

InterNetX GmbH Maximilianstr. 6 93047 Regensburg Germany

InterNetX GmbH  
Maximilianstr. 6  
93047 Regensburg  
Germany

Internet Corporation for Assigned Names and Numbers  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094  
USA

Telefon +49 941 59559-0  
Telefax +49 941 59559-55

info@internetx.de

www.internetx.de

February 20th, 2014

Handelsregister B  
Regensburg 7142

**Re: Letter of Opposition on Community Priority Evaluation for .INC (1-880-35979)**

Geschäftsführer/CEO  
RA Thomas Mörz

USt-IdNr. DE199405147

Dear ICANN,

Bayerische Hypo- und  
Vereinsbank AG  
Konto-Nr. 344924120  
BLZ 75020073  
IBAN-Nr.:  
DE27750200730344924120  
SWIFT-Code:  
HYVEDEMM447

InterNetX GmbH would like to take the opportunity to submit a letter of opposition for the Community Priority Evaluation of Dot Registry LLC's .INC application. Thank you for reviewing our attached statement and forwarding this document to the CPE Panel.

Sincerely,



Thomas Mörz,

CEO of InterNetX GmbH  
CEO of myLLC GmbH

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## INTRODUCTION

We understand that ICANN is fully aware of the critical significance in the case of an inadequately delegated gTLD to a non-legitimate community applicant. According to the Applicant Guidebook (AGB), it “should be noted that a qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application...” (AGB 4.2.3, p. 4-9).<sup>1</sup>

Therefore, we appreciate the establishment of the Community Priority Evaluation (CPE) Panel and support a strict examination of community applications, whereby the evaluation has to be handled very precisely in order to reach ICANN’s goals for the New gTLD Program, since all the TLDs are meant to be operated in a non-discriminatory way.<sup>2</sup>

Dot Registry’s application deliberately excludes numerous companies from many countries, such as “Canada, Australia and the Philippines”, as the applicant Dot Registry admitted in its application (Dot Registry, Application ID: 1-880-35979, 20(d)).<sup>3</sup> In fact, the legal form “Inc.” is used in even more countries, as determined later in this document. Entities from these countries are excluded in a discriminatory way, as they indeed have the same legal form as US based companies but are not allowed to register domains within the TLD .INC.

Concerns regarding the application of Dot Registry are known for a considerable period of time already. In August 2012 a letter was written to ICANN by US-based lawyer Shawn Gunnarson in which he emphasized that Dot Registry does not represent the community it is intending to and furthermore, that Dot Registry’s definition of the community does not combine with the reality of today’s world economy. In the end he states, that even the written endorsements are not sufficient to support Dot Registry’s application. Mr. Gunnarson’s letter is publicly available on the ICANN website.<sup>4</sup> Therefore, and for the reasons mentioned below, the Dot Registry application has to fail the CPE and should be treated as a regular application according to the AGB.

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<sup>1</sup> <https://newgtlds.icann.org/en/applicants/agb> (retrieved Februar 03, 2014)

<sup>2</sup> <https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-25jun13-en.htm> (retrieved January 23, 2014)

<sup>3</sup> <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1805> (retrieved January 23, 2014)

<sup>4</sup> <https://gtldcomment.icann.org/applicationcomment/commentdetails/1936>

## Criterion # 1: Community Establishment

In accordance with the AGB an application can score a total of 4 points in this Criteria: 2 points relating to “Delineation” and 2 for the sub-criterion “Extension”.

### Definition

Following the Community Priority Evaluation Guidelines (CPEG), a “clearly delineated, organized and pre-existing community” (Criterion 1-A, CPEG, p. 3)<sup>5</sup> should exist (up to 2 points), being a “community of considerable size and longevity” (Criterion 1-B, CPEG, p. 5)<sup>6</sup> to score up to 4 points. Following the criteria definitions, an applicant needs a “clear and straight-forward membership definition” (Criterion 1-A, CPEG, p. 4)<sup>7</sup> to score high, while an “unclear, dispersed or unbound definition scores low” (Id.).

### Analysis

Dot Registry cannot deliver the necessary facts needed to score more than one point in this criterion. Dot Registry purports to create a community of Registered Corporations (Inc.) limited to the borders of the US and its territories. Although the applicant mentions the existence of “Inc.” in other countries, it excludes these companies from his community by referring to different formation regulations in countries other than the United States (Dot Registry, Application ID: 1-880-35979, 20(d)).<sup>8</sup>

The applicant obviously has also ignored the fact that even within the United States there are no homogeneous regulations regarding the formation of “Inc.”. Indeed, there are completely different regulations in different states. This goes back to the fact that “corporate law is state law, not federal law”, as mentioned by Buxbaum in the American Journal of Comparative Law.<sup>9</sup> Furthermore, the Model Business Corporation Act (MBCA)<sup>10</sup> from 1950 serves as a basis on which all states could develop their own regulations. Some states used the Act to set up their own rules like Florida, Georgia and Washington, while others decided to independently develop

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<sup>5</sup> <http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf> (retrieved January 23, 2014)

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1805> (retrieved February 03, 2014)

<sup>9</sup> Buxbaum, Richard M.: Facilitative and mandatory rules in the corporation law(s) of the United States, *The American Journal of Comparative Law*, Vol L, 2002, p. 250, <http://www.law.berkeley.edu/php-programs/faculty/facultyPubsPDF.php?facID=17&pubID=15> (retrieved February 05, 2014)

<sup>10</sup> Model Business Corporation Act, American Bar Foundation

<http://users.wfu.edu/palmitar/ICBCorporations-Companion/Conexus/ModelBusinessCorporationAct.pdf> (retrieved February 19, 2014)

their own legislation without referring to the MBCA. As a consequence, today there is a variety of regulations for corporations in the United States. In some states (e.g. Delaware<sup>11</sup>, Wyoming<sup>12</sup>) any person can incorporate a corporation while in others (e.g. Illinois<sup>13</sup>) an incorporator must be at least 18 years of age. Also, the state of California, for example, defines the number of directors in its legislation<sup>14</sup>, which other states do not (e.g. Ohio<sup>15</sup>, Texas<sup>16</sup>). Besides that, taxation of registered corporations varies from state jurisdiction to state jurisdiction.<sup>17</sup>

Without citing all different regulations to form “Inc.” within the United States it becomes clear that there are indeed tremendous differences between the different states and not only between the US and the rest of the world, as stated by Dot Registry.<sup>18</sup>

## Conclusion

With regard to the aforementioned information it seems that the applicant Dot Registry did not give consideration to the global use of the INC string when defining its own community.

It is obvious that a community of “Inc.”, if existing at all, cannot be restricted to only one country, but needs to include all companies of the same type, regardless of the jurisdiction where the company is registered. Thus, Dot Registry has failed to score in the field “extension”.

In light of all the significant differences of “Inc.” in the US, as listed in our analysis, “Inc.” most probably do not consider themselves as part of a community, at least not a community limited to the jurisdiction of the United States. Most probably they do not even recognize themselves as a community at all. Dot Registry fails to show evidence of this awareness – a necessity to score.<sup>19</sup> Therefore, the application should score very low.

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<sup>11</sup> State of Delaware: <http://delcode.delaware.gov/title8/c001/sc01/index.shtml> (retrieved February 19, 2014)

<sup>12</sup> <http://legisweb.state.wy.us/statutes/statutes.aspx?file=titles/Title17/Title17.htm> (retrieved February 19, 2014)

<sup>13</sup> <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2273&ChapterID=65>, Article 2 – Formation of Corporations (retrieved February 19, 2014)

<sup>14</sup> <http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=corp&codebody=&hits=20>

<sup>15</sup> <http://codes.ohio.gov/orc/1701> (retrieved February 19, 2014)

<sup>16</sup> <http://www.statutes.legis.state.tx.us/?link=BO> (retrieved February 19, 2014)

<sup>17</sup> State Corporate Income Tax Rates, The Tax Foundation, Washington DC, <http://taxfoundation.org/article/state-corporate-income-tax-rates-2000-2013> (retrieved February 19, 2014)

<sup>18</sup> <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1805>, Number 20 d (retrieved January 23, 2014)

<sup>19</sup> <http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>, page 5 (retrieved January 23, 2014)

## Criterion # 2: Nexus between Proposed String and Community

In accordance with the AGB an application can score a total of 4 points in this Criteria; 3 for the sub-criterion “Nexus” and 1 point for “Uniqueness”.

### 2-A Nexus

#### Definition

“For a score of 3, the essential aspect is that the applied for string is commonly known by others as the identification/name of community.” (Criterion 2-A, CPEG p. 8)<sup>20</sup> The term ‘others’ “refers to individuals outside of the community itself” (Criterion 2-A, CPEG p. 7)<sup>21</sup> and ‘identify’ means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community“ (Id.). At which ‘over-reaching substantially’ means “that the string indicates a wider geographical or thematic remit than the community has“ (Id.).

CPEG states that “... for a score of 2, the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.” (Criterion 2-A, CPEG p. 8)<sup>22</sup> Again “over-reaching substantially” means “that the string indicates a wider geographical or thematic remit than the community has” (Criterion 2-A, CPEG p. 7).<sup>23</sup>

#### Analysis

Issue 1: “Does the string capture a wider geographical/thematic remit than the community has?” (Criterion 2-A, CPEG p.8)<sup>24</sup>

- Dot Registry LLC’s definition of the Inc.-Community:

“Members of the community are defined as businesses registered as corporations within the United States or its territories.” (Dot Registry, Application ID: 1-880-35979, 20(a))<sup>25</sup>
- The string .INC captures a wider geographical range, because Registered Corporations (abbreviated with Inc.) exist also outside of the United States, for example in:
  - **Canada**, as stated by the Canada Business Corporations Act:

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<sup>20</sup> <http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf> (retrieved February 03, 2014)

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1805> (retrieved February 03, 2014)

- [http://www.ic.gc.ca/eic/site/cilp-pdci.nsf/eng/h\\_cl00022.html](http://www.ic.gc.ca/eic/site/cilp-pdci.nsf/eng/h_cl00022.html) (retrieved 29 January 2014)
- **Australia**, as stated by the Corporations Act 2001:
  - <http://www.comlaw.gov.au/Details/C2013C00605> (retrieved 29 January 2014)
- **New Zealand**, as stated by the Corporations Act 1989:
  - <http://www.legislation.govt.nz/act/public/1989/0011/latest/DLM144264.html> (retrieved 29 January 2014)
- **South Africa**, as stated by the Companies Act 71 of 2008:
  - <http://www.info.gov.za/view/DownloadFileAction?id=98894> (retrieved 29 January 2014)
- **The Philippines**, as stated by the Corporation Code of the Philippines (1980):
  - <http://www.sec.gov.ph/laws/pdf/Corporation%20Code%20of%20the%20Philippines.pdf> (retrieved 29 January 2014)

Issue 2: “An Internet search should be utilized to help understand whether the string identifies the community and is known by others.” (Criterion 2-A, CPEG p. 8)<sup>26</sup>

- Search engine “Google”, language settings “English”, search word “INC” (retrieved January 29, 2014):
  - 1<sup>st</sup> hit: INC. Business Web Portal
  - 2<sup>nd</sup> hit: Wikipedia: Inc.
  - 3<sup>rd</sup> hit: 4AD Record Label (artist: inc.)
  - 4<sup>th</sup> hit: Twitter: INC. Business Web Portal
  - 5<sup>th</sup> hit: Inc (web application)
  - 6<sup>th</sup> hit: INC Research (therapeutically focused research organization)
  - 7<sup>th</sup> hit: Facebook: INC. Business Web Portal
  - 8<sup>th</sup> hit: Apple Inc. (company)
  - 9<sup>th</sup> hit: Gartner Inc. (company)
  - 10<sup>th</sup> hit: Pfizer Inc. (company)
- Search engine “Google”, language settings “German”, search word “Inc.” (retrieved January 29, 2014):
  - 1<sup>st</sup> hit: INC. Business Web Portal

