International Centre for Dispute Resolution

CASE NO. 01-14-0001-5004

Between

DOT REGISTRY, LLC,
Claimant

v.

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

WITNESS STATEMENT OF TESS PATTISON-WADE

I, Tess Pattison-Wade, of Kansas City, Missouri, hereby make the following statement:

1. I am the Executive Director of Dot Registry, LLC ("Dot Registry"). I make this statement based on my own personal knowledge of the applications made by Dot Registry to the Internet Corporation for Assigned Names and Numbers ("ICANN") for the right to operate the registries for the new generic top-level domain names ("gTLDs") .INC, .LLC, and .LLP.

2. I submit this witness statement as my true and accurate testimony about certain facts that I understand to be at issue in this Independent Review Process ("IRP"), including the competence and independence of the Economist Intelligence Unit ("EIU") evaluators who, under contract with ICANN, performed the Community Priority Evaluations ("CPEs") of Dot Registry's applications for .INC, .LLC and .LLP; how the EIU evaluators performed the CPEs of Dot Registry's applications; and how ICANN has treated Dot Registry and its

applications throughout the course of the New gTLD Program, including in ICANN's accountability mechanisms.

I. EDUCATIONAL AND PROFESSIONAL BACKGROUND

3. I graduated in 2006 from the University of Missouri-Kansas City with a Bachelor of Arts degree in Urban Planning and Community Development. In early 2004, I began working for Trabon Consulting Company, a Kansas City-based accounting firm, which specializes in urban redevelopment projects and neighborhood revitalization.

4. I first met Mr. Shaul Jolles in early 2006, when he purchased five historic properties in the River Market area of Kansas City and began to convert them from rental apartments into condominiums. At the time, I served as the steward of the Old Town Redevelopment Fund, which managed the historic streetscape of the River Market and implemented the aesthetic requirements for buildings located in that area. In that position, I was charged with interacting directly with property owners to ensure the thoughtful application of our community directives, the consistent care of River Market's historic properties, and that the overall integrity of the neighborhood was on track with development plans. I had heard great things about Mr. Jolles' work and efforts in revitalizing the downtown business district in Kansas City, and by working with him on the River Market development, I found his attention to detail, perseverance, and enthusiasm not only commendable, but refreshing. Mr. Jolles and I saw eye to eye and were aligned in our missions of civic issues, neighborhood planning, and community engagement.

5. In 2009, I left Trabon to develop my own business, and with the help of two partners, we collectively formed Pique Co. LLC ("Pique"), a small business consulting firm that provides accounting, human resources, and marketing assistance to non-profits and small businesses, nationally. Pique's unique spectrum of services provides us with the opportunity to interact with a large variety of businesses; our broad client base ranges from social service organizations to

multi-state metal anodizing facilities. Pique's services are an extension of my former work at Trabon. Over the years, I have developed expertise in drafting procedural, managerial, and financing documents for our clients, and in particular, the ability to translate ideas and concepts into concrete proposals. I also manage ongoing compliance on behalf of my clients by providing reporting services to state and federal agencies and providing supervisory internal oversight of audit procedures and management evaluations.

II. JOINING DOT REGISTRY

A. Introduction to Dot Registry and the Concept of Business Identifier gTLDs

6. In 2011, Mr. Jolles approached Pique to assist Dot Registry with preparing its applications to ICANN to operate the registries for .INC, .LLC and .LLP, under ICANN's new gTLD expansion program. Mr. Jolles' vision for these extensions was compelling: to create dedicated gTLDs to specifically serve legally registered U.S. businesses.

7. Part of Pique's primary focus is, and has been over the years, advising businesses in connection with their choice of business formation, *i.e.*, whether to organize as a corporation, limited liability company or partnership. As a Registered Agent in both the States of Kansas and Missouri, I am authorized to file entity formation documents on behalf of newly forming businesses, maintain entity filings with the Secretary of State and alter registration information for businesses that I represent.

