

11<sup>th</sup> March 2014

To whom it may concern

**RE: ICANN's proposed review process of certain specific objection sets**

I am writing on behalf of Domain Venture Partners which is the controlling shareholder of 60 companies that filed applications within the New gTLD Program. Our direct nexus to the proposed review is in relation to dot Agency Limited which has filed an application to operate the .cam registry and which was successful in defending a String Confusion Objection (SCO). The various objections were defended individually by the three applicants, each using very different arguments with results reached independently based those independent arguments. It was decided by the expert panellists that the usage of one applicant could provide an environment where string confusion could exist whereas the proposed usage of the .cam registry by two other operators would not lead to the same risk of confusion.

We also have an indirect nexus on behalf of a number of our other group companies that suffered from expert determinations that are not being opened up to re-examination. This issue is particularly acute upon analysis of some of the Community Objection results such as .sport the arguments of which do not appear to stand up to the most basic logical analysis.

In brief, we believe the proposals to amend the New gTLD Program rules post event to allow an appeal type review to be a breach of process under ICANN's own guidelines but also legally as discussed in more detail below. Furthermore, the arbitrary nature in which the New gTLD Program Committee (NGPC) has subjectively isolated 2 objections sets compounds the unfairness caused by changing the process at all.

Original Decision

All applicants signed up along with ICANN to the objection process as set out in the Applicant Guidebook. Applicants have invested a considerable amount of money in the whole process, not just in evaluation fees to ICANN and the expert panellists but also to the required lawyers, expert witnesses and consultants. Expert panellists were chosen. Applicants were asked if they wished to consolidate the objection set to one hearing. United TLD Holdco Ltd ("United"), being one of the applicants, refused to do so arguing that:

"Although dot Agency Limited asserts that VeriSign's objections should be "identical in each case," each Applicant may have a different basis for responding to these objections. Consolidating these objections and evaluating their merits collectively to reach a universal ruling has the potential to harm one or more of the Applicants...United TLD has a unique proprietary plan for the .Cam gTLD that should be evaluated independently."

On the basis of United's 'proprietary plan for the .cam gTLD' it was decided that United's usage of the .cam registry would result confusion with .com. In the decisions brought down in relation to dot Agency Limited and AC Webconnecting's applications it was explicitly stated that upon analysis of the proposed usage confusion would not exist.

It appears to us totally logical that different usage of a registry can result in different confusion results. This is acknowledged by United itself. A motor car is not widely considered dangerous per se but most people understand that if it is driven in certain ways it can become dangerous. Usage is important. By bringing United back into an objection set the NGPC is in effect stating that irrespective of a panellist believing United's proposed usage of the .cam registry could create some risk of confusion it is happy to allow such mischief to continue.

The only way of avoiding this would be to allow United to change its application to alter operational usage of the registry. Change requests such as this should be denied where it would be unfair (in accordance with ICANN's rules on change requests), and to do this would certainly favour one applicant over another and open up the same possibility to everyone wishing amend their applications.

#### Legal Position

The proposed appeal review materially prejudices our investment and we are obtaining formal legal advice on this matter. It is our understanding that a change of process as proposed would open up potential contractual claims around the application process itself based on the contractual terms to which all applicants signed up.

As part of such process we would look for full legal discovery as to the arguments of the NGPC in putting forward these proposals and the process that was used to isolate (seemingly arbitrarily) on just two objection sets. It is important that ICANN act in a transparent manner and does not favour one applicant or stakeholder indiscriminately over another. There still remain important questions to be answered as to firstly how this proposed amendment was structured and how the NGPC decided that two objection sets required review. We also believe that any such decision could be ultra vires under ICANN's own rules which if true would put into question whether it can be put into effect in the first place.

#### Other objection sets

The process by which the NGPC isolated these two objection sets is important. It affects not just the applicants involved in these contention sets but also all objection sets. In recent months there have been a variety of decisions that have been called into question, for example relating to contention set involving Hotel and Hotels; Shop and a similar IDN; Pet and Pets and Web and Webs. Furthermore, the NGPC has also arbitrarily decided that it would isolate reviews to only String Confusion Objection sets ignoring the plethora of decisions that have been questioned within Community Objections for example with Sport.

We strongly request that ICANN should reconsider the review proposals and honour the process which all application agreed to and therefore returning to an environment in which all applicants are treated equally and fairly.

Yours sincerely,

Charles Melvin

Chief Operating Officer

Domain Venture Partners