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Berlin, den 24. Februar 2013

Comment on the Proposed ICANN Public Interest Commitments Specification.

Dear Sirs,

this letter is a response from our company TLDDOT GmbH which filed a community-based application for the .GMBH top-level domain to ICANN's request for comments on the Public Interest Commitments Specification ("PIC Spec.").

Public Interest Commitments Specification

Our community-based application, in contrast to our competitors and the vast majority of applications, already includes comprehensive Public Interest Commitments in its DNA, addressing the special needs of the GmbH community. We invested considerable time and resources to develop them with the relevant community stakeholders; we will be bound to these commitments by contract with ICANN. These commitments are also explained in detail in the publicly available parts of our application. In addition, our commitments were part of an extended public comment period between 13 Jun and 26 Sep 2012.

The proposed model of Public Interest Commitments can be particular of value for standard applicants which received a governmental Early Warning and which are not in a contention set. They are likely free to add commitments made in their application as Public Interest Commitments to their contract to address governmental or community concerns or to add completely new commitments. No other third party or competitor will likely be harmed by such retroactive changes.

PIC Spec. will enable Gaming Scenarios

When it comes to applications in contention, though, the Public Interest Commitments proposal as it has been published to the community is highly questionable. It opens up multiple gaming scenarios and raise more questions than could be answered at this stage of the ICANN application process. We have already seen a lot of muckraking in the current application process and it's most likely that the Public Interest Commitments will create such a new loophole with parties stepping in.

Public Interest Commitments will also be used to make promotional efforts in favor of a single applicant in a contention set, to gain additional supporters or to discredit competitors. They will be used to gain unfair advantages over other applicants by asking governments to withdraw Early Warnings or to avoid a GAC Advice. The Objection process as well as the Community Priority Evaluation will be negatively affected by parties using Public Interest Commitments that positively affect their chances of winning while harming others. Unfortunately, these scenarios are no theoretical predictions; they will become reality if no bounds will be installed.

Change Request Process as good Example to learn from

A best practice example how Public Interest Commitments could be smoothly introduced into the running application process is the Change Request Process where ICANN successfully implemented several safeguards to avoid gaming of this process. ICANN has designed the Change Request Process in a way that allows applicants to make reasonable changes to correct obvious errors or to add additional information.

All applicants already had the chance to integrate Public Interest Commitments after public comments and after Early Warnings against their application, but none of the applicants concerned have used this chance, probably due to absence of enough pressure and the hope to sit out these toothless paper tigers.

Public Interest Commitments are a Change Request

To classify a Public Interest Commitment as a Change request is the right way to go for ICANN now. This Change request process is also likely to mitigate the risk of liability for compensation ICANN faces when it causes material hardship to applicants by PIC Spec..

In this context we express our support for the inclusion of contractual provisions that are intended to protect consumers and rights holders. These provisions may include, but are not limited to, registration restrictions, enhanced security measures to mitigate the potential for malicious activities and rights protection mechanisms.

We also support ICANN's Governmental Advisory Committee's (GAC) request in its Toronto Communiqué that "Statements and commitments detailed in individual gTLD applications be transformed into binding contractual commitments, subject to compliance oversight by ICANN."

We would expect that PIC Specs. should elaborate on and correspond to existing commitments applicants made in their applications. However, ICANN's FAQ includes that commitments do not need to be limited to statements in the application. Given the significant effort community applicants expended in preparing their applications, we are concerned that in some cases applicants could attempt to use the PIC Spec. to amend their applications to more closely correspond to existing community applicants' responses to question #20.

We ask ICANN to carefully compare each PIC Spec. with its associated application prior to posting to ensure that any material changes are identified and handled as an application Change Request.

Furthermore, ICANN should reserve the right to identify any provision in a PIC Spec. as a material change requiring an application Change Request based on feedback obtained during public review.

By ensuring that PIC Specs. are not used to materially change applications, ICANN protects the integrity of the application process without causing further delays to the overall application round or discouraging applicants from using the PIC Spec. in the manner that it is intended.

We urge ICANN to recognize that the context of the timing of the PIC Spec., if not handled as described, is troubling for many community applicants with regard to the publication of question #20 and for the filing of community-based objections.

We encourage ICANN to not only foster responsible commitments to the public interest, but to recognize those who are already leaders in making those commitments.

Sincerely,

A handwritten signature in black ink, appearing to read "Dirk Krischenowski". The signature is fluid and cursive, with the first letter of each word being capitalized and prominent.

Dirk Krischenowski
CEO