8. Choosing the appropriate structure for a new business influences its operations, financial reporting, and ongoing liability. Businesses in the United States may choose from several categories of entity forms, each with distinct characteristics, allowing business owners to select the structure that best aligns with their business operating model and objectives. State laws determine the characteristics of the various legal forms of business organization, making it possible to very clearly define and distinguish between corporations, limited liability companies,

and limited liability partnerships as distinct communities. Business organizers seek information from lawyers, tax advisors, and consultants, such as Pique, in order to make an informed decision when selecting which type of business entity structure or legal form of business to pursue. After forming, businesses continue to work with advisors in order to meet the state and federal tax and business reporting requirements associated with their chosen type of business form. Organizational preferences have developed due to the evolution of operations, reporting, and management requirements for each entity type within the United States. For example, law firms typically choose to organize as limited liability partnerships; large publicly traded entities, which handle a high volume of cash and complex transactions, commonly form as corporations; and many small businesses choose to form as limited liability companies because it offers them flexible guidelines and liability protections. The decision to form as a particular type of business entity is a deliberate action. By doing that, each business opts into a particular type of community of registered businesses.

9. As a person knowledgeable about the various business entity structures and their specific nuances, I instantly understood the importance of restricting and validating the use of these business identifier gTLDs that Mr. Jolles sought to operate, in order to ensure that businesses are accurately and legitimately categorized and portrayed online. Although the concept of limiting the use of the business identifier gTLDs, .INC, .LLC, and .LLP, to legally registered U.S. businesses is simple, the process necessary to execute this goal is one of complexity. It requires the creation of an intricate verification system for initial registrants and an ongoing monitoring system that can fluidly adapt to changing state regulations and technology. Like every other project I witnessed Mr. Jolles take on over the years, this project required meticulous attention to detail, as well as a considerable amount of time, research, and perseverance. I felt that this

project was a natural fit for my skill set and provided an interesting opportunity to work with Mr. Jolles and his colleagues to protect and promote the integrity of business formations in the United States.

B. Serving as Executive Director of Dot Registry

10. In January 2012, I assumed the role of Executive Director of Dot Registry, in addition to my position as a principal at Pique. As Executive Director of Dot Registry, I oversee the daily operations of Dot Registry and build and maintain relationships with the Secretaries of State and with our technical service providers. Over the last three years, I have primarily focused on creating operational protocols to operate the registries for these extensions, developing our verification system in order to ensure that it meets state regulations, managing the gTLD and community priority application process with ICANN, and managing our relationship, communications and other interactions with ICANN.

II. PREPARING DOT REGISTRY'S gTLD APPLICATIONS

A. The Decision to Prepare Community-Based Applications

11. To operate a gTLD registry, applicants must designate in their application whether they are applying for a "community-based" or a standard (non-community-based) gTLD. An applicant must: (i) clearly define the proposed community to be served by the gTLD; (ii) be able to show clear and straightforward membership criteria for registration purposes; (iii) articulate the parameters related to the registration and ongoing monitoring for use of the gTLD; and (iv) show significant support for the issuance of the gTLD as a community designation. Unlike standard gTLDs, use of community-based gTLDs is restricted by clearly defined membership criteria for the community, as described in the application. Registries responsible for managing community gTLDs are bound by the parameters defined in their initial applications in order to protect the integrity of the described community over time. Although generic registry

agreements allow standard applicants to make changes driven by market demands and constraints, a community registry cannot materially alter its operational parameters in ways that would be deemed detrimental or harmful to the respective community. Community registries are required to seek community and ICANN approval for any changes that might alter the scope and effect of the terms and conditions set out in the initial application to ICANN.

12. Even community-based applicants who do not prevail in a CPE may not alter their applications; rather, they proceed to an auction with standard applicants who are not similarly restricted. Although standard applicants for highly sensitive strings, including the extensions Dot Registry applied for, are subject to certain "Public Interest Commitments" under Specification 11 of ICANN's Registry Agreement, the public interest commitments impose only weak requirements, permitting a registry operator, for example, to rely on a registrant's self-attestation that it has the right to use a highly sensitive string.

