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Description of Public Interest Commitments

**OWNER: Drew**

*[Other related papers: Laureen's Background on Public Interest Commitments].*

**HIGH LEVEL QUESTION: What types of voluntary PICs were incorporated into the new gTLD program?**

**OWNER: Drew Bagley**

**SUB-QUESTIONS: I) What were the voluntary PICs? II) What voluntary PICs were made by new gTLD applicants?**

- I) **What were the voluntary PICs? [Answered by Laureen's Voluntary PICs Background Paper]**
- II) **What voluntary PICs were made by new gTLD applicants?**

**Findings:**

**a. Six operators ran the top 30 largest gTLDs that incorporated voluntary public interest commitments (PICs) in their application or registry agreement.<sup>1</sup>**

- Section 2 commitments from application incorporated into the Registry Agreements:
  - Of the six Top 30 new gTLD registry operators,<sup>2</sup> only one operator proposed Section 2 voluntary PICs in their applications.<sup>3</sup>
    - These voluntary PICs included an Abuse Prevention and Mitigation plan, Additional Mechanism for Protection of Capital City Names, Additional Mechanisms to Protect and Reserve IGO Names, Additional Mechanism – Abuse Prevention and Mitigation Seal, Acceptable Abuse Policy, Rights Protection Mechanisms, and WHOIS Accuracy.

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<sup>1</sup> Based on data available to ICANN staff on September 12, 2016, these included: .win, .loan, .date, .racing, .download, .accountant, .vip, .bayern, .work, .news, .rocks, .guru, .email, .solutions, .photography, .company, .tips, .center, .city, .world, .expert, .media, .pub, .ninja, .london, .today, .live, .life, .ooo, and .ltd. Of these gTLDs, .accountant, .city, .download, .loan, .news, and .media are gTLDs designated as GAC Category 1 strings (Regulated Sectors/Open Entry Requirements in Multiple jurisdictions. One gTLD, .ltd is designated as a Highly Regulated sector/Closed Entry Requirements in Multiple Jurisdictions.

<sup>2</sup> Famous Four Media, Minds+Machines, Donuts, United TLD Holdco Ltd., Dot London Domains Limited, and Infibeam Incorporation Limited Donuts

<sup>3</sup> Famous Four Media for .win, .loan (regulated), .date, .racing, .download (regulated), .accountant (regulated)

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- All of these mechanisms, except for the Abuse Prevention and Mitigation Seal, were already required by the Registry Operator Guidebook or 2013 Registry Agreement.
- The Abuse Prevention and Mitigation Seal (APM Seal) requires registrants to incorporate an APM Seal onto their web pages for one-click access by visitors to abuse reporting resources. The operator commits to ensuring that the APM Seal is visible to website visitors in a geographically tailored way based on their IP address.<sup>4</sup>
- Section 3 mandatory public interest commitments voluntarily included in Registry Agreements<sup>5</sup>:
- Section 4 voluntary public interest commitments in Registry Agreements:
  - All of the top 30 new gTLDs with voluntary PICs incorporated some into section 4 of their registry agreements:
    - Famous Four:
      - In its registry agreements, Famous Four made voluntary PICs in Section 4 that further described how its APM Seal program commitments from Section 2 would work, from countries that have elected, through their involvement in the registry's Governance Council, to participate in the APM Seal program.<sup>6</sup>
    - Donuts:
      - Although generic and open gTLDs, the registry agreements for .live, .life, and .today, commit to

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<sup>4</sup> See Registry Agreement, Public Interest Commitments, and Application for .LOAN (<https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1205>), .WIN (<https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1201>), .DATE (<https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1175>), .RACING (<https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1227>), .DOWNLOAD (<https://gtldresult.icann.org/applicationstatus/applicationdetails/1217>), .ACCOUNTANT (<https://gtldresult.icann.org/applicationstatus/applicationdetails/1187>)

<sup>5</sup> This section is incomplete and will be populated once further analysis is available.

