

International Centre for Dispute Resolution

CASE NO. 01-14-0001-5004

Between

DOT REGISTRY, LLC,
Claimant

v.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,
Respondent

WITNESS STATEMENT OF SHAUL JOLLES

I, Shaul Jolles, of Kansas City, Missouri, hereby make the following statement:

1. I am the Chief Executive Officer of Dot Registry, LLC ("Dot Registry"), a company that I founded in 2011 to apply to the Internet Corporation for Assigned Names and Numbers ("ICANN") for the rights to operate the domain name registries for five new business identifier generic Top-Level Domains ("gTLDs"), including ".INC," ".LLC" and ".LLP."
2. I submit this witness statement as my true and accurate testimony about key facts that are at issue in this Independent Review Process ("IRP"), including how Dot Registry's applications for .INC, .LLC and .LLP are supported by the well-established communities of U.S. registered corporations, limited liability companies and limited liability partnerships as well as by the National Association of Secretaries of State ("NASS"); how ICANN and the Economist Intelligence Unit ("EIU") conducted and treated Dot Registry's applications in the Community Priority Evaluation ("CPE") process; and how ICANN handled Dot Registry's concerns and

objections about the way in which its gTLD applications and supporters were treated throughout the application and CPE process.

I. PERSONAL AND PROFESSIONAL BACKGROUND

3. I was born in Israel and moved to the United States to attend college at the University of Missouri-Kansas City after completing three years of mandatory military service in the Israeli Army. Entrepreneurship is a concept that I understood and gravitated to early on. As a non-U.S. citizen living in America on a student visa, I was unable to seek traditional employment; however, under U.S. law it was permissible for me to start my own business. Therefore, I conceptualized, developed, and launched a series of my own businesses while I was attending college. I explored a wide range of industries in the process of discovering my career niche. From early on, I harbored a great deal of respect for U.S. small business owners and aspired to be one of them. In 2000, I earned a Bachelor of Arts Degree in Business and Economics and in 2001, I earned a Masters of Business Administration Degree with a concentration in International Business, both from the University of Missouri-Kansas City.

4. After college, I became immersed in real estate development throughout downtown Kansas City, Missouri, particularly in an area of town known as the “Crossroads Arts District.” The Crossroads Arts District was, and remains today, a home to a unique sector of budding entrepreneurs and Sprint’s Accelerator, which is a tech startup incubator for small businesses.

5. My experience over the years founding several start-up tech companies and a series of small businesses inspired me to narrow and direct my focus on helping other budding entrepreneurs start their own businesses in an economical way. This desire drove me to devote a large portion of my career to fostering development dedicated to providing artists, small companies and startups with office space and other resources that had not been available to them in our local community. I have been actively involved in redeveloping and growing small

businesses in the Crossroads Arts District and served as president of the Crossroads Community Association between 2006 and 2008.

6. In early 2007, I created the first co-working space in Kansas City, Missouri, called OfficePort. OfficePort, which now has three locations across the Midwest and is home to over 100 businesses, fosters an environment of interactive networking and has been home to such notable companies as Groupon, Aglocal, The Nerderly, Neighbor.ly and Silicon Prairie News. The OfficePort concept has earned me a reputation as an advocate for entrepreneurs and I often speak publicly about business entity formation, entrepreneurship, and the road to a successful start-up, including at schools, conferences and entrepreneurship-focused White House events.

7. I also helped prepare Kansas City's winning proposal to be the testing ground for Google Fiber, Google's ultra high-speed broadband network. Kansas City was selected from a pool of more than 1,100 other communities that responded to Google's request for proposals. In 2011, I was honored to receive the Kansas City Downtown Council's "Urban Hero Award" for my work on this project.

8. Today, my office remains located in the Kansas City, Missouri, Crossroads Arts District because I enjoy being ingrained in the culture of small business entrepreneurship and start-ups.