13. After reviewing ICANN's gTLD Applicant Guidebook (the "AGB"), we determined that the communities of U.S. corporations, limited liability companies, and limited liability partnerships quite precisely reflect the concept of communities in the AGB because each is a distinct community comprised of members who have made a deliberate choice to be a part of that community and maintains membership in the community by providing data to state regulators, paying fees and satisfying other state and federal reporting requirements. Additionally, each community member has made a specific election regarding its business form and, hence, belongs to the community of businesses who have made that same choice. A business that has elected to organize as an LLC, as opposed to an INC, understands that it is presenting itself to the consuming public, other businesses and to government regulators as a particular type of business, with a particular type of ownership, tax, liability structure and set of reporting obligations. Even

though a business is organized in a particular state within the United States, state requirements across the United States for the same type of business form are very similar, with only minor nuances.

14. In cyberspace, there is an additional significance to community membership associated with protection against business and consumer fraud. If a business is a legally registered corporation, limited liability company or limited liability partnership under the laws of a U.S. state or the District of Columbia, then it is a member of INC, LLC or LLP, respectively. Creating dedicated TLDs for each of these communities with the type of registration policies and verification mechanisms that Dot Registry has developed, would protect businesses against business identity theft and give individual consumers, other businesses and regulators peace of mind and assurance that they are transacting with a legally registered U.S. business, in good standing under U.S. law.

15. The fact that these communities are clearly defined by state legislation, coupled with the fact that business theft and consumer confusion would most likely occur if these strings were issued without credible and verifiable restrictions related to their use, is what motivated us to submit community-based applications. In order to achieve our objectives of fostering the trust, reliance, and loyalty of consumers and business owners alike, we believed at the time we were applying, and continue to believe today, that it is absolutely essential to restrict the use of these business identifier extensions to only registered U.S. businesses. At this time, the United States is the only jurisdiction in the world where we are able to reliably verify that use of these extensions is consistent with applicable law.

16. Each of the business identifier abbreviations, .INC, .LLC, and .LLP, has specific taxation and operational reporting requirements in the United States. Once a business entity is created, it

is held to both federal and state reporting regulations set forth to guide businesses in their participation in commerce and consumer interactions. For example, entities are required to submit annual reports to their applicable state secretary's office, file annual tax returns detailing their activities, update state filings regarding board minutes and operations, and stay current on both state and federal taxation requirements. Corporations, for example, are required to report their annual board minutes, shareholder information, and details associated with their activities throughout the year in order to ensure that they comply with state regulations applicable to corporations. These activities serve as documentation of community participation and awareness and establish a record against which we can verify registrants.

17. Although the final version of the AGB had not been issued at the time that we were deciding whether or not to submit community applications (and was not issued until nearly three months after we had submitted our community applications and the gTLD application window had closed), based on how the term "community" was defined in the AGB at that time—and because the AGB states that a community can consist of legal entities—we believed that the communities of corporations, limited liability companies and limited liability partnerships easily fit within ICANN's definition of community.

18. While there is some use of the INC, LLC and LLP business entity designations outside the United States, their use, purpose and meaning, and access to information to credibly verify businesses' use of them, varies greatly from jurisdiction to jurisdiction. In contrast, there is a clear framework of taxation, liability, and operational guidelines for each of these types of business entities in the United States, which can be measured over time and verified. Moreover, the overwhelming majority of registrations for these business identifier designations are within the United States. For these reasons, it quickly became apparent to us that for purposes of

operating the registries for .INC, .LLC and .LLP, it was appropriate to restrict use of these extensions to the communities of U.S. corporations, limited liability companies and limited liability partnerships. Based on my review of the draft AGB, it did not contain anything that prevented Dot Registry from geographically restricting our applications. At the time we submitted our application, as is still the case today, the vast majority of businesses using the designation INC, LLC and LLP operate within the confines of the United States. Consequently, we decided to submit community-based applications to ICANN and began developing the protocols for operating these gTLDs safely, securely and responsibly within the United States. As the technology infrastructure to verify this type of information in other countries evolves, Dot Registry is willing to amend its applications to include jurisdictions outside of the U.S., with ICANN's approval.

B. Building Relationships with the U.S. Secretaries of State

19. After confirming that our concept of restricted business identifier gTLDs for the communities of legally registered U.S. corporations, limited liability companies and limited liability partnerships met the community requirements, we recognized that we would need to build relationships with the regulators who oversee each of these community designations in order to effectively verify potential registrants as legally registered businesses.

20. In the vast majority of states, the Secretary of State is responsible for overseeing business entity registrations, the verification of business filings, the collection of annual reports, and the administration of the Uniform Commercial Code, which provides for the uniform application of business contracts and practices across the United States. In this regard, within their respective jurisdictions, the Secretaries of State maintain all records of business activities, oversee the chartering of businesses, and hold the administrative authority to dissolve or suspend an entity's right to conduct business if the entity does not comply with applicable regulatory requirements.

21. Although the Secretaries of State do not make up the community, as explained in our ICANN applications, they do represent and play an important role in creating, facilitating and defining membership within the communities of registered U.S. corporations, limited liability companies and limited liability partnerships. They service the communities, regulate the communities and represent the communities. Their databases are also an irreplaceable component of Dot Registry's verification process. The Secretaries provide data collection and retention mechanisms for our community registration. Each state's database houses the contact information, entity designation type, defined operational purposes, and corporate filings, for each member of Dot Registry's communities. These records allow Dot Registry to verify a business entity's validity and standing. It is with reference to these databases that an entity is either awarded or denied its ability to participate in community activities and registrations.

22. In order to develop our relationship with the Secretaries of State, we chose to first approach the National Association of Secretaries of State ("NASS"). NASS membership consists of Secretaries of State or Lieutenant Governors of all 50 states, the District of Columbia and U.S. territories. NASS works as a collective body to distribute information amongst the states and foster cooperation among the Secretaries relating to the development of public policy. More specifically, the NASS Business Services Committee and Company Formation Task Force actively educates NASS members about state practices regarding corporate registrations, electronic business filings, Uniform Commercial Code filings, and business identity theft awareness.

23. To facilitate building and maintaining our relationships with the Secretaries of State, Dot Registry became a "Corporate Affiliate" to NASS in January 2012. Through NASS's Corporate Affiliate Program, Dot Registry attends NASS's biannual meetings, business

symposiums, and support programs throughout each calendar year. We first presented our plan to apply for and operate business identifier gTLDs to the Secretaries in a presentation to the NASS Business Services Committee in 2012. Thereafter, we reached out to individual Secretaries in order to understand each state's database, the information collection processes, and the concerns that individual Secretaries had about what safeguards would be necessary to protect each community. We have developed strong relationships with the Secretaries of State, and we used their input to develop systems and restrictions, which will create a stable and sustainable Internet registry for these extensions. NASS has served as both a medium of exchange between Dot Registry and the Secretaries and also as the collective national voice for the Secretaries on the issue of business identifier gTLDs. NASS's resolution, which was passed unanimously by NASS members in July 2013, memorializes the collective position of all U.S. Secretaries of State and territories on the issuance of these business identifier gTLDs.

24. The concerns expressed by the Secretaries stem from the shortcomings in the Registry Agreement that standard applicants (*i.e.*, non-community applicants for the .INC, .LLP and .LLC strings) would execute with ICANN for these extensions. ICANN's standard Registry Agreement does not contain the necessary restrictions and long-term enforcement mechanisms required to protect U.S. businesses and consumers alike. In fact, the United States government itself expressed concern about awarding these strings to standard applicants on numerous occasions, prompting ICANN to incorporate a set of vague "Public Interest Commitments" ("PICs") into its standard Registry Agreement. The PICs serve to protect registrants in post-abuse scenarios only, a reactive approach that would not actually prevent the possible harms I have described. Neither state governments nor ICANN's Governmental Advisory Committee

("GAC") have been persuaded that these PICs will have any protective impact and have continued to lobby ICANN for more protective registration requirements for sensitive strings.

25. In any case, through our commitment to establishing a long-term relationship with each state and our diligence in working with the state offices to craft registration policies and procedures that meet each state's standards and because of our commitment to secure operation of .INC, .LLC and .LLP, Dot Registry obtained the support of individual offices of the Secretaries of State for our community-based approach to operating the registries for these strings. I understand that none of our competitors for these extensions have done this. Based on my communications with NASS, I also understand that the association has not been approached by any standard applicant for .INC, .LLC or .LLP. Dot Registry's relationship with NASS and the individual Secretaries has proven to be an invaluable resource during the gTLD application and evaluation process. It was through NASS that I was able to interact directly with the Secretaries and gain advocates for our applications, who fought to express not only to ICANN, but also to the GAC and the U.S. Department of Commerce, the necessity of issuing these business identifier extensions to only a community-based applicant committed to implementing appropriate safeguards.

C. Developing Pre-Verification Software, Registration Policies and Appeal Mechanisms

26. Based upon the input received from various Secretaries of State and NASS, we crafted an extensive set of registration policies that reflect the definition of each of the respective communities and detail the admittance, naming, abuse and fraud, suspension timelines, and verification processes that Dot Registry plans to implement. Dot Registry's registration policies were developed in accordance with state laws concerning entity formation and reporting requirements. Our policies were also reviewed and approved by various Secretaries of State.

This comprehensive set of policies assisted us in developing the parameters for Dot Registry's pre-verification system. Dot Registry also retained the New gTLD Division of Steptoe & Johnson LLP, a well-respected international law firm, to review the content of our registration policies and assist us in crafting our abuse and fraud mitigation and appeal mechanism processes and procedures. These registration policies are explained in detail in our gTLD applications.

27. By way of example, Dot Registry's registration guidelines reserve .INC for registered corporations within the United States as verified by the Secretary of State's office in the jurisdiction where the corporation is formed or has authority to conduct business. When an incorporated entity applies for a .INC extension, its registration information will be cross-checked against the applicable state's database, verifying not only the entity's basic data such as name, address, and organizer information, but also whether the corporation is in good standing. Registrants whose data points do not align with the their respective Secretary of State's database, or who are not deemed to be in good standing by the state, will not be allowed to register or maintain use of a business identifier gTLD. Should an entity using a business identifier extension not remain in good standing, its domain name will be suspended until its good standing status is restored. Should a registrant fail to restore its good standing within an allotted timeframe, the domain registration will be withdrawn.

28. Dot Registry provides a tiered appeals process for registrants to remedy everything from a temporary suspension of their domain to a dispute related to naming or registration parameters. Dot Registry's appeal mechanisms are referenced briefly in question 18 of Dot Registry's applications and extensively in both questions 28 and 29. Continued use, through verifications, will require businesses to maintain their good standing status; as such, it is the Secretary of State that serves as the final appellate mechanism related to use. Due to government regulation,

Dot Registry cannot replace a Secretary of State's ruling on whether a business is in good standing.

29. The design and implementation of our pre-verification and monitoring software proved to be an extremely complex and time-consuming task. First, our team had to develop a standard set of criteria for each community that would represent collection data points at the time that a business identifier gTLD is purchased. These data points, crafted from our registration policies were identified through planning sessions with the offices of various Secretaries of State, information collected from the Business Services Committee of NASS, and research about the differences in data collection among the states. Our team relied heavily on the relationships we had built with each of the Secretaries of State in order to obtain this information to create policies that are complementary to the communities we are committed to serving in our applications.

30. Once we had identified a standard set of data collection points for each type of business entity, we began researching further how each state collected and stored such data. State offices neither use a universal software platform nor are they required to present information in a nationally uniform way. Due to differing state data collection modes, we found that it was essential to build unique verification software tailored to each state. Through our relationship with NASS, we were able to partner with another NASS Corporate Affiliate that specializes in providing data collection services for 22 states. This technical service provider agreed to assist Dot Registry with creating a technical platform that would universally conform to any state database, provide real-time updates on entity registration status, and cross-check pre-defined data points to verify community membership.

III. THE ICANN gTLD EVALUATION PROCESS

A. The Initial Evaluation Process

31. In the spring of 2012, Dot Registry submitted completed applications for .INC, .LLC and .LLP to ICANN. Once submitted, the content of an application cannot be materially altered or changed without the submission of a formal change request to ICANN, which ICANN has discretion to accept or reject.

32. In October 2013, ICANN informed Dot Registry that our applications passed "Initial Evaluation," meaning that our applications satisfied the technical, operational, and financial requirements for operating the registries for these business identifier extensions. A number of other standard applicants for these business identifier strings also passed Initial Evaluation, so ICANN grouped our applications into "contention sets" with these other applicants.