<sup>6</sup> See Specification 11, Section 4 of the Registry Agreement for .LOAN (<https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1205>), .WIN (<https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1201>), .DATE (<https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1175>), .RACING (<https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1227>), .DOWNLOAD (<https://gtldresult.icann.org/applicationstatus/applicationdetails/1217>), .ACCOUNTANT (<https://gtldresult.icann.org/applicationstatus/applicationdetails/1187>)

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undertaking “commercially reasonable efforts” to consult with specific brand owners regarding the use of domain names in relevant commercial applications and “reserve certain names that likely would interfere with the rights of that entity.”<sup>7</sup>

- The same operator also committed to creating a Domains Protected Marks List that “allows rights holders to reserve registration of exact match trademark terms and terms that contain their trademarks across all gTLDs administered by Registry Operator under certain terms and conditions.”<sup>8</sup>
- Moreover, the operator committed to establishing a “Claims Plus service,” which would be used to alert new registrants if they attempted to register a domain name that matched a trademark.<sup>9</sup>

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<sup>7</sup> Specification 11, 4 in the .life (<https://www.icann.org/sites/default/files/tlds/life/life-agmt-html-06feb14-en.htm>), .live (<https://www.icann.org/sites/default/files/tlds/live/live-agmt-html-04dec14-en.htm>), and .today (<https://www.icann.org/sites/default/files/tlds/today/today-agmt-html-20sep13-en.htm>) Registry Agreements

<sup>8</sup> Specification 11, 4(iii) in the Registry Agreements for .life (<https://www.icann.org/sites/default/files/tlds/life/life-agmt-html-06feb14-en.htm>), .live (<https://www.icann.org/sites/default/files/tlds/live/live-agmt-html-04dec14-en.htm>), .today (<https://www.icann.org/sites/default/files/tlds/today/today-agmt-html-20sep13-en.htm>), .ltd (<https://www.icann.org/sites/default/files/tlds/ltd/ltd-agmt-html-25sep14-en.htm>), .news (<https://www.icann.org/sites/default/files/tlds/news/news-agmt-html-18dec14-en.htm>), .rocks (<https://www.icann.org/sites/default/files/tlds/rocks/rocks-agmt-html-14nov13-en.htm>), .guru (<https://www.icann.org/sites/default/files/tlds/guru/guru-agmt-html-27aug13-en.htm>), .email (<https://www.icann.org/sites/default/files/tlds/email/email-agmt-html-31oct13-en.htm>), .solutions (<https://www.icann.org/sites/default/files/tlds/solutions/solutions-agmt-html-07nov13-en.htm>), .photography (<https://www.icann.org/sites/default/files/tlds/photography/photography-agmt-html-20sep13-en.htm>), .company (<https://www.icann.org/sites/default/files/tlds/company/company-agmt-html-07nov13-en.htm>), .tips (<https://www.icann.org/sites/default/files/tlds/tips/tips-agmt-html-20sep13-en.htm>), .center (<https://www.icann.org/sites/default/files/tlds/center/center-agmt-html-07nov13-en.htm>), .city (<https://www.icann.org/sites/default/files/tlds/city/city-agmt-html-29may14-en.htm>), .world (<https://www.icann.org/sites/default/files/tlds/world/world-agmt-html-12jun14-en.htm>), .expert (<https://www.icann.org/sites/default/files/tlds/expert/expert-agmt-html-21nov13-en.htm>), .media (<https://www.icann.org/sites/default/files/tlds/media/media-agmt-html-06mar14-en.htm>)

<sup>9</sup> Id. at Specification 11, 4(iv)

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- The operator also pledged to “[l]imit the use of proxy and privacy registration services in cases of malfeasance.”<sup>10</sup>
- The same operator added a Corporate Designations in Whois commitment for the highly regulated<sup>11</sup> .LTD domain name, committing to “provide appropriate jurisdictional authorities with the capability at their option and at no cost to make designations in the Whois record relevant to the registrant’s organizational status in the registrant’s jurisdiction.”<sup>12</sup> If used, this means that a Whois record would display whether or not the organization’s corporate status had been validated by the relevant jurisdiction’s governing authority.
- Although these commitments go beyond what is already required by ICANN, the registry operator reserved the right to discontinue any of its voluntary PICs “in the case of a substantial and compelling business need.”<sup>13</sup> This means that the registry operator and subsequent operators<sup>14</sup> maintain the power to determine whether commitments made upon obtaining a new gTLD remain binding.
- Mind+Machines:
  - “To develop a dispute-resolution procedure that supplements ICANN-mandated processes, including access to alternative resolution processes”<sup>15</sup>
- Infibeam Incorporation Limited
  - PICs were incorporated into the .ooo Registry Agreement to protect against confusion with Australia’s Triple Zero Emergency Call Service, including the reservation of domain names related to police, fire, and emergency, in order to prohibit

<sup>10</sup> Id. at Specification 11, 4(vi)

<sup>11</sup> <https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-2-05feb14-en.pdf>

<sup>12</sup> Specification 11, 4(e) in .ltd Registry Agreement

(<https://www.icann.org/sites/default/files/tlds/ltd/ltd-agmt-html-25sep14-en.htm>)

<sup>13</sup> Supra note 6 Specification 11, 4

<sup>14</sup> .Live was assigned from the original applicant, a Donuts subsidiary, to United LTD

<sup>15</sup> Specification 11, Section 4j.vip (<https://www.icann.org/sites/default/files/tlds/vip/vip-agmt-html-22jan15-en.htm>), .bayern (<https://www.icann.org/sites/default/files/tlds/bayern/bayern-agmt-html-23jan14-en.htm>), and .work

(<https://www.icann.org/sites/default/files/tlds/work/work-agmt-html-19dec13-en.htm>)  
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- domain name registrations that might lead to confusion with these services.<sup>16</sup>
- United TLD Holdco Ltd.
    - Voluntary PIC to implement a Domain Protected Marks List to “allow trademark registrants to block their trademarks from being registered by others at the second level.” for .ninja and .pub.<sup>17</sup>
    - Voluntary PIC to “allow domain name proxy or privacy services to be offered only by select registrars and resellers who have demonstrated a commitment to enforcing the accuracy of registrant data and their willingness to cooperate with members of law enforcement to identify users who are engaging in improper or illegal activity.”<sup>18</sup>
  - Dot London Domains Limited
    - Voluntary PICs made in Specification 11, Section 4 resembled mandatory commitments, expressing a willingness to follow the Applicant Guidebook, tackle abuse, and cooperate with law enforcement when appropriate. The registry operator did, however, commit to incorporate procedures permitting it to block abusive registrants from further registrations and delete all of their registrations.
- b. GAC Category 1 new gTLDs
- a. Specification 11
    - i. Section 2
    - ii. Section 3
    - iii. Section 4
      - 1. Donuts
        - a. Same section 4 voluntary PICs as in Donuts’ registry agreements for the new gTLDs mentioned in the Top 30 analysis of section a of this paper.<sup>19</sup>
      - 2. Mind+Machines

Commented [AB1]: This section is incomplete and will be populated once further analysis is available.

<sup>16</sup> Specification 11, Section 4a-c .ooo Registry Agreement (<https://www.icann.org/sites/default/files/tlds/ooo/ooo-agmt-html-09jan14-en.htm>)

<sup>17</sup> Specification 11, Section 4c(iii) .ninja (<https://www.icann.org/sites/default/files/tlds/ninja/ninja-agmt-html-07nov13-en.htm>) and .pub (<https://www.icann.org/sites/default/files/tlds/pub/pub-agmt-html-12dec13-en.htm>)

<sup>18</sup> Id. at Specification 11 4c(v)

<sup>19</sup> These GAC Category 1 new gTLDs had the same section 4 voluntary PICs as the Donuts domain names discussed in section a of this paper: .surgery, .dentist, .creditcard, .attorney, .lawyer, .doctor

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- a. Same section 4 voluntary PICs as in Mind+Machines' registry agreements for the new gTLDs mentioned in the Top 30 analysis of section a of this paper<sup>20</sup>
- b. Specification 12 Community Registration Policies
  - i. National Association of Boards of Pharmacy

**CAUSES/RATIONALE:**

- The voluntary PICs were made in a short timeframe in response to GAC concerns. [See Lauren's Voluntary PICs Background Paper]

**Recommendations:**

Voluntary PICs that are mere reiterations of mandatory PICs should be labeled as such and referenced accordingly. Similarly, they should be specific about whether they are going beyond specific requirements.

The community should create a process and well defined standards for a new gTLD operator to change their voluntary PICs after they have been incorporated into their registry agreement. The ability to change and evolve is important. However, the status quo appears to permit unilateral changes, which could hypothetically change the safeguards of a new gTLD after registrants have relied upon them.

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<sup>20</sup> These GAC Category 1 new gTLDs had the same section 4 voluntary PICs as the Mind+Machines domain names discussed in section a of this paper: .dds, .abogado