starting dot

November 26, 2013

Ms. Christine Willett
Vice President, gTLD Operations
ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

Re: Donuts' tentative to circumvent the CPE rules

Dear Ms. Willett,

Following our letter from November 7, 2013, you will find here attached Starting Dot's official reply to Donuts' comments regarding Community Priority Evaluation for the .IMMO string.

Thank you for your review of our input, and for forwarding this document to the evaluation panel.

Sincerely,

Godefroy Jordan
Executive Chairman

cc: New gTLD Operations (newgtld@icann.org)
        Mr. Steven Crocker
        Mr. Fadi Chehadé
        Ms. Heather Dryden
        Mr. David Martinon
        Mr. Laurent Ferrali
        Mr. Lars-Erik Forsberg
        Ms. Camino Manjon
        Mr. Xavier Ortegat
        Mr. Steve Chan

FOREWORD

Starting Dot with the support of its sponsors submits this letter for the attention of the CPE Panel in reply to Donuts' letter regarding Community Priority Evaluation for the IMMO string (see Appendix 1). This document will reply to a number of inaccuracies, mistakes, out-of-context quotes made by Donuts without providing any substantial supporting evidence. This letter is part of the overall strategy by which Donuts aims to systematically challenge the claims and rights of communities (see letters sent by Donuts to ICANN regarding TAXI and TENNIS CPE, and ARCHITECT Community Objection).

In terms of procedure, it should be noted that:

- This letter was published on ICANN's website on October 29, 2012, even if dated October 23, 2013, i.e. outside the accepted scope of CPE Public Comment.
- This letter was sent to ICANN and published in the gTLD Correspondence section instead of the Public Comments, designated by ICANN as the exclusive forum for comment to the CPE Panel.

Accordingly, this letter should not be considered as a public comment on the Community Priority Evaluation for the IMMO community application, and should not be taken into account by the CPE Panel.

It is somewhat unexpected that a concurrent Applicant for IMMO is to allow the work of the CPE, to assess the merits of an application and assign grades in place of the Panel. This can only be explained because Donuts has the sole purpose of defending its own interests as the Applicant for an IMMO non community-based Application to the detriment of the legitimate interests of the real estate community.

The sole intention of Donuts by sending this letter is to influence the judgment of the Panel. Starting Dot respects the neutrality of the Panel and does not want to interfere in the proceedings. Nevertheless, Starting Dot has no choice but to respond to this letter to establish the truth.

DEFINITIONS

AGB means The Applicant Guidebook. This document provides a step-by-step procedure for new gTLD applicants. It specifies what documents and information are required for applications, the financial and legal commitments of operating a new gTLD, and what to expect during the application and evaluation period.

GNSO means Generic Names Support Organization, an ICANN constituency that fashions policies for generic Top-Level Domains.

IG means the Implementation Guidelines; set of Principles, proposed Policy Recommendations and Guidelines established by the Generic Names Support Organization (GNSO) used as a base for the new gTLDs program. The Implementation Guidelines are numbered [IG A] to [IG R].

THE IMMO COMMUNITY IS A CLEARLY DELINEATED COMMUNITY

ICANN'S DEFINITION OF THE "COMMUNITY"

[IG P c] defines "community" as follows: "*community should be interpreted broadly and will include, for example, an economic sector, a cultural community, or a linguistic community.*"

THERE IS A WELL-ESTABLISHED DEFINITION FOR THE REAL ESTATE COMMUNITY

According to Wikipedia, "*the business of real estate [is] the profession of buying, selling, or renting land, buildings or housing*".

Therefore, the real estate community is composed of organizations that meet this definition; it includes all professional organizations contributing to the creation of a shared economy based around real estate products and services: real estate agents and brokers, rental property management services, real estate publishers, service providers for real estate professionals, real estate mortