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## NEW GENERIC TOP-LEVEL DOMAIN NAMES (“gTLD”) DISPUTE RESOLUTION PROCEDURE

### RESPONSE FORM TO BE COMPLETED BY THE APPLICANT

- *Applicant responding to several Objections or Objections based on separate grounds must file separate Responses*
- *Response Form must be filed in English and submitted by email to [expertise@iccwbo.org](mailto:expertise@iccwbo.org)*
- *The substantive part is limited to 5000 words or 20 pages, whichever is less*

**Disclaimer:** *This form is the template to be used by Applicants who wish to file a Response. Applicants must review carefully the Procedural Documents listed below. This form may not be published or used for any purpose other than the proceedings pursuant to the New GTLD Dispute Resolution Procedure from ICANN administered by the ICC International Centre for Expertise (“Centre”).*

### References to use for the Procedural Documents

Name	Abbreviation
Rules for Expertise of the ICC	“Rules”
Appendix III to the ICC Expertise Rules, Schedule of expertise costs for proceedings under the new gTLD dispute resolution procedure	“Appendix III”
ICC Practice Note on the Administration of Cases	“ICC Practice Note”
Attachment to Module 3 - New gTLD Dispute Resolution Procedure	“Procedure”
Module 3 of the gTLD Applicant Guidebook	“Guidebook”

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### Identification of the Parties and their Representatives

#### Applicant

Name	dot Rugby Limited
Contact person	Geir Andreas Rasmussen
Address	Contact Information Redacted
City, Country	
Telephone	
Email	

#### Objector

Name	International Rugby Board
Contact person	Julie O'Mahony, Senior Legal Counsel
Address	Contact Information Redacted
City, Country	
Telephone	
Email	

*Copy the information provided by the Objector.*

#### Applicant's Representative(s)

Name	Famous Four Media Limited
Contact person	Peter Young
Address	Contact Information Redacted
City, Country	
Telephone	
Email	

*Add separate tables for any additional representative (for example external counsel or in-house counsel).*

**Applicant's Contact Address**

Name	Famous Four Media Limited
Contact person	Peter Young
Address	Contact Information Redacted
City, Country	
Telephone	
Email	

*This address shall be used for all communication and notifications in the present proceedings. Accordingly, notification to this address shall be deemed as notification to the Applicant. The Contact Address can be the Applicant's address, the Applicant's Representative's address or any other address used for correspondence in these proceedings.*

**Other Related Entities**

Name	
Address	
City, Country	
Telephone	
Email	

*Add separate tables for any additional other related entity.*

## Disputed gTLD

**gTLD Applicant has applied to and Objector objects to [.example]**

Name	.RUGBY Application ID 1-1206-66762
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### Objection

**The Objector filed its Objection on the following Ground (Article 3.2.1 of the Guidebook and Article 2 of the Procedure)**

**Limited Public Interest Objection:** the applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.

or

**Community Objection:** there is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

*Copy the information provided by the Objector.*

**Point-by-Point Response to the claims made by the Objector (Article 3.3.3 of the Guidebook and Article 11 of the Procedure)**

*(Provide an answer for each point raised by the Objector).*

### I. INTRODUCTION

Dot Rugby Limited (“Applicant” or “Respondent”) hereby submits this Response to the Community Objection filed against its application for the generic Top-Level Domain (“gTLD”) .RUGBY by the International Rugby Board (“IRB” or “Objector”).

The Applicant, dot Rugby Limited is a Gibraltar private limited company, the shares of which are partially owned by Domain Venture Partners PCC Limited, a Gibraltar Experienced Investor Fund regulated by the Financial Services Commission of Gibraltar. .RUGBY gTLD is intended and designed to increase availability and access to create, produce and disseminate informative, creative and innovative rugby related content. Its framework and mechanisms have been established to ensure the gTLD operates and grows in a manner that is responsible, protects consumers and promotes consumer and industry trust and confidence. The Applicant hopes to work closely with key global rugby stakeholders to further develop policies and best practices to ensure successful operation of the gTLD.

Notably, the Objector, through its affiliation with IRB Strategic Developments Limited, has submitted a competing bid for the .RUGBY gTLD.<sup>1</sup> The objection process is not a substitute for Community Priority Evaluation and was not envisaged to be a mechanism by which one applicant could gain a competitive advantage over another.

<sup>1</sup> See New gTLD Application ID 1-994-63638 at (Annex 1)

Moreover, the alleged community is incapable of being clearly delineated, and Applicant targets a much broader user base for the gTLD than Objector represents. Thus, the .RUGBY objection should be denied.

**A. Standing: IRB has not established that it has an ongoing relationship with a clearly delineated community as a whole (Applicant Guidebook (“AGB”) § 3.2.2.4 and Obj. paragraph A page 5)**

Whilst the IRB may be an established institution, they do not have an ongoing relationship with a clearly delineated “rugby” community; rather their relationship is with a particular subset of the alleged community, which in itself is not clearly delineated. In addition, since they do not have an ongoing relationship with the sport as a whole (including for example Touch Rugby or Rugby League), their relationship is not sufficient to support the objection to Applicant’s .rugby gTLD:

1. There is some suggestion in the public domain that the IRB fails certain members of the alleged community, in part focusing too heavily on elite rugby, giving too much power to the 8 founding members, and complaints that “they are too Anglo-centric.”<sup>2</sup>
2. The IRB has also been accused of failing the smaller nations in the alleged community especially during the last World Cup and in at least one instance excluding one of the smaller nations from being able to qualify. For example:
  - a. *“The IRB has come in for constant criticism since the World Cup started, particularly over their treatment of the minnow nations, who had to play their pool matches in a tight timeframe.”*<sup>3</sup>
  - b. *“[P]oorer countries are undermined, underfunded, cleverly weakened, robbed at every stage yet asked to make the numbers in the World Cup so that rugby can masquerade as a global game.”*<sup>4</sup>
  - c. Noteworthy is the IRB’s decision to exclude Cyprus from being able to qualify for the Ruby World Cup 2015 because Cyprus was not a “full member.”<sup>5</sup>
3. Further, there is some uncertainty and controversy in relation to IRB membership, thus raising questions as to which members are actually considered to form their “community”. For example, Greece (Hellenic Federation of Rugby) was granted full membership on a probationary basis despite not meeting all membership criteria and the UAE Association was fast-tracked to full membership, however Cyprus was not given the same opportunities.<sup>6</sup>
4. The IRB also seems to narrowly define the alleged community, focusing on professional and amateur players within organized unions and associations. However, IRB does not represent the alleged community as a whole which would include unorganized or unofficially recognized leagues, many clubs and teams (e.g., community social/recreational leagues and clubs, company sponsored after work

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<sup>2</sup> See e.g., <http://www.telegraph.co.uk/sport/rugbyunion/international/2475705/IRB-critics-must-come-out-of-the-shadows-to-validate-report-rugby-union.html> (Annex 2)

<sup>3</sup> See <http://tvnz.co.nz/rugby-world-cup/irb-hit-back-criticisms-4439789> (Annex 3)

<sup>4</sup> See <http://www.theroar.com.au/2011/09/21/monstrous-irb-maim-minnows/> (Annex 4)

<sup>5</sup> See e.g., <http://www.irb.com/unions/index.html>; <http://www.espnscrum.com/2015-rugby-world-cup/rugby/story/180581.html> (Annex 5)

<sup>6</sup> See e.g., <http://www.change.org/en-GB/petitions/cyprus-national-rugby-team-let-cyprus-take-part-in-rcw2015-qualifying> (Annex 6)

rugby recreational leagues and school leagues), rugby equipment/clothing manufacturers and retailers, media outlets, fan participants (i.e., fantasy rugby league), the video game industry and indeed Touch Rugby or Rugby League.<sup>7</sup>

5. The Applicant commissioned a survey of supporters of rugby amongst general internet users.<sup>8</sup> 79% of participants surveyed when asked whether they received sponsorship or support from an official rugby organization said “no,” thus suggesting that formal organization is not a necessity to participate in the sport.<sup>9</sup> 61.9% also agreed that the rugby community includes stakeholders such as the media and manufacturers.

**B. Community: Objector fails to prove that the alleged community is “clearly delineated” (AGB § 3.5.4 and Objection paragraph B pages 6 and 7)**

The alleged Rugby community is not clearly delineated because it is comprised of a significant number of stakeholders who do not necessarily share similar goals, values or interests, thus the alleged community lacks formal boundaries, evidenced by disagreement as to which stakeholders are considered members of the rugby community.

1. In an official statement, the Independent Objector (“IO”) explained that alleged communities associated with so-called “generic” strings cannot likely meet the “clearly delineated” criteria due to the broad definition of “community” and the nature of generic terms, which are by definition used by a significant number of people, who do not necessarily share similar goals, values or interests. For example, the IO expressed disbelief about the clear delineation of an alleged community encompassing a large variety of stakeholders who do not always share similar primary interests, because stakeholders are of a very different nature.<sup>10</sup>
2. The word “rugby” is a generic word, being a sport, and Applicant intends to use the gTLD as such.
3. According to the IRB, there are more than four million registered players worldwide, but more than half are from England and over three-quarters (3.3 million) come from the eight Foundation Unions, i.e., Scotland, Ireland, Wales, England, Australia, New Zealand, South Africa and France. Meanwhile, there are less than a quarter of a million players in the ten most populous nations of the world (China, India, USA, Indonesia, Brazil, Pakistan, Bangladesh, Russia, Nigeria, and Japan). Television audience data for the 2007 World Cup final, between South Africa and England, shows that 97% of the 33 million total viewers came from the Foundation Unions – with just half a million viewers of the final spread amongst all the remaining nations where it was shown live. There are 115 members of the IRB – but rugby is evidently not particularly popular in most of them.<sup>11</sup>

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<sup>7</sup> See <http://plover.net/~bonds/rugby.html> for a good explanation of why Rugby Union receives more media coverage than Rugby League. (Annex 7)

<sup>8</sup> See (Annex 8)

<sup>9</sup> See Q3 Rugby Survey (Annex 8)

<sup>10</sup> See (Annex 9) - <http://www.independent-Objector-newgtlds.org/english-version/the-issue-of-closed-generic-gtlds/> - (indicating clear delineation is doubtful for “book community” potentially encompassing authors, publishers, libraries, retailers, readers, and international organizations because some stakeholders have the promotion of literature as their primary aim but for many others it is one objective among many others)

<sup>11</sup> See [http://www.puttingrugbyfirst.com/downloads/Putting\\_Rugby\\_First.pdf](http://www.puttingrugbyfirst.com/downloads/Putting_Rugby_First.pdf) (Annex 10)

These statistics call into question the IRB's claim that it is representative of a clearly delineated rugby community, as it appears that only a few of these members are active while quite a number are passive members of the alleged community, thus confusing any notion of delineation.

4. The IRB also represents only a subsector of the alleged rugby community, but not the alleged community as a whole which would include **Touch Rugby**<sup>12</sup>, unorganized or unofficially recognized leagues, clubs and teams (e.g., community social/recreational leagues and clubs, company sponsored after work rugby recreational leagues), rugby equipment/clothing manufacturers and retailers, media outlets, fan participants (i.e., fantasy rugby league), the video game industry. It is impossible to ascertain the amount of unorganized/unofficially recognized leagues, clubs, teams that should be included as members of the rugby community, and as such the alleged rugby community is not clearly delineated.<sup>13</sup>
  
5. Further, although the IRB offers in support of this Objection "an opposition letter" from the Rugby League International Federation ("RLIF"), it cannot truly claim to represent a global rugby "community" which would by necessity have to include, in a large part, the Rugby League.<sup>14</sup>
  - i. The official Rugby League administration is undertaken by the RLIF who make themselves responsible for the "Laws of the Game," the development, organization and governance of official Rugby League matches internationally, and for the sport's major international tournament, the Rugby League World Cup.<sup>15</sup>
  
  - ii. We set out below a table identifying 2005-2006 participation levels in both Rugby Union and Rugby League in Australia; one of the largest and most influential nations in the Rugby community<sup>16</sup>.

#### **Participants, Selected football codes - By age**

<b>Age group (years)</b>								<b>Total</b>
<b>15-17</b>	<b>18-24</b>	<b>25-34</b>	<b>35-44</b>	<b>45-54</b>	<b>55-64</b>	<b>65 and over</b>		
<b>Number ('000)</b>								

<sup>12</sup> Touch Rugby is represented by the Federation of International Touch, which is conspicuously absent from any involvement in the objection or competing application. See [www.international-touch.org](http://www.international-touch.org) (Annex 11)

<sup>13</sup> See <http://www.economist.com/blogs/gametheory/2011/10/globalisation-rugby> "That things are tight at the top is not surprising, bearing in mind the resource gap between the top countries, where rugby is a professional game, and the have-nots, where amateurism still rules the day". (Annex 12)

<sup>14</sup> The "opposition letter" is not so much a letter of direct opposition to the Applicant's application but is more support for a competing bid. The letter itself recognises the inherent tension between rugby union and rugby league, since it alludes to an agreement that no restriction would be placed on rugby league applications for second level domains.

<sup>15</sup> See <http://www.rlif.com/about-rlif> (Annex 13)

<sup>16</sup> <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4156.0.55.001Feature+Article1May%202009> (Annex 14)

Rugby League	33.2	27.7	*22.9	*5.8	**1.7	-	-	91.2
Rugby Union	*19.8	28.1	*16.8	*7.3	*6.8	-	-	78.9

**Participation rate (%)**

Rugby League	4.1	1.4	*0.8	*0.2	**0.1	-	-	0.6
Rugby Union	*2.4	1.4	*0.6	*0.2	*0.2	-	-	0.5

The chart shows that Rugby League was more popular than Rugby Union, thereby supporting the notion that the IRB is not only not representative of the whole of the alleged Rugby Community, but also is not associated with the most popular form of rugby in one of its biggest member states. See the article referenced at footnote 7 which explores the social development side of the game.

6. Assuming for arguments sake there is a clearly delineated rugby union community, which we contend there is not, there is no clearly delineated rugby community of which one organization such as the IRB can claim to be representative.
7. Finally, the fact that IRB could have filed a community application but instead chose to file a standard application, should have no bearing on the Panel's decision to this objection. (Objection at page 8). IRB made the conscious decision not to file such an application. A closer examination of the criteria required for a community application yields insight as to why this decision was taken. Specifically, as discussed above, IRB cannot claim to be the only global representative of the alleged Rugby community, given the distinctively different forms of rugby – rugby union, rugby league and touch rugby – all of which flourish under different rules and governing bodies. Moreover, had it applied for community priority designation, it likely would have faced opposition from the RLIF and the international federation of touch, because it could not restrict registration to its members.
8. Thus, because of the alleged Rugby community's diversity of goals, values and interests, as well as its lack formal boundaries, the IRB fails to prove that the alleged community is clearly delineated.

**D. Substantial Opposition: IRB Fails to Prove Substantial Opposition to Respondent's Rugby Application (AGB § 3.5.4 and Objection, paragraph 2)**

1. *The number of expressions of opposition relative to the composition of the alleged rugby community is small.*

IRB represents 100 national unions or associations in full membership, 18 Associate members and 6 Regional Associations, yet provides letters of support from only a small number of its members (Objection at page 8 - Attachment B). A number of objections are from organisations one would not associate with Rugby.

2. *The representative nature of entities expressing opposition and level of recognized stature or weight among sources of opposition*

- i. The Objector represents a subsector of the rugby community as a whole, i.e., “elite and organized rugby union”, and does not provide examples of support from any other members of the alleged community such as recreational leagues, media outlets, or sponsors.
  - ii. It is noted that the United Kingdom issued an Early Warning expressed opposition to our application and support for Objector’s application (Objection at paragraph 2 page 9 – Attachment C). This was procured by or on behalf of the Objector and totally against the spirit of the GAC process.<sup>17</sup> It is noteworthy that the objection was not pursued further by the UK and did not form part of the GAC communique issued after the ICANN Beijing meeting.<sup>18</sup>
  - iii. There appears to be little support at national level for the objection outside of the 8 Founding Nations: only Tonga, Japan, Kenya and Italy, and two umbrella organisations.
3. *Distribution or diversity among sources of expressions of opposition (regional, subsectors, leadership, membership)*
- i. As mentioned above, the vast majority of the IRB’s support comes from their membership; thus there is little diversity of entities expressing opposition.
  - ii. Many of the letters are also form letters. Ten letters from individual rugby players, a referee, Irish Rugby Union Players Association and Rugby Football Union are the same. Also five other letters mirror parts or all of the UK Early Warning Letter (i.e., FFR, Jean-Louis Barthes, Tonga Rugby Union, New Zealand Rugby Union, Australian Rugby Union, and South African Rugby Union). This is obviously therefore a campaign orchestrated by the IRB.
4. *Costs incurred by Objector in expressing opposition, including other channels Objector may have used to convey opposition*

Costs incurred by the IRB in expressing opposition, including other channels the IRB may have used to convey opposition, are minimal in comparison to: the costs of applying for the .RUGBY gTLD; the annual revenues of IRB and its members; its investments in rugby related activities.

- i. For example, IRB strategic programs and investment amounted to £153million (\$245.6 million) from 2009 to 2012 for efforts to increase participation, performance, recruitment and retention of players.<sup>19</sup>
- ii. The IRB invested in targeted high performance initiatives in 22 countries with an investment of £48 million (\$77 million) over the period 2009-2012, to its annual expenditure on annual Union grants, tournament funding and education and training program expenditure.<sup>20</sup>

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<sup>17</sup> See (Annex 15), emails. The first is from Brady Bohrmann to Geir Rasmussen of Famous Four Media, threatening to launch a global public campaign against Famous Four Media. The second is to Jon Nevett of December 2012 in which Roar Domains (who assist the competing bidder) state “We are pleased to have obtained four Early Warnings on behalf of our applications, and fully expect the GAC process to be completed to GAC Advice.”

<sup>18</sup> See (Annex 16)

<sup>19</sup> See [http://www.irb.com/mm/Document/NewsMedia/MediaZone/02/04/22/88/2042288\\_PDF.pdf](http://www.irb.com/mm/Document/NewsMedia/MediaZone/02/04/22/88/2042288_PDF.pdf) (Annex 17)

<sup>20</sup> See [http://www.irb.com/mm/Document/NewsMedia/MediaZone/02/04/22/88/2042288\\_PDF.pdf](http://www.irb.com/mm/Document/NewsMedia/MediaZone/02/04/22/88/2042288_PDF.pdf) (Annex 17)

- iii. The IRB invests over \$3 million annually in development, high performance, and tournament programs in collaboration with Asian Rugby Football Union (ARFU), which explains why the ARFU were prepared to file a letter of support for IRB.<sup>21</sup>
5. Also, given that IRB filed an application for the .rugby string, cost estimates for obtaining the gTLD certainly should have included costs associated with defending their application, either from objection or by lodging objections against other applicants. As such, it is difficult to see how IRB has expended more resources than necessary to participate in the new gTLD application progress.
6. Thus, the IRB fails to prove substantial opposition to Respondent's application due to the opposing entities' relatively small number; unrepresentative nature; unrecognized stature or weight; and lack of distribution or diversity. The IRB moreover fails to offer any proof of historical defense, or costs incurred or channels used in conveying opposition.

**E. Targeting: The IRB Fails to Prove a Strong Association Between the .Rugby String and the alleged Rugby Community (Objection, paragraph 3)**

*1. Statements contained in the application*

There is little question that there would be an association between the applied-for .rugby gTLD and the members/unions IRB represents, however the application demonstrates that Applicant has a broader target than the alleged "IRB rugby" community, as the application evidences<sup>22</sup>.

The "strong association" alleged by the IRB is purely ancillary or derivative.

*2. Associations by the public*

Public perceptions demonstrate that Applicant has a broader target than the alleged "rugby" community<sup>23</sup>.

Finally, the public understands that a domain name registration does not confer or even define special status for the holder worldwide and for every purpose. For example, for-profit businesses operate .org domain names (slashdot.org); American-based companies use ccTLDs of other countries for unconventional naming purposes (bit.ly, fold.it, twit.tv).

Thus IRB fails to prove sufficient targeting to support this objection because Applicant's intended use for the gTLD is much more inclusive, and the public, including average Internet users, understands the same.

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<sup>21</sup> See [http://www.oceaniarugby.com/101216\\_japan\\_to\\_host\\_irb\\_pacific\\_nations\\_cup\\_2011.html/ref/267](http://www.oceaniarugby.com/101216_japan_to_host_irb_pacific_nations_cup_2011.html/ref/267) (Annex 18)

<sup>22</sup> See (Annex 19) "*Rugby is a great leveller. Given the chance, anyone - from the poorest child to the world's richest man - can play rugby. Passion is the essence of rugby, and we hope to capture this within .rugby largely using the valuable platform presented by the internet.*

*the aim of .rugby is to create a blank canvas for the online rugby sector set within a secure environment. The Applicant will achieve this by creating a consolidated, versatile and dedicated space for the rugby sector. As the new space is dedicated to those within this affinity group the Applicant will ensure that consumer trust is promoted. Consequently consumer choice will be augmented as there will be a ready marketplace specifically for rugby-related enterprises to provide their goods and services".*

<sup>23</sup> See (Annex 8)

**F. Detriment: Any likelihood of material detriment to the rights and legitimate interest of the Rugby Community is Speculative**

1. The thrust of IRB's argument (Obj. paragraph 4A) seems to be that only IRB can control and manage the .rugby gTLD because that right or responsibility belongs only to an entity operating within the industry associated with this generic term. That is simply untrue. IRB is not the only entity that can or will ensure that the .rugby gTLD will act for the benefit of rugby. The Applicant, as a neutral third party with no affiliation to any single representative group, is best capable of ensuring that .rugby acts to the benefit of all stakeholders in rugby. No single organization can unfairly influence the development of the gTLD and restrict the content appearing within this string to serve its own interest. An IRB-managed gTLD raises questions about IRB's ability to be impartial as to third parties who are interested in rugby that are not a part of IRB or who are critical of IRB. The fact that the IRB as a sports federation promotes rugby does not necessarily mean it promotes the interest of every facet of the sport worldwide.
2. *IRB offers no evidence that Applicant is not acting or does not intend to act in accordance with the interests of the Rugby community* (Obj. paragraph 4Aa)

The Applicant has every intention of acting in the interests of rugby and will put rugby in the forefront of how the gTLD will be operated. All relevant stakeholders will have an opportunity to join the Governance Council (GC) which will provide stakeholders with a voice to direct policies of the registry. The Rugby GC will shape the gTLD. We encourage involvement from a broad spectrum of key stakeholders, including IRB, RFIL, IWRF, their respective leagues, rugby players and coaches, referees, volunteers, fans, sponsors and individual governments. The fact that we have not yet consulted with IRB regarding the gTLD's policies should not be of concern. At this time, IRB is a competing applicant. The policies are to be further developed and refined through the GC. What our application demonstrates is that the framework for the GC and for establishment of the TLD's policies is in place.

3. For example, the GC will recommend policies and best practices to ensure fair access and to combat critical issues of fraudulent websites, have oversight of the type of information offered within the gTLD, set registration policies, ensure compliance with regulatory controls, establish abuse prevention and takedown measures, protect intellectual property rights, and set rules for the gTLD on other matters of importance to the rugby industry. We disagree with the statement by the IRB that the true system of management and control is "entirely within the DVP structure" (Obj. paragraph 4Aa). We have committed to a PIC Spec, and so will potentially be open to challenge under the PIC dispute resolution procedure by any member of the public if we do not abide by commitments in the PICSpec and the application. Unlike other applicants, Applicant will have a body of self-appointed persons and organisations in the GC watching its stewardship of the .rugby gTLD, and is therefore under much more scrutiny than any other applicant. The GC could challenge Applicant's actions under the PIC dispute resolution procedure.<sup>24</sup>
4. A three-part plan is currently underway to attract such stakeholders to the GC. First the GC website has been up and running for the past several months to

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<sup>24</sup>. See PIC Spec Statement (Annex 20)

attract interest from organisations and to join.<sup>25</sup> Second, outreach has been made to the rugby industry as a whole through press releases to drive traffic to the GC website.<sup>26</sup> Finally, Applicant continues its efforts to identify key stakeholders, so that when the time delegation of the gTLD nears, we will be prepared to contact such organisations with a view to encouraging their participation in the GC.

5. Further, Applicant will also perform periodic consumer surveys to measure trust and satisfaction with the gTLD. Surveys will be conducted to improve operation of the gTLD and to obtain data that will ensure that the processes in place are responsive to all stakeholders' needs, and to assist with the development and refinement of abuse policies, and procedures and rights protection mechanisms. These surveys will be designed to measure:
  - i. Consumer satisfaction with gTLD content
  - ii. Service availability of critical registry systems
  - iii. Abuse and takedown incidents
  - iv. Whois data accuracy
  - v. Rights protection incidents
6. *IRB offers no evidence of concrete or economic damage to the Rugby community that would result from Applicant's operation of the .Rugby String (Obj. paragraph 4Ab).*

The Applicant has implemented measures that go above and beyond those required by ICANN to address concerns of fraud and other illegal activities and to protect intellectual property rights, and beyond what the IRB offers through its application for the .rugby string:<sup>27</sup>

- i. Use of domain names that infringe upon the legal rights of others in .rugby will not be tolerated and preventing abusive registrations is a core objective of Applicant. Applicant will prevent abusive registrations and those that infringe upon intellectual property rights by implementing comprehensive registration, rights protection and anti-abuse guidelines as defined in its Acceptable Use Policy (AUP).
- ii. Whilst all domains will be registered on a first-come, first-served basis during the "General Availability Phase," a Trademark Claims Service will be offered for the first 90 days of general registration with the intent of providing clear notice to potential registrants of the existing rights of trademark owners with registered trademarks in the Trademark Clearinghouse. Moreover, all registrars who are accredited to sell names in .rugby will be required to review all domain names requested to be registered during the Trademark Claims period to determine if they are an identical match of a trademark that has been filed with the Trademark Clearinghouse.
- iii. The GC Board of Directors will also meet regularly to discuss matters relating to intellectual property protection. The Board will be responsible for recommending mechanisms to protect against intellectual property violations and to deal with infringement. Further, the Board may recommend reservation of certain second-level domains for various purposes and initiatives related to the rugby sector.

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<sup>25</sup> [www.governancecouncils.com/rugby](http://www.governancecouncils.com/rugby) (Annex 21)

<sup>26</sup> See Press Release (Annex 22)

<sup>27</sup> See (Annex 23) question 18, 28, Application

7. The above mechanisms should help to provide adequate protection of the brands, professional players, officials, sponsors and teams that fall under the rugby community's umbrella.
8. Further, Applicant's Abuse Prevention and Mitigation Plan, in conjunction with the GC and the Abuse Prevention and Mitigation Working Group, is another mechanism that it committed to in its application and PIC Spec that will be used to combat fraudulent and unauthorized ticket sales, unofficial tournament and team merchandise sales, and other abusive activities that negatively impact the goodwill and reputation of the rugby community and result in the loss of income, confidence and integrity in the sport.<sup>28</sup> The plan includes
  - i. establishment of a single abuse point of contact, responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the gTLD;
  - ii. Whois accuracy measures, educating consumers about domain name use, restrictions on proxy registration services, and cooperation with law enforcement agencies;
  - iii. a provision wherein bad actors and repeat offenders who engage in abuse registrations will be blacklisted, and will face potential disqualification of their current or any future registrations;
  - iv. an Acceptable Use Policy that gives Applicant the ability to quickly lock, cancel, transfer or take ownership of any domain name.
9. All of these mechanisms are designed to combat fraudulent websites, prohibit fraudulent or unauthorized re-sale of tickets, the sale of unofficial tournament and team merchandise, protect consumers, and increase consumer and industry trust and satisfaction in the .rugby gTLD. Given all of these mechanisms, rugby is likely to benefit from Applicant's operation of the gTLD.
10. The IRB's claims of alleged economic harm are speculative. They offer no concrete evidence of harm. Moreover, the damage they allege seem only to materialise if Applicant is delegated the string, instead of IRB.
11. *IRB offers no concrete evidence that Applicant's operation of the gTLD will interview with core, noncommercial activities of the Rugby Community (Obj. paragraph 4Ac)*

It seems unlikely that local and provincial amateur teams would suffer significant cybersquatting issues, but Applicant does take this risk seriously. The GC Board may recommend reservation of certain second-level domains for various purposes and initiatives related to the rugby sector, such as the non-commercial programs and/or well-known identifiers or names. The concern over protection of "non-trademark" identifiers is an issue that stakeholders within the rugby community can and should raise with the GC, in an effort to better ensure that registration policies and/or other measures are

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<sup>28</sup> See (Annex 23) questions 18 and 28

implemented so they are not lost to persons/entities not genuinely associated with rugby.

IRB also seems to suggest that the average, reasonable internet user is not sophisticated enough to locate the information he/she is searching for. We do not think this is the case. We see no reason why internet users should have difficulty navigating the gTLD and finding information coming from “individuals and entities associated with the Rugby community”.