B. The Community Priority Evaluation Process

1. Dot Registry's Decision to Undergo Community Priority Evaluation

33. As the sole community applicant for .INC, .LLC and .LLP, Dot Registry had the option of participating in the CPE to resolve the contention sets for these extensions. This option is available only to community applicants, in order to give qualified community applicants priority over standard applicants for the same string. It serves to protect the members of clearly established communities, by awarding priority (and therefore the right to operate the gTLD registry) to the applicant servicing that community, rather than awarding the gTLD though an auction, where the registry operator is determined by the highest financial bidder. Any community applicant who passes Initial Evaluation may be evaluated for community priority by notifying ICANN and paying ICANN a fee of $22,000 per application. The proceeds of an ICANN-administered auction go to ICANN. Based on publicly available information posted on

ICANN's website, I understand that ICANN has netted nearly $59 million from gTLD auctions as of May 20, 2015.[1]

34. CPE is a special type of review performed by ICANN-appointed third-party evaluators, who are charged with independently and professionally evaluating the content of community designated applications against specific criteria set forth in the AGB, which was developed over several years by the multi-stakeholder community. To prevail in CPE, a community applicant must receive a score of at least 14 out of 16 possible points according to the CPE criteria. Applicants who receive a passing score are awarded priority over all standard applicants for the same string and may proceed with negotiating and entering into a registry agreement with ICANN to operate the registry for the gTLD.

35. Since Dot Registry passed Initial Evaluation, and submitted community-based applications, we decided that it was worthwhile to pay ICANN the $66,000 USD required to have our applications for .INC, .LLC and .LLP undergo CPE (in addition to the $555,000 Dot Registry had already paid ICANN in application fees). We believed that our community applications were strong, had the requisite support of the communities of corporations, limited liability companies and limited liability partnerships, and would be evaluated professionally, independently, objectively, and fairly. We also believed that going the extra step was essential to avoid an auction situation where standard applicants, without sufficient restrictions in place to safeguard these communities, could win the right to operate the registries by merely outbidding us. It is simply unthinkable and unconscionable to allow a registry to operate these strings without any consideration of or mechanisms to protect the over-arching significance or legal

[1] *See* New gTLD Auction Proceeds, ICANN (20 May 2015), http://newgtlds.icann.org/en/applicants/auctions/proceeds.

restrictions imposed upon these business identifier extensions. To do so would most likely result in considerable harm to businesses, consumers and the U.S. economy.

2. Problems with the EIU's Handling of Dot Registry's CPEs

36. On February 19, 2014, ICANN notified Dot Registry that the EIU would be performing the CPEs we elected to undergo. ICANN also opened a public comment period during which anyone could post comments in support of or objection to our applications.

37. Early on in the process, issues began to surface about the way in which the EIU was handling the CPEs on our applications. Although the individual EIU evaluators never contacted Dot Registry directly about any of our applications during the CPEs, we began to receive communications from various Secretaries of State expressing their concerns about how the EIU was handling the validation process of their support letters. For example, we learned from the assistant to the North Carolina Secretary of State that the EIU had contacted the Secretary's office more than a dozen times to verify the Secretary's support. I also understand from the Secretaries of State for Kansas, Nebraska and Tennessee that the EIU evaluators never contacted their offices to verify the letters of support they submitted on behalf of Dot Registry's applications. The feedback that we heard from the Secretaries of State led me to become quite concerned about the core competence and professionalism of the EIU evaluators in analyzing Dot Registry's applications.

3. Problems with the CPE Results Issued by the EIU

38. On June 11, 2014, ICANN published Dot Registry's CPE results. Each of our applications scored 5 out of 16 possible points. This was shocking and incomprehensible to me for many reasons. I expected the EIU to perform individual CPEs using different evaluators for each of our applications because the CPE process described in the AGB called for independent analysis. The mere fact that the rationale and scores are essentially the same in the CPE reports

for .INC, .LLC and .LLP, demonstrates to me that our applications did not receive the individual review required by the AGB. Dot Registry's scoring instead appears to have been a collaborative effort, based off of other evaluators' findings or opinions. By combining the review of our applications, Dot Registry not only lost the benefit of the EIU considering the merits of each application for each community-based gTLD, but the errors made by the EIU were multiplied or compounded across all applications. An error that might have reduced Dot Registry's score on one application instead detracted from the scores on all three applications.