II. THE CONCEPT OF REGISTERED BUSINESS gTLDs

9. I have always avidly followed technology advancements and for the past 20 years, I have run Internet based businesses and monitored the growing risks to business owners as more and more transitioned away from traditional brick and mortar businesses into virtual web-based companies. When ICANN announced the launch of the New gTLD Program, I was instantly drawn to the possibility of offering business owners, like myself, a unique opportunity to own a domain name that directly correlates to their particular business form. The concept of providing dedicated gTLDs to registered U.S. businesses was born from my experience as a business owner

and my desire to provide lesser known businesses with a way to legitimize themselves to consumers in the Internet name space, to help address the need for more accurate naming protocols online, and to curb business identity theft in a cyber-setting, a problem many of my fellow entrepreneurs and small business owners had unfortunately already experienced. Business identity theft is a direct and real threat to U.S. businesses, consumers and the U.S. economy and it is occurring at an alarming rate. I recognized that a very effective way to address these issues would be to offer legally registered U.S. businesses gTLDs that matched the name of the conventional abbreviations and designations for U.S. corporations (INC), limited liability companies (LLC) and limited liability partnerships (LLP). These business identifier gTLDs would help small businesses demonstrate their legitimacy on the web by reassuring consumers that they are dealing with a business legally registered, with a recorded presence and liability, under the laws of a U.S. state. Business identifier gTLDs, if appropriately delegated and secured, would provide credibility to small business owners, help provide transparency to consumers, and instill a level of confidence in both businesses and consumers that currently does not exist when exchanging sensitive information online.

10. To date, ICANN has failed to institute and enforce proper registration and use verification protocols under Specification 11 of ICANN's standard Registry Agreement. Delegating the operation of the registries for .INC, .LLC and .LLP to an applicant without appropriate use restrictions and verification procedures would prove disastrous to the communities of registered U.S. corporations, limited liability companies and limited liability partnerships as well as to consumers and state governments. Only applicants who have submitted community-based applications, like Dot Registry, and have committed to serve a particular community, are accountable to that community post-delegation. If anyone could

purchase and utilize a domain name ending in .INC, .LLC or .LLP, whether a registered business or not, legally registered businesses would be exposed to increased instances of theft, fraud and abuse, as would the consumers who patronize them.

11. Consumers would be increasingly vulnerable to Internet crime. Imagine the damage that could result if domains like .BANK, .CPA or .INC, which imply a level of trust amongst consumers, were allowed by ICANN to operate without restrictions. Many consumers naively assume that when they visit a website, it is legitimate and, in turn, they feel comfortable releasing sensitive information and issuing payments via the Internet. This common misperception serves as a prime example of why these business identifier strings require adequate security and validation mechanisms in order to ensure that registrations directly correlate to the legally registered businesses using them. The unrestricted issuance of .INC, .LLC and .LLP to a standard applicant without adequate security and validation protocols in place would very likely mislead consumers into thinking that they are interacting with legitimately registered U.S. businesses online, when in fact they could be interacting with someone that is not in fact a registered business, which might well be operating for nefarious purposes. ICANN does not allow material changes to applications in order to address these latent security and validation oversights. To my knowledge, Dot Registry is the only applicant for .INC, .LLC and .LLP to adequately and appropriately address necessary security and validation protocols to map domain names to legally registered U.S. business entities in good standing.

12. A lack of proper verification of registrant credentials at the time of registration could also cost U.S. state governments significant taxpayer dollars investigating consumer and business protection actions, require additional staff to handle increased work volumes, compel states to

strengthen existing laws or enact new ones, and place a considerable financial burden on already strained state budgets. Without the protections in place that Dot Registry has proposed in its applications, these business identifier gTLDs would be available for anyone's use, including persons without a registered business or businesses organized in jurisdictions around the world without comparable, or even any, oversight. The cross-jurisdictional implications of combatting business identity theft outside of the United States would be costly to our communities, the regulators, the U.S. economy, and consumers in general.

13. As a consequence, I decided to structure registration policies that would bring the legal regimes implemented within each State to register companies and protect consumers, into the Internet space. Within each state, the Secretary of State's office or equivalent authority evaluates the business practices of registered entities and assesses whether such entities are in good standing based on their commercial interactions with both the state and consumers. Although most of this information is public record, the average consumer is unable to quickly and easily find this information and there is currently no mechanism for policing the domain name system for instances where a registrant is using a domain name that matches or resembles the name of a validly registered U.S. business, other than for trademarked names. This is why I decided to create registration policies that would translate the protections offered by the Secretaries of State onto the web, adding a layer of protection for both businesses and consumers operating online.

14. I viewed the New gTLD Program not only as a good business opportunity, but as a chance to take my experience with U.S. small business programming and make a meaningful contribution. The New gTLD Program provided an opportunity to harness the guiding principles expressed in ICANN's Bylaws in order to mitigate corporate fraud on the Internet and make a

permanent shift towards better consumer protections online and to align with ICANN's key commitments to ensure Internet security and stability.

III. PREPARATIONS TO BE THE REGISTRY OPERATOR FOR .INC, .LLC & .LLP

A. Forming Dot Registry

15. In October 2011, I formed Dot Registry to apply to ICANN for the rights to operate the domain name registries for five business identifier TLDs, including .INC, .LLC and .LLP. I built a team of professionals based on key competencies that I felt were necessary to create a well-rounded program. The Dot Registry team consists of in-house counsel, who focused on creating our policies and researching each state's entity formation laws; our Chief Financial Officer, who is a Certified Public Accountant; a back-end technical team to assist in the technical development of protocols; and an Executive Director, Ms. Tess Pattison-Wade, who I specifically hired to write our applications and act as the primary liaison between Dot Registry and the various state offices because of her exceptional experience in governmental compliance and procedural writing.

B. Deciding to Apply as a Community Applicant

16. I decided to file community applications, because ICANN's community process struck me as the best way to ensure that the registration policies Dot Registry created to protect business and consumer interests were both robust and binding. Although these restrictions will limit the profitability of operating these strings as compared to standard applicants, who do not commit to follow such restrictions, we understood that ICANN's CPE process offered a way to win the right to operate the registries for these gTLDs without participating in a competitive auction environment where the sole determining factor would be the highest bid. I also held the deep belief that the business identifier TLDs should be awarded to a community applicant.

17. Dot Registry's registration policies preclude the registration of domain names that are not connected to a legally registered business entity in the United States, which means the number of possible registrants for .INC, .LLC and .LLP is limited by the number of registered U.S. corporations, limited liability companies and limited liability partnerships. Fewer registrants for these strings means that Dot Registry would have fewer sources of revenue as compared to a standard applicant, who can offer the strings to anyone, anywhere. For this reason, the decision to apply as a community applicant was not taken lightly. Although the impact of limiting the revenue from these strings was a serious consideration from the standpoint of being able to compete against standard applicants in an auction, we determined that our concept for operating these strings matched the definition of community in the AGB. After reading the draft AGB, I determined that it would be essential to participate in the CPE process in order to ensure that these TLDs were awarded as community applications. It was immediately apparent to me that a community applicant is at a distinct disadvantage relative to standard applicants when the contention set is resolved through an auction, for the reasons I discussed above.

18. I also believe that there is a real social and ethical responsibility associated with managing these business identifier gTLDs. I cannot say that I was driven purely by altruistic considerations; I have always been conservative in choosing business opportunities and the limited profitability weighed heavily on my decision to apply as a community applicant in ICANN's New gTLD Program. Ultimately, however, I determined that Dot Registry should submit community applications and elect to undergo CPE.

C. Dot Registry's Business Plan

19. Dot Registry's community applications consist of a business plan that restricts registration under each business identifier gTLD to registered corporations, limited liability companies and limited liability partnerships in good standing within the United States, as verified by the Secretary of State or equivalent authority in the relevant state of formation. This means that under Dot Registry's registration policies, only corporations in good standing may register and use .INC, only limited liability companies in good standing may register and use .LLC, and only limited liability partnerships in good standing may register and use .LLP.

Dot Registry is committed to perform real time online verifications with states that have the requisite technology and to contact the offices of the individual Secretaries of State to perform manual verifications in states that do not have accessible electronic business registration records. Dot Registry will rely on the verification system we have developed to re-verify each business identifier gTLD registration on an annual basis in order to ensure that the business owner of each second-level domain remains a registered corporation, limited liability company or limited liability partnership in good standing.¹

20. Dot Registry's business plan is to collect revenue through the registration and renewal of business identifier gTLDs, restrict domain name ownership to members in good standing within the communities of registered U.S. corporations, limited liability companies and limited liability partnerships, and to verify that registrants are legally formed businesses using state business

¹ New gTLD Application ID: 1-880-35979 (.INC) at 18(b), ¶ viii ("Dot Registry or its designated agent will annually verify each registrants community status. Verification will occur in a process similar to the original registration process for each registrant, in which the registrars will verify each registrant's "Active" Status with the applicable state authority. Each registrar will evaluate whether its registrants can still be considered "Active" members of the Community of Registered Corporations....Any registrant is found to be "Inactive,"...will be issued a probationary warning by their registrar, allowing for the registrant to restore its active status or resolve its dissolution with its applicable Secretary of State's office. If the registrant is unable to restore itself to "Active" status within the defined 30 day probationary period, their previously assigned ".INC" will be forfeited. DOT Registry reserves the right to change the definition of "Active" in accordance with the policies of the Secretaries of State.") [Ex. C-007].

formation and registration databases. In order to execute its business plan, Dot Registry, with the cooperation of state regulators, will operate a sophisticated real-time registry of data that synchs, uploads, and reports on the status of businesses (*i.e.*, the form of business entity, whether the business is registered in a U.S. state, territory or the District of Columbia, and whether such business is in good standing).

D. Working with NASS and the State Secretaries

21. On January 29, 2012, Ms. Pattison-Wade and I attended the NASS Winter Conference in Washington, D.C., on behalf of Dot Registry as a Corporate Affiliate of NASS. At this conference, NASS's Business Services Committee released a White Paper on Business Identity Theft, which indicated that more than half of U.S. states reported cases of business identity theft resulting from fraudulent business representations online. North Carolina Secretary of State Elaine Marshall, who then served as Co-Chair of the NASS Business Services Committee, indicated that the primary function of the white paper was to harness new technology to make it harder for identity thieves, both globally and domestically, to prey upon U.S. businesses. Dot Registry's business plan to develop and operate a stable Internet naming space dedicated to registered U.S. businesses aligned with NASS's concerns and provided a viable solution to mitigate ongoing business identity theft online.

22. During the conference, we presented our concept for business identifier gTLDs. At that time, we were considering applying for .INC and .LLC because I had direct experience and knowledge about operating corporations and limited liability companies. Mr. Richard

Geisenberger, the Delaware Deputy Secretary of State, approached me at the meeting and urged me to submit community applications for .LLP and .CORP as well.²

23. Shortly after the NASS meeting, Ms. Pattison-Wade and I began working with NASS and its members to develop registration policies and enforcement mechanisms to securely operate a registry for these business identifier extensions. We recognized early on that the communities of registered U.S. corporations, limited liability companies and limited liability partnerships are subject to different requirements, and that it would be critical to develop registration policies protective of these communities (similar to those that exist for the extensions .GOV or .EDU) in order to maintain the integrity and security of .INC, .LLC and .LLP.

24. Our vast network of support from members of these communities, state regulators and NASS, the overarching association comprised of 55 members (including representatives of U.S. territories), has been instrumental in formulating our registration policies and building the necessary infrastructure to comply with the verification commitment Dot Registry made in its applications to ICANN and to the communities of registered U.S. corporations, limited liability companies and limited liability partnerships. Based on my experience incorporating and forming businesses, I know that the U.S. Secretaries of State are both (1) the governmental regulators of business entity formation and reporting; and (2) the only authorities (other than the Internal Revenue Service and state tax authorities) that interact with each and every business registered in their particular state—not just once, but on a continual and ongoing basis. Without the functions performed by the various Secretary of States offices, business entities would not legally exist.

² ICANN has yet to determine if .CORP will ever be delegated due to concerns about name collusion issues on the Internet (*i.e.*, the circumstance when a domain name on a private network matches a public domain name) since .CORP is a commonly used extension by private networks (*e.g.*, corporate intranets).

25. NASS, as the nation's oldest nonpartisan professional organization, whose members include the Secretaries of State or Lieutenant Governors of the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands and American Samoa, is uniquely positioned to represent the business community interest, through state regulators, in support of registered U.S. corporations, limited liability companies and limited liability partnerships. The majority of NASS's members are state regulators who are responsible for business entity formation and registration in their state. NASS provides a forum and conduit for governmental officials to unite and collectively address issues affecting the communities of registered U.S. businesses. NASS Resolutions solidify and express the collective opinion of the states on a variety of matters. Resolutions must be approved by a full member vote; therefore they always reflect the views of the whole body. NASS Resolutions are used to express their opinions on matters to state legislatures. The Business Services Committee, that issued the business identity theft white paper, is a longstanding NASS committee that is specifically focused on state practices regarding corporate registrations, electronic business filings, Uniform Commercial Code filings and other related services and issues affecting legally registered U.S. businesses.

26. Dot Registry's relationship with NASS has developed over time: first, by becoming a corporate affiliate of NASS; second, addressing their membership at their Winter 2012 meeting; and third, reaching out and working directly with the Business Services Committee and several key Secretaries to help us craft our registration guidelines to ensure consistency with the law.

27. Through Dot Registry's relationship with NASS, we also developed relationships with the majority of the State Secretaries across the United States, the U.S. Federal Trade Commission ("FTC") and ICANN's Government Advisory Committee ("GAC") in support of issuing business identifier strings to the community to which they belong. The information we

learned and gathered through these relationships was key in developing our registration policies to fit the legal framework of business formation. The State Secretaries shared with us their views about how these designations would be perceived by consumers and what safeguards would be necessary to protect consumers as well as the communities of registered corporations, limited liability companies and limited liability partnerships. My staff and I used this information to compile a set of registration guidelines, which we submitted with our community-based applications to ICANN. These guidelines describe our naming policies, enforcement mechanisms and the verification processes we expect to implement. They also provide for Dot Registry's ongoing accountability to NASS, our community members and to the state regulators to update our policies in accordance with state law, which evolves over time. The FTC has embarked on letter writing campaigns to both the GAC and ICANN Board to convey that adequate safeguards for business identifiers must be in place to protect consumers. The GAC has issued numerous Communiqués to the ICANN Board on implementing so called "Category-1 Safeguards" for highly regulated sectors, such as business identifiers, for the same reasons.

E. Developing Pre-Verification Procedures and Technology

28. Our relationships with NASS and the individual State Secretaries also solidified the right approach for implementing our registration policies for .INC, .LLC and .LLP. We developed separate sets of registration policies and renewal mechanisms for each of these communities in order to best protect them and the integrity of the designations. We worked with individual Secretaries of State, NASS, and a leading state technology provider, which provides information technology services to over 3,500 federal and state agencies in the United States, in order to develop registration and use policies that are not only attainable to execute but also ensure the

long term integrity and stability of the three business identifier extensions for their respective communities.

IV. DOT REGISTRY’S COMMUNITY-BASED APPLICATIONS

29. Dot Registry is the only community-based applicant for the extensions .INC, .LLC and .LLP. I understand that a few standard (not community-based) applicants for these extensions have claimed in their applications that they will require registrants to be legally registered, but to my knowledge, not one of the 26 standard (non-community) applications has built any type of relationship with the Secretaries of State, NASS or has taken any concrete steps to understand how to properly secure and responsibly manage these extensions, over time.

30. Each of Dot Registry’s applications for .INC, .LLC and .LLP passed ICANN’s “Initial Evaluation” for technical, financial and operational capabilities; however, standard applicants for all three strings also passed the Initial Evaluation, meaning that Dot Registry is in contention with other applicants for all three sets. As a community applicant, Dot Registry was offered the opportunity to undergo a CPE, which, if successful, would serve to disqualify all competing standard applicants in contention for these same strings. In other words, if Dot Registry’s applications passed CPE, we would be allowed to sign a registry agreement with ICANN to operate the strings.

A. Electing to Participate in CPE

31. Dot Registry was invited to participate in the CPE process on February 19, 2014, more than two years after the application process commenced and nearly one year after we had submitted a statement of interest through ICANN’s portal about undergoing CPEs. The CPEs were performed by the Economist Intelligence Unit (“EIU”), the “business information arm of

The Economist Group, publisher of the Economist.”³ ICANN appointed the EIU in November 2011, along with InterConnect Communications, as a result of an open call for expressions of interest. ICANN initially committed to select and contract with more than one provider for CPEs (and for all other portions of the review) in order to maximize quality through competition, provide an alternative evaluator in the event of conflicts of interest and to share the burden of the many expected applications.⁴ In or around September 2013, however, ICANN disclosed to new gTLD applicants that the EIU would be the only provider to perform CPEs, without further explanation.⁵ At that same time, ICANN made applicants aware that it was increasing the price of undergoing a CPE from \$10,000 per string to \$22,000 per string,⁶ and that it would perform extensive pre-testing of the CPE process, though it would not likely make such testing public.⁷