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<sup>26</sup> <http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf> (retrieved February 03, 2014)

- 2<sup>nd</sup> hit: Wikipedia: Inc.
- 3<sup>rd</sup> hit: Twitter: INC. Business Web Portal
- 4<sup>th</sup> hit: Apple Inc. (company)
- 5<sup>th</sup> hit: Indian National Congress
- 6<sup>th</sup> hit: Rosebud Inc. (company)
- 7<sup>th</sup> hit: Facebook: Inc (artist)
- 8<sup>th</sup> hit: Facebook: INC. Business Web Portal
- 9<sup>th</sup> hit: AccuWeather Inc. (company)
- 10<sup>th</sup> hit: Food Inc (documentary movie)
- Search engine “Google”, language settings “English”, search word “registered corporations” (retrieved January 29, 2014):
  - 1<sup>st</sup> hit: Wikipedia: “company”
  - 2<sup>nd</sup> & 3<sup>rd</sup> hit: Corporations Canada, Government of Canada
  - 4<sup>th</sup> hit: Washington Secretary of State, USA
  - 5<sup>th</sup> & 6<sup>th</sup> hit: CT / Wolters Kluwer Corporate Legal Service, Dutch Editor & Business Consultant
  - 7<sup>th</sup> hit: Australian Prudential Regulation Authority
  - 8<sup>th</sup> hit: California Secretary of State, USA
  - 9<sup>th</sup> hit: Corporate Registry Searches, Province of Alberta, Government of Canada
  - 10<sup>th</sup> hit: Companies Office, Province of Manitoba, Government of Canada
- Search engine “Google”, language settings “German”, search word “registered corporations” (retrieved February 05, 2014):
  - 1<sup>st</sup> & 2<sup>nd</sup> hit: Industry Canada, Government of Canada
  - 3<sup>rd</sup> hit: Secretary of State, Washington, USA
  - 4<sup>th</sup> hit: Wikipedia: “corporation”
  - 5<sup>th</sup> hit: Department of Environment, Labour and Justice, Government of Prince Edward Island Province, Canada
  - 6<sup>th</sup> hit: Information Services Corporation, Canada
  - 7<sup>th</sup> hit: Corporations Division, District of Columbia, USA
  - 8<sup>th</sup> hit: Corporate Registry, Department of Justice, Northwest Territories, Canada
  - 9<sup>th</sup> hit: Registered Financial Corporations, Australian Prudential Regulation Authority
  - 10<sup>th</sup> hit: California Secretary of State, USA



These Internet searches demonstrate that the string “Inc.” does not “identify” a discrete community, contrary to what Dot Registry has claimed. Third parties do not associate the string with the self-defined “Dot Registry community.” Instead, they use the word “Inc.” with a wide variety of organizations and activities unified, if at all, by some connection with business and commerce.

Further consideration:

According to the experts of the International Chamber of Commerce, in charge of judging “community objections”<sup>27</sup> in the self-same application process, the evaluations of objections and community status share “common concepts ... (such as community establishment and nexus between the string and the community)”, even though the “standards are stricter” with community status evaluation through EIU (ICC Case No. EXP/507/ICANN/124, p. 11).<sup>28</sup> Therefore, there is at least to be drawn an analogy to a similar case (.insurance), where the US-based P&C Insurance claimed to be the string related community. The ICC panel has concluded in its evaluation process, that the “narrowness with which this community has been defined renders it very difficult to accept, that a global public (even restricted to English speaking countries) strongly associates the term insurance with the geographically-bound community of US P&C Insurances” (Id., p. 25).<sup>29</sup>