39. Our CPE reports were riddled with items that caused me significant concern about the core competency and professionalism of the EIU evaluators and the way in which they applied the CPE criteria in the AGB to our applications. Most concerning to me is that the EIU evaluators appear to have taken an overly subjective and narrow approach to performing Dot Registry's CPEs while taking a more generous approach to reviewing the applications which received a passing score. Further, it was very obvious to me that the EIU evaluators shared information and essentially collaborated in deriving and justifying a non-passing score for each criterion.

40. In addition, the EIU acknowledged in several places that Dot Registry's applications met the criteria, but then did not award any points. One glaring example of the confusion we still feel in regards to our CPE evaluations can be found in the evaluators' response to Criterion # 1-A: Delineation. This particular criterion is evaluated based on the applicant's ability to identify a "clear and straight-forward membership definition" where there is additionally, "awareness and recognition of a community [as defined by the applicant] among its members."[2] Dot Registry

[2] gTLD Applicant Guidebook, Version 2012-06-04, Module 4, p. 4-11 (June 4, 2012) [Ex. C-005].

scored zero out of two points for this criterion, even though the evaluator(s) collectively commented on all of Dot Registry's applications that the "community definition shows a clear and straightforward membership. While broad, the community is clearly defined."[3]

41. Further, the EIU engaged in what I understand to be prohibited "double counting" under the AGB, meaning that the EIU awarded Dot Registry fewer points for a particular criterion based on its negative assessment of another criterion. For example, the EIU appears to have compounded its scoring errors in Criterion #1: Community Establishment by relying on its flawed interpretations under that criterion when scoring Dot Registry's applications under Criterion #4: Community Establishment. As described above, the EIU did not award Dot Registry's applications any points for Criterion #1-A: Delineation, based, in part, on the EIU's erroneous conclusion that the offices of the Secretaries of State do not represent the communities of corporations, limited liability companies or limited liability partnerships because they are "government agencies . . . fulfilling a function."[4] Then the EIU relied on that exact same finding in Criterion #4-A: Support, to justify withholding one point. Using identical language, the EIU explained that the endorsements of the Secretaries of State did not qualify as endorsements from the recognized community institutions or member organizations because the Secretaries of State are "government agencies . . . fulfilling a function."[5] I believe this is an instance of prohibited "double counting" because the EIU's finding in Criterion #1 affected the

[3] New gTLD Program, CPE Report, Application No. 1-880-35979 (.INC), p. 2 (11 June 2014) [hereinafter .INC CPE Report] [Ex. C-020]; New gTLD Program, CPE Report, Application No. 1-880-17627 (.LLC), p. 2 (11 June 2014) [hereinafter .LLC CPE Report] [Ex. C-018]; New gTLD Program, CPE Report, Application No. 1-880-35508 (.LLP), p. 2 (11 June 2014) [hereinafter .LLP CPE Report] [Ex. C-019].

[4] .INC CPE Report, p. 2 [Ex. C-020]; .LLC CPE Report, p. 2 [Ex. C-018]; .LLP CPE Report, p. 2 [Ex. C-019].

[5] .INC CPE Report, p. 7 [Ex. C-020]; .LLC CPE Report, p. 7 [Ex. C-018]; .LLP CPE Report, p. 6 [Ex. C-019].

EIU's assessment in Criterion #4 and cost Dot Registry's applications points under both Criterion #1 and Criterion #4.

42. Another glaring issue in each of our CPE reports is the reference to a letter of opposition from an organization the EIU evaluators considered to be of "non-negligible size." No members of the communities of registered corporations, limited liability companies or limited liability partnerships objected to our applications. Although our competitors seized on the opportunity to submit public comments on our applications by posting a series of negative comments aimed at publicly discrediting the validity of our community status and influencing the EIU CPE evaluators. Based on my review of Section 4.2.3 of the AGB, I understand that comments such as these are not considered relevant and therefore should not have been considered by the EIU.