B. Performance of the CPE

32. Our CPEs were performed in the spring of 2014. By early May 2014, I began receiving correspondence from the Secretaries of State documenting their displeasure and frustration about their interactions with the EIU evaluators. During our CPEs, certain Secretaries received what they believed to be excessive amounts of correspondence from the EIU evaluators, questioning their authority and the representations they made to the EIU in relation to Dot Registry’s applications for .INC, .LLC and .LLP; and .GMBH, for which Dot Registry had not even applied. The way in which the EIU interacted with the Secretaries of State made it clear to me

³ Community Priority Evaluation Panel and Its Processes, Published August 17, 2014 by the EIU, p. 1 [Ex. C-016].

⁴ Michael Salazar, “Preparing Evaluators for the New gTLD Application Process,” (22 Nov. 2011), <http://newgtlds.icann.org/en/blog/preparing-evaluators-22nov11-en>, [Ex. C-058].

⁵ See Conference call at 0:18:40 (10 Sept. 2013), <http://audio.icann.org/new-gtlds/cpe-10sep13-en.mp3> (Christine Willett, ICANN Vice President of gTLD Operations, informs call participants that only the EIU will perform CPEs rather than the EIU and InterConnect Communications).

⁶ *Id.* at 0:06:19.

⁷ *Id.* at 0:5:20 (Steve Chan, then ICANN New gTLD Operations Manager) and 0:29:00 (Christine Willett).

that the evaluators did not understand the status and function of a State Secretary, who serves in public office, under oath. This apparent lack of even a rudimentary understanding of the role of our supporters and their positions as the state regulators who oversee business entities, led me to have serious concerns about the evaluators' professionalism, credentials and qualifications to properly, professionally and adequately evaluate the substance of our applications within the AGB's framework.

33. In response to complaints I received from the Secretaries, I contacted ICANN via email on May 19, 2014, in order to ask them to ensure that the EIU handle its communications with our supporters in a more professional, organized and respectful fashion. While ICANN staff have made public statements to CPE applicants indicating that staff members cannot interact with the EIU during a CPE, soon thereafter, affected Secretaries of State began to receive apologetic emails from the EIU evaluators regarding their previous communication with them. Since I had not contacted the EIU directly about this issue, I could only assume that ICANN had relayed the information to the EIU evaluators, which triggered the EIU's sudden, apologetic replies.⁸ After reviewing ICANN's document production in this matter, I was able to confirm that this was the case and that ICANN and the EIU worked together to revise the overall process of verifying letters of support specific to Dot Registry's CPEs.

34. Even more concerning to me, however, was feedback I received from other Secretaries of State indicating that they were never contacted by the EIU to validate their letters of support for Dot Registry's business identifier applications.

⁸ See, e.g. Email from Economist Intelligence Unit EIU Contact Information Redacted to North Dakota Secretary of State Al A. Jaeger (27 May 2014) ("We realize that in some cases receiving multiple emails may have caused confusion and inconvenience, for which we apologize...Going forward, I will be your sole point of contact...Thank you for clarifying your position towards Dot Registry's applications for the three gTLDs. Again, we are sorry for any inconvenience or confusion this may have caused.") [Ex. C-057].

35. When we received the final CPE reports for our applications on June 11, 2014, it was apparent that the problems with the way the EIU evaluators performed the CPEs were not limited to the process of verifying letters of support. At this point, my team and I decided that we needed to pursue accountability mechanisms available to us under ICANN's Bylaws and raise these issues formally with ICANN in a Reconsideration Request. We were hopeful that we could resolve this matter with ICANN before having to resort to an Independent Review Process, the only remaining accountability process available to us.

V. RECONSIDERATION REQUEST

36. My team had diligently followed the AGB, believing that the substance of our answers, not just the depth of our financial resources, would be what differentiated us from our competitors. I sat quietly through 2012 while the application entry system (TAS) crashed, exposing our confidential application information to competing applicants. ICANN minimized the impacts of the data breach by providing vague, unreliable updates on when the system would be functional again and without remedy to those affected. I was patient when ICANN botched their initial batching process for determining which applications would be evaluated first, even though I had spent thousands of dollars designing a program to efficiently participate in ICANN's poorly executed process called "Digital Archery." I was polite when I inquired about the fact that ICANN lost the proof that I had filed my Continuing Operations Instruments ("COI") (to satisfy ICANN's financial requirements), publicly humiliating my company and me as they implied that I did not have the financial fortitude to obtain a bond and proceed through Initial Evaluation. I even accepted the fact that it took ICANN a year and a half to notify me that my application for .CORP would most likely never be delegated due to ICANN's failure to clearly identify extensions used internally within the domain name system, and, to date, ICANN has not issued Dot Registry a formal letter, refund of my application fees, released me from the

COI or provided me any update on the future status of .CORP. I sat quietly for over two years, waiting patiently for my applications to be evaluated, while ICANN held on to over \$600,000 of my money without so much as providing me with a regular update as to when they might consider reviewing my applications. When ICANN issued our CPE Results, my patience and confidence in the New gTLD Program and ICANN as the Internet regulator disappeared.

37. Over the last two years, I watched ICANN change the rules on the fly repeatedly to suit its needs and shield itself from liability. I watched my staff rally to jump hurdle after hurdle that was presented in order to remain compliant with ICANN's numerous spur of the moment changes. I had to pacify and reassure government officials that ICANN had everything under control after both ICANN and the EIU blatantly ignored them and treated their offices unprofessionally, and at times, even disrespectfully, throughout this process and failed to respond to correspondence. To date, my company has spent millions of dollars and tens of thousands of man-hours attempting to play ICANN's game on its terms, only to find out that, in fact, the only rules that exist are the ones that ICANN creates as and when it pleases.

38. Consequently, on June 26, 2014, in conjunction with NASS, Dot Registry submitted Reconsideration Requests to ICANN's Board Governance Committee ("BGC"), which called into question the qualifications of the EIU to oversee the CPE process and, specifically, the EIU's inability to follow the CPE guidelines in relation to the scoring of our applications. We asked the BGC to review the professional qualifications of the evaluators who performed the CPEs, to identify the "research" the EIU evaluators claim to have performed and relied upon in scoring Dot Registry's applications, the existence and identity of the opposition of non-

negligible size, whether the EIU evaluators properly verified all letters of support submitted for Dot Registry's applications, and the scoring of our applications.⁹

39. These requests were denied. The BGC indicated its belief that Dot Registry's "claims [did] not support reconsideration," and that, Dot Registry had "failed to demonstrate that the Panels acted in contravention of established policy or procedure in rendering their respective CPE Reports, or that it has been adversely affected by the challenged actions of the Panels."¹⁰ At no time did any member of the BGC, ICANN staff or the ICANN Legal Department contact me or any other member of the Dot Registry team, to ask us any questions in the course of reaching its decision on our reconsideration requests. I understand that the BGC is empowered by ICANN's Bylaws to do this and I am surprised that they did not given the serious issues we raised about how our applications were treated.

VI. ATTEMPTS TO ENGAGE ICANN IN CEP

40. When the BGC denied our Reconsideration Requests, Dot Registry attempted to participate in the Cooperative Engagement Process ("CEP") with ICANN. Article IV, Section 3 of ICANN's Bylaws allows applicants to pursue independent third-party review of Board actions in situations, where the person or entity believes their issue has not been sufficiently acknowledged or addressed through the Reconsideration Request Process. However, before submitting a request for IRP, the Bylaws urge applicants to enter into "a period of cooperative

⁹ See Reconsideration Request Form 14-32, for Application No. 1-880-35979 (.INC) (11 Apr. 2013) [Ex. C-021]; Reconsideration Request Form 14-30, for Application No. 1-880-17627 (.LLC) (11 Apr. 2013) [Ex. C-017]; Reconsideration Request Form 14-33, for Application No. 1-880-35508 (.LLP) (11 Apr. 2013) [Ex. C-022].