12. *IRB offers no evidence that Dot Rugby’s operation of the gTLD will damage the reputation of the rugby community (Obj. paragraph 4Ad)*

The IRB’s suggestion that the reputation of rugby will be damaged if Applicant is delegated the string because of a pending civil suit should be rejected. This is a “smoke screen” intended only to cloud the issues or divert attention from the fact that a neutral third party, the Applicant, can provide a safe, secure, consume-oriented, trustworthy and inclusive .rugby gTLD. The civil action, *David Ways v. Roache et al.*, is in the preliminary stages. Indeed Iain Roache has not even been served. There have been no findings of fact by the court and no judgment has been rendered against DVP, which intends to fight the case vigorously, as the underlying allegations are meritless. Any large, well-funded organization frequently finds spurious claims filed against it. The Panel should resist any temptation to base a finding of reputational damage on the mere fact that a complaint has been filed against DVP. Many of Applicant’s affiliated entities have already passed Initial Evaluation and hence have passed ICANN’s background checks.<sup>29</sup>

13. *The IRB’s efforts to draw an association between .rugby and gambling (Obj. paragraph 4B) are pure speculation.*

Nowhere in our application is there any mention of any plan to associate the .rugby TLD with gambling. Neither Applicant nor any of its affiliated entities have any link or do business with Gibraltar based gaming companies.

Moreover, Applicant’s proposed Acceptable Use Policy (AUP) requires that registrants will use in accordance with applicable law.<sup>30</sup> Further, the GC for each TLD that is awarded will be independent and made up of stakeholders relevant to the individual TLD sector. In other words, there is no plan to overlap GC Boards of Directors across TLDs or to “cross sell across TLDs”, so IRB’s concerns are misplaced.

14. Thus, because the IRB fails to offer proof of reputational, concrete, or economic damage to the community; that Applicant does or will not act according to community or user interests; that Applicant will interfere with the community’s core activities; that community core activities depend on the DNS (rugby is a sport that is played on a pitch and does not rely on any particular domain name); or any certainty that detrimental outcomes would occur, the IRB therefore fails to prove any likelihood of material detriment to the rights and legitimate interest of the alleged Rugby Community.

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<sup>29</sup> See (Annex 24)

<sup>30</sup> “all registrants agree that they will not use their domain for any purposes which are prohibited by the laws of the jurisdiction(s) in which they do business or any other applicable law. You may not use your domain for any purposes or in any manner which violate a statute, rule or law governing use of the Internet and/or electronic commerce, including those statutes related to **gaming and/or online gambling.**” Response to Q28, Paragraph 14 (See Annex 23)

**V. CONCLUSION**

For the foregoing reasons, Respondent respectfully requests that the community objection filed by the IRB be denied.

**Communication (Article 6(a) of the Procedure and Article 1 of the ICC Practice Note)**

A copy of this Response is/was transmitted to the Objector on: 5<sup>th</sup> June 2013  
by e-mail, the following addresses: Contact Information Redacted

A copy of this Response is/was transmitted to ICANN on: 5<sup>th</sup> June 2013  
by e-mail to the following address: drfiling@icann.org

**Filing Fee (Article 1 Appendix III to the Rules and Article 11(f) of the Procedure)**

As required, Euros 5 000 were paid to ICC on 14<sup>th</sup> May 2013

Evidence of the payment is attached for information.

**Description of the Annexes filed with the Response (Article 11(e) of the Procedure)**

*List and Provide description of any annex filed.*

1. New gTLD Application ID 1-994-63638
2. Daily Telegraph article
3. IRB treatment of minnow nations
4. Monstrous IRB maim the minnows
5. IRB excludes Cyprus
6. Uncertainty and Controversy with IRB membership
7. Rugby League vs Rugby Union
8. Rugby Survey
9. The issue of Closed Generics
10. Is IRB truly representative of clearly delineated rugby community
11. Touch Rugby
12. Economist article
13. Rugby League International Federation
14. 2005-2006 participation levels in both Rugby Union and Rugby League in Australia
15. Roar Domains Email
16. GAC communique issued after the ICANN Beijing meeting
17. IRB Investments
18. IRB invests over \$3 million annually in development
19. Extract from dot Rugby Limited Application
20. PIC Specification
21. governance council rugby
22. Press Release
23. Application Questions 18 & 28 from dot Rugby Limited
24. Applications passes IE - proof of passing background checks

Date: 5<sup>th</sup> June 2013

Signature: \_\_\_\_\_

**Peter Young**  
**Chief Legal Officer, Famous Four Media Limited**  
**For and on behalf of dot Rugby Limited**