43. One submission even went as far as to quote the Delaware Secretary of State, the Honorable Jeffrey Bullock, out of context, which led Secretary Bullock to issue a formal statement to ICANN. Additionally, the European Commission initially objected to our applications on the grounds that it discriminated against European corporations, LLCs and LLPs; however, the European Commission withdrew its opposition through a public statement it submitted to ICANN, after Dot Registry discussed the matter with the European Commission and informed them that INC and LLC are not valid company identifiers in the European Union, and LLPs are used only in England and have different registration requirements than LLPs under U.S. law. We issued correspondence to ICANN on March 20, 2014, asking ICANN to disregard comments submitted by our competitors due to their clearly biased and spurious nature but we, like Secretary Bullock, received no response from ICANN addressing our concerns. NASS finally took matters into its own hands by contacting the EIU directly on April 1, 2014, in order to clearly express its opinion regarding the comments posted by our competitors.

44. Although we knew of no formal objections with merit that were posted against Dot Registry's applications, it was difficult for us to determine whether the EIU evaluators truly performed the due diligence required for scoring this criterion because they failed to identify what objection they deemed relevant. The language in the CPE reports, however, specifically called to mind the paraphrasing by our competitors in regards to the Delaware Secretary of State's communications to ICANN and the European Commission's withdrawn objection, which suggested to us that such due diligence had not been performed. If the EIU evaluators had performed the required steps to accurately score this criterion and had verified the "opposition," it would have discovered that none existed. Although this error cost each of our applications one point, it is very troubling to me because it raises questions about the overall thoroughness and objectivity of the EIU's evaluation process.

45. The evaluators also referred to "independent research" they performed to score our applications, but the evaluators did not provide citations for their research nor did they describe it in any detail. This "research" appears to have influenced the evaluators' opinions in our CPE evaluations without regard to entity formation principles in the United States, the role of the Secretaries of State, and the necessity of the business identifiers being issued as community-designated TLDs. Although I understand from reviewing the AGB that the EIU is not required to publish the source or content of any "research" the evaluators perform, I found the conclusions that the EIU evaluators reached highly questionable. In particular, I question the validity of any source that indicates that entities are typically organized based on specific industries, locales, or other criteria and in no way are organized according to the tax benefits or liability protections afforded to a company based on its structure as a corporation, limited liability company or limited liability partnership. Organizations choose an entity structure primarily based on liability

and taxation considerations. Business entities can cross all subsections of industry. The assertion in the CPE reports that a business would not identify itself as an INC, LLC, or LLP, if asked, is absurd.

46. Given all of the steps that we took to develop our registration policies and to ensure that we created appropriate abuse and fraud mitigation and appeal mechanism processes and procedures, I was also very surprised that the EIU evaluators did not award us full points for our registration policies. As I explained above, Dot Registry even took the additional step of having the New gTLD Division of Steptoe & Johnson review such policies and provide expert guidance before we submitted our applications to ICANN.

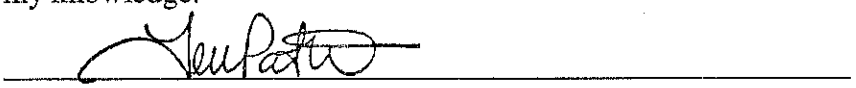
47. The totality of these errors demonstrate to me that the EIU evaluators did not competently perform the CPEs according to the criteria in the AGB. If the EIU evaluators had questions about our applications or our support letters, the EIU evaluators certainly could have communicated with us directly or through ICANN's process of issuing clarifying questions to applicants. The EIU, however, never contacted us directly or indirectly, through ICANN or otherwise, to ask any clarifying questions about our applications.

48. Likewise, when we raised the issue with the Board Governance Committee, through a Reconsideration Request (in which we were joined by NASS) asking the Board to reexamine the EIU's conduct of our CPEs, the Board never once reached out to us for comment, before denying our Requests wholesale. Since the BGC's denial of our Reconsideration Requests, Dot Registry has exhausted all accountability mechanisms afforded to us under ICANN's Bylaws.

49. I find it very odd that ICANN, a supposedly open and transparent organization, appears to be working hard to keep the CPE process veiled in secrecy. It seems to me that Dot Registry, like any other applicant, should be able to get a clear answer about why it was not awarded

points for particular criteria in a CPE and have its concerns addressed about the performance of its evaluations without having to commence a legal process.

I affirm, under penalty of perjury, that the foregoing statement is true and correct to the best of my knowledge.



Tess Pattison-Wade

July 13, 2015
Kansas City, Missouri