¹⁰ Determination of the BGC Reconsideration Requests 14-30, 14-32, 14-33 (24 July 2014) [hereinafter BGC Determination] [Ex. C-004].

engagement with ICANN.” Failure to do so creates a presumption that the applicant will face a cost or fee penalty at the conclusion of the IRP.¹¹

41. On September 5, 2014, on behalf of Dot Registry, I submitted a CEP request to ICANN, via email, exactly as the CEP rules instruct. ICANN failed to respond, despite the fact that I sent a follow-up email and my counsel, Mr. Ali, sent two additional emails to the CEP/IRP filing email address and to ICANN’s General Counsel, Mr. John Jeffrey. I placed a read receipt on my emails which confirmed that ICANN staff had opened and viewed Dot Registry’s CEP request numerous times and did *not* respond. Since ICANN had placed us on “ignore mode,” we believed we had no choice but to file an IRP or face being barred from any further participation in ICANN’s accountability mechanisms—the only review mechanisms available to us according to ICANN’s gTLD Applicant Guidebook.

42. Immediately after ICANN received our IRP Request, ICANN responded from the same email address to which we had sent our CEP Request and subsequent follow-up emails. An unnamed ICANN member assigned to the email address apologized for failing to “see” our CEP request and offered to discuss our claims. At that point, we had already incurred the expense of retaining counsel and formally filing this IRP. Since ICANN had our Request for IRP, we agreed to participate in a phone call with ICANN in order to discuss a way forward. We still did not know with whom we were communicating, as the individual emailing with us simply signed his or her emails “ICANN” and sent them from “independentreview@icann.org.” In fact, we did not even know who would be participating in the call on behalf of ICANN until approximately 15 to 20 minutes before it began, despite our repeated requests for this information in the days leading up to it. During the call with ICANN’s General Counsel, Deputy General Counsel and

¹¹ Bylaws for Internet Corporation for Assigned Names and Numbers (30 July 2014), <https://www.icann.org/resources/pages/governance/bylaws-en> [Ex. C-060].

outside counsel from Jones Day, I was joined by Ms. Pattison-Wade, Mr. Ali and his colleagues, and we made it crystal clear that the phone call was in no way an attempt to go back and engage in CEP since we had already filed a request for IRP. Although ICANN again apologized for not timely responding to our CEP request, ICANN appeared to have no real interest in resolving this matter and ICANN's Deputy General Counsel commented that we had no case. The phone call did not last more than 20 minutes and was fruitless.

VII. ICANN's CONDUCT DURING THE IRP

43. After we filed the IRP, we continued to be mistreated by ICANN. ICANN proceeded full steam ahead towards auctioning off .INC, .LLC and .LLP. ICANN scheduled auctions for these business identifier extensions for January 21, 2015, and refused to postpone the auctions, even though the auctions would directly contradict ICANN's Auction Rules and the new gTLD Auction Eligibility policy listed on its website. Because the IRP Panel had not yet been fully constituted, Dot Registry sought the assistance of an International Centre for Dispute Resolution ("ICDR") emergency arbitrator, to obtain an injunction against ICANN to halt it from proceeding with auctions for .INC, .LLC, and .LLP until the conclusion of this IRP. In my opinion, ICANN forced us to file for emergency protection to toll the auctions as a strategic move to delay and increase our financial expenditures for the IRP. Of course, the two factors on ICANN's side are time and money, of which they have plenty.

44. I am a small business owner. I do not have unlimited resources to fight against a regulator who constantly changes the rules on a whim for its own benefit. My expectation when I applied for these business identifier gTLDs was that my company would be treated fairly, transparently, equitably, and in accordance with the extensive provisions of the AGB, drafted by ICANN and its stakeholders to govern the New gTLD Program. Never in my life would I have imagined that my expectations would be so laughable in ICANN's eyes.

45. My vision for these business identifier gTLD extensions is that they will become the gold-standard for operating a secure registry through validation and for legitimizing to the public registered U.S. corporations, limited liability companies and limited liability partnerships operating online. Dot Registry's business plan for operating these highly sensitive strings will greatly benefit Internet security and stability and directly aligns with ICANN's core mission and values. Dot Registry's commitments go above and beyond what ICANN currently requires as safeguards in Specification 11 of its Registry Agreement and Dot Registry takes a proactive approach (versus ICANN's reactive approach) to safeguarding these extensions, which I believe is in the best interest of the public, businesses, the states and the U.S. government.

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



Shaul Jolles

July 13, 2015
Kansas City, Missouri