## Conclusion

Dot Registry’s community application for .INC fails the criteria of nexus. ‘Others’ do not naturally associate the string .INC with the community as defined by Dot Registry. The string .INC as a corporate identifier has a wider geographical range than the self-defined community claimed by Dot Registry, which is geographically limited to the United States. Therefore, .INC as a generic string whose accepted meaning by global users of the Internet far exceeds the community Dot Registry’s application asserts. Like .INSURANCE, INC is not a unique US legal form. It is internationally used but understood somewhat differently in particular regions. The string INC is not “commonly known by others” to refer to the community Dot Registry has defined. For that reason, the application should receive 0 points for the criterion of nexus.

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<sup>27</sup> <http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf>, Applicant Guidebook Module 3.2.1 (retrieved January 23, 2014)

<sup>28</sup> <http://newgtlds.icann.org/sites/default/files/drsp/17jan14/determination-2-1-1512-20834-en.pdf> (retrieved January 23, 2014)

<sup>29</sup> Id.

## 2-B Uniqueness

### Definition

To achieve a score of 1, CPEG requires that the “string has no other significant meaning beyond identifying the community described in the application” (Criterion 2-B, CPEG p. 8).<sup>30</sup> CPEG further defines “significant meaning” to mean the “public in general” (Criterion 2-B, CPEG p. 9).<sup>31</sup>

### Analysis

Applying the CEPG, the following questions need to be considered:

Issue 1: “Will the public in general immediately think of the applying community when thinking of the applied-for string?” (Id.)

- No, the public will not immediately think of the community as defined by Dot Registry. CPE Guidelines refer to a worldwide public, not only a user base limited to the United States. For evidence please consider the analysis for criterion # 2-A.

Issue 2: “Is the geography or activity implied by the string?” (Id.)

- The string .INC has no unique connection to any geographic identifier. For evidence please consider the analysis above.

Issue 3: “Is the size and delineation of the community inconsistent with the string?” (Id.)

- As outlined in our Analysis # 2-A above, the string INC does not signify a distinctly delineated community. Dot Registry has defined and restricted his community in particular to reduce its own efforts with no evident concern for the global body of existing INCs.

### Conclusion

The abbreviation “Inc.” does not uniquely identify the community as described by Dot Registry’s application. It should score 0 points.

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<sup>30</sup> <http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf> (retrieved February 03, 2014)

<sup>31</sup> Id.

### **Criterion # 3: Registration Policies**

In accordance with the AGB an application can score a total of 4 points for this criterion, 1 point each for Eligibility, Name Selection, Content and Use, and Enforcement.

#### **Definition**

“An applicant for a community-based gTLD is expected to: [...] 3. Have proposed dedicated registration and use policies for registrants in its proposed gTLD...” (AGB 1.2.3.1. Definitions, p.1-27)<sup>32</sup>

#### **Analysis**

The requirement of “dedicated registration and use policies” clarifies that a community applicant has to provide a complete set of policies instead of a draft version of intentions (as provided by Dot Registry) to gain the exclusive right to administrate the respective string as a community-based gTLD.

Based on criterion 3 of the CPEG, a successful community applicant needs to conform to the criteria of 1) eligibility, 2) name selection, 3) content and use and 4) enforcement. All together these criteria need to be included as policies in paragraph 20(e) of the New gTLD application submitted to ICANN. A complete set of policies must be included, as they would appear on the website of the successful community-based gTLD applicant.

Criterion 3 of the Community Priority Evaluation Criteria claims that eligibility to become a registrant needs to be restricted. This means that policies of community-based applications require an explicit passage (preferentially in the beginning of the policy set) which defines who could become a registrant of the respective gTLD. This part is clearly missing in the policies provided by Dot Registry in chapter 20(e) of its .INC application (Dot Registry, Application ID: 1-880-35979, 20(e)).<sup>33</sup> Although the applicant mentions “Inc.” in several parts of chapter 20(e), it does not provide a specific definition of eligible registrants. The applicant only mentions in other parts of the application that it is referring to registered corporations in the USA, but does not state so in its registration policies in chapter 20(e). Although, naturally, a policy set for restricted gTLDs needs a definition of the possible registrants (which by the way is also a procedure executed by already existing restricted gTLDs like .museum or .aero).

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<sup>32</sup> <https://newgtlds.icann.org/en/applicants/agb> (retrieved February 03, 2014)

<sup>33</sup> <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1805> (retrieved February 03, 2014)

Furthermore, community applicants are asked to include content and use policies in their applications defined as “restrictions stipulated by the registry as to the content provided in and the use of any second-level domain name in the registry” (Criterion 3-C, CPEG p. 13).<sup>34</sup> Regarding this point the applicant failed to deliver clear policies. There are no unique policies, which deal with the aspects of content and use. Only at the end of question 20(e), which focuses on enforcement policies, a few aspects regarding content are mentioned. However, Dot Registry mentions no explicit policies which would fulfill the “very stringent requirements for qualification” (AGB 4.2.3, p. 4-9)<sup>35</sup> neither the inclusion of those aspects into a different policy string be considered as a “dedicated registration and use” policy.

## **Conclusion**

The application for INC leaves out necessary ingredients of registration policies that conform with the New Registry Application and the AGB. Moreover, only intentions are provided but not the requested policies. The application should therefore score no more than 2 points here.

## **Criterion # 4: Community Endorsement**

In accordance with the AGB an application can score between 0 and 4 points for this criterion, including a score of 2 points for each sub-criterion (Support and Opposition).

### **Definition**

With respect to “Support” the applicant can score a maximum of 2 points if they prove “documented support from the recognized community institution(s)/member organization(s) or has otherwise documented authority to represent the community” (Criterion 4-A, CPEG p. 16).<sup>36</sup>

The Guidelines clarify the requirements:

“Is the applicant the recognized community institution or member organization?”

To assess this question, it has to be considered, “whether the community institution or member organization is the clearly recognized representative of the community” (Id.).

If not, it has to be considered, “whether there is more than one recognized community institution or member organization” (Id.). “Recognized means institution(s)/organization(s) that, through

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<sup>34</sup> <http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf> (retrieved February 03, 2014)

<sup>35</sup> <https://newgtlds.icann.org/en/applicants/agb> (retrieved February 03, 2014)

<sup>36</sup> <http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf> (retrieved February 03, 2014)

membership or otherwise are clearly recognized by the community members as representative of that community.” (Criterion 4-A, CPEG p. 17)<sup>37</sup>

If the applicant couldn’t prove to represent itself, CPEG demands that the applicant has “documented support from the recognized community institution(s)/member organization(s) to represent the community.” (Criterion 4-A, CPEG p. 16)<sup>38</sup> This could be irrelevant if the applicant itself has “documented authority to represent the community“ (Id.).

## **Analysis**

Doubtlessly, Dot Registry itself does not have the authority to represent the community of all entities organized as limited liability partnerships, neither the self-declared US community nor the implicated worldwide “Inc.” community. As to the latter, it does not even claim to.

Therefore, in a second step the panel has to analyze the documented support. If it is provided from “at least one group with relevance” (Id.), this may allow a score of 1, but does not suffice for a score of 2. The Guidelines further state, with respect to “Support” that if there would be proven support from “the only national association relevant to a particular community on a national level” (Criterion 4-A, CPEG p. 17)<sup>39</sup>, it “would score a 2 if the string is clearly oriented to that national level, but only a 1 if the string implicitly addresses similar communities in other nations” (Id.).

