of the Council of SportAccord are directly appointed by three out of the only four sport associations officially recognized by the IOC on their website." (Request, § 8, Pg. 5.) The Requester also points out that SportAccord's website states that SportAccord enjoys a "close collaborative relationship" with the IOC. (*Id.*)

<sup>5</sup> <https://www.icann.org/en/system/files/files/request-sport-02apr14-en.pdf> [PDF, 866 KB]

<sup>6</sup> <https://www.icann.org/en/system/files/files/request-sport-02apr14-en.pdf> [PDF, 866 KB]

<sup>7</sup> Although the Requester only requests reconsideration of the ICC's appointment of the Expert, it also appears to object to the ICC's response to the Requester's newly-discovered information, stating that the Requester's representative "wrote to the ICC on two occasions to request that the ICC question [the Expert]" about the alleged conflict of interest, but that the ICC "repeatedly declined to do so." (Request, § 8, Pg. 5.) However, this claim is untimely, and the Requester has not identified any policy or procedure that the ICC allegedly violated that would support reconsideration.

<sup>8</sup> Having a reconsideration process whereby the BGC reviews and, if it chooses, makes a recommendation to the Board/NGPC for approval, positively affects ICANN's transparency and accountability. It provides an avenue for the community to ensure that staff and the Board are acting in accordance with ICANN's policies, Bylaws, and Articles of Incorporation.

<sup>9</sup> <https://www.icann.org/en/system/files/files/request-sport-02apr14-en.pdf> [PDF, 866 KB]

<sup>10</sup> In support of its Request, the Requester references a 31 March 2014 communication the Ombudsman sent to the Board regarding the Expert's alleged conflict of interest, in which the Ombudsman expressed concern and recommended "a rehearing of the objection

with a different expert appointed." (Request, § 8, Pg. 11.) However, the Ombudsman's communication, by itself, does not support reconsideration because it does not constitute Board action. Moreover, the Ombudsman's communication has subsequently been withdrawn. As such, it would be premature for the NGPC to consider the Ombudsman's comments on any alleged conflict of interest.



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