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June 16, 2014

ICANN Board
For Public Posting and Comment

RE: Integrity of the New gTLD Program & Treatment of Generic Strings

Dear Dr. Crocker and the ICANN Board:

We respectfully submit the following letter addressing concerns regarding protection of the public interest and the treatment of generic strings (non-branded and non-community supported Applications). At the outset, please note that we appreciate the significant time, great attention, and significant resources that have been expended by the Board, GAC, NGPC and others to address this issue of “closed” generics and find a way to protect the public interest and address Applicant concerns.

However, ICANN’s recent approval of massive, sweeping changes to Amazon EU S.à.r.l.’s exclusive access (closed) generic Applications are troubling. The trouble lies not as much with Amazon, but rather ICANN’s lack of clarity, and transparency on how to address the issue of “closed generics,” and apparent loopholes to potentially circumvent important GAC Advice on the issue of treatment of sensitive closed generic strings.

Since the issuance of GAC Advice on closed generics and, protection of particularly sensitive intellectual property related strings, ICANN clarified the definition of “generics,” worked to identify instances where code of conduct exemptions could or should be granted, and further defined “Affiliates.” Specifications 11 and 13 when read together essentially provide that “restricted access gTLD’s are not permitted and granting of Code of Conduct Exemptions would be inconsistent with protecting the public interest unless the Applicant owns a valid trademark.” This makes sense, so by way of quick example, Walmart can run an exclusive access gTLD for .WALMART, but should not for .GROCERY unless of course, they own a trademark for GROCERY. Likewise, Safeway, Inc. should not be permitted to run .GROCERY for its exclusive access. However, unlike Walmart, Safeway, Inc. appears to have responded to GAC Advice that it will “not run an exclusive” registry yet its Application remains unchanged, but for its statement. Without changes to its Application and clear understanding of its “eligibility requirements” uncertainty remains as to how the public interest will be protected and the level of Applicant’s commitment to preserving the public interest. Without clarity from ICANN, Applicants and the public are left wondering how these Registries will be

operated. Moreover, ICANN should provide further clarity on how it will address Requests for Code of Conduct Exemptions where the public interest is negatively impacted. These are but 2 examples of program wide issues concerning treatment of generic strings. The issue of “closed generics” and more specifically, GAC’s Category 1 & 2 Advice is not insignificant – it is precedent setting and affects the public worldwide.

Dozens of restricted access applications for generic words across many different Applicants, such as .BABY by Johnson & Johnson or .CHANNEL by Charleston Road Registry (Google) appear to be non-compliant with the GAC Advice and the new language introduced by Specifications 11 and 13 of the Registry Agreement.

First, we ask ICANN for clarification on how it intends to address other restricted access Applications for generic words that are not backed by a valid trademark (brand) or are community applications with support and specific delineated polices and safeguards.

If Applications for closed generics are to be resubmitted, as we think they should be to clarify Applicant policies and commitments, what guidelines will govern the way these Applications reevaluated and eventually allowed to continue or be disqualified.

Per Section 1.2.7 of the Applicant Guidebook (“AGB”):

if at any time during the evaluation process information previously submitted by an applicant becomes untrue or inaccurate, the applicant must promptly notify ICANN via submission of the appropriate forms. This includes applicant-specific information such as changes in financial position and changes in ownership or control of the applicant... ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round. Failure to notify ICANN of any change in circumstances that would render any information provided in the application false or misleading may result in denial of the application.

With access to only the public portion of Amazon’s Change Requests (or others like Richemont who changed .JEWELRY and .WATCHES) our ability to understand the full effect of the changes is limited. It appears though that Amazon made changes to Questions 18, 22, 28, 29, 46, 47, 48, 49, and 50. Questions 28 (Abuse Prevention and Mitigation), 29 (Rights Protection Mechanism), 46 (Projections Template), 47 (Costs and Capital Expenditures), 48 (Funding and Revenue), 49 (Contingency Planning) and 50 (Funding Critical Registry Functions) are all scored sections in which Amazon originally received a score of 2, 2, 1, 2, 2, 2 and 3 respectively in their Initial Evaluation scores. This represents more than 50% (fifty percent) of the total scoring, yet ICANN approved these changes as non-material. Given the volume of affected strings, and the fact that many relate to important intellectual property, we ask that ICANN provide guidance and disclose how the Change Requests were evaluated and whether Section 1.2.7 of the AGB was applied and the factors balanced. We also respectfully request that ICANN provide transparency on whether or not the Amazon Applications are being reevaluated and re-

graded. A cursory review of the issue indicates that such sweeping changes affect material portions of the Applications and need close evaluation.

By way of example, surely the Letters of Credit (LOCs) must have changed to reflect the Amazon's purported intent to abandon its plans to run exclusive access registries. By way of example, .BOOK, .MOVIE, and .MUSIC are strings that should result in millions of new domain name registrations. Moving from a closed to open registry would likely change the volume of domain registrations and change the LOC.

Second, it is our understanding that Applicants have twenty-one (21) days to submit changes in response to GAC Advice or Warnings. What basis did Amazon provide for its sweeping and material Change Requests? Furthermore, because many of the affected strings relate to highly sensitive intellectual property sectors, we ask that ICANN provide transparent discussion and identify how the Change Requests protect the Public Interest. The volume and nature of the Change Requests are precedent setting; accordingly the integrity of the new gTLD Program requires open and frank discussion on these issues.

Third, we are aware of many instances where some Applicants had Change Requests denied while others took many months to approve. Some changed office locations, others changed corporate identity and others appear to have sought to improve or "fix" flaws in their Applications, but were rejected. Thus, without further clarity there is the appearance that ICANN is not treating all Applicants equally.

Finally, because the Change Requests affect many sensitive intellectual property strings this issue is very important. Amazon's Change Requests appear to leave open the possibility that Amazon will still maintain strict control over the registration of domain names. Moreover, given Amazon's stated desire to strictly control sensitive strings, coupled with the fact that one corporation could end up effectively controlling the entire space of written, and recorded expression on the DNS, this issue requires close evaluation before auction.

As noted above, this issue is not limited to Amazon. However, the Amazon's Change Requests highlight a Program wide issue. ICANN needs to provide clarity on how all restricted access applications for generic strings will be treated. Clarity on this issue is particularly needed for IP related strings that have the potential to chill important aspects of free speech and expression.

Protecting the public interest is synonym with ensuring Program and Applicant accountability. Applicants for generic strings must be held accountable to their commitments and ensure compliance with GAC Advice. Change Requests, Applications Statements, Requests for Code of Conduct Exemptions should be subject to close scrutiny to ensure that the public interest is served. What safeguards will exist to ensure that Requests for Code of Conduct Exemptions will not provide loopholes for Applicants to circumvent GAC Advice? How will the public interest be protected and how will inconsistencies in Applicant statements be reconciled, with vague or unclear corrective statements?

For the key sensitive generic strings (CAT 1 & 2) it is ill-advised for ICANN to rush to delegation where Applicant Policies are not clearly defined and explained. Because we are an Applicant for .TUBE, the strings that impact video, audio and written expression are of specific concern to us; however, we also seek program wide clarity for all closed generics. With clear and transparent policies, evaluations and standards the public, Applicants, and ICANN are well served.

We therefore ask ICANN to address the above referenced concerns to preserve integrity of the Program and protect the public interest.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Rami Schwartz', written over a faint grid background.

Rami Schwartz
On Behalf of Latin American Telecom, LLC

cc: Jason Schaeffer
General Counsel