Dot Registry provides several letters including those of 15 Secretaries of State, three from registered corporations and two from NASS, the National Association of Secretaries of State. All of these letters are from an US origin. As mentioned before, the string addresses similar communities in other nations but the applicant does not have an endorsement from a single “Inc.” outside of the US. Furthermore, neither the Secretaries of State as a group nor the NASS recommend Dot Registry as the only possible applicant for becoming the registry of a corporate identifier TLD like INC.<sup>40</sup> They just refer to the importance of explicit policies regarding the ability to register a domain name to prevent confusion and distrust amongst consumers and future registrants.

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<sup>37</sup> Id.

<sup>38</sup> Id.

<sup>39</sup> Id.

<sup>40</sup> <https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadattachment/141593?t:ac=1805> (retrieved February 03, 2014)

Considering Dot Registry’s own statement (Dot Registry, Application ID: 1-880-35979, 18(b))<sup>41</sup>, in the majority of the 50 states of the US, Secretaries of State are the relevant authorities to register business entities. Assuming this as correct, Dot Registry has not even shown to have support from at least 1/3 of the self-defined ”relevant authorities“, having presented letters of support from only 15 different Secretaries of State in the US.

In fact it has to be doubted, that Secretaries of State even “represent” this US community at all. It is mandatory for an entity in several US states to register with a Secretary of State, but this does definitely not signify that these Secretaries are in a position to “speak” for these companies, same as tax authorities cannot do so only because it is mandatory for the entities to pay taxes with them.

The requirement that “institution(s)/organization(s) representing a majority of the overall community addressed” (Criterion 4-A, CPEG p. 16)<sup>42</sup> fails by far. As stated in the CPE Guidelines, “a 0 will be scored on ‘support’ if the applicant fails to provide documentation showing support from recognized community institutions/community member organizations or does not provide documentation showing that it has the authority to represent the community” (Criterion 4-A, CPEG p. 18).<sup>43</sup>

## **Conclusion**

Dot Registry can neither prove support from the majority of the relevant community institutions/members nor that it has the authority to represent the community. Therefore it should score 0 points for this criterion.

## **Overall Conclusion**

Based on the aforementioned analysis, we consider the Dot Registry application for INC a case of “false-positive“ as defined in module 4.2.3 of the AGB—a string sought by an applicant who “refers to a ‘community’ construed merely to get a sought-after generic word as a gTLD string.“ (AGB 4.2.3, p. 4-9)<sup>44</sup> Dot Registry admits in its application that the string ”Inc.” describes organizations all around the world and not just in the United States. Yet it decided to apply for “.INC“ instead of “.INCUSA“ addressing the national level of the applied for US registered

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<sup>41</sup> <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1805> (retrieved February 03, 2014)

<sup>42</sup> <http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf> (retrieved February 03, 2014)

<sup>43</sup> Id.

<sup>44</sup> <https://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf> (retrieved February 03, 2014)

community. Considering that a positive CPE excludes all other applications, ICANN has thoughtfully implemented the Criteria and Guidelines in the AGB in order to give maximum transparency to this economically important issue (not only to the competing applicants but also to the community). Applying those standards to Dot Registry's application for INC, it is obvious that Dot Registry has not provided sufficient evidence to prevail in CPE. Additionally the Dot Registry community application for .INC fails to match the fundamental principles of ICANN's New gTLD Program as pointed out, amongst others, in the ICANN bylaws<sup>45</sup> as well as in the Approved Resolution of the NGPC in realization of the GAC Beijing advice.<sup>46</sup> Therefore Dot Registry's application for INC is not community-based; it should have to compete among other standard applications in contention-sets on the same terms as all other applicants.

Sincerely,

A handwritten signature in blue ink, appearing to read 'T. Mörz', with a stylized flourish at the end.

Thomas Mörz,

CEO of InterNetX GmbH  
CEO of myLLC GmbH

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<sup>45</sup> <http://www.icann.org/en/about/governance/bylaws> (retrieved January 23, 2014)

<sup>46</sup> <https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-25jun13-en.htm> (retrieved January 23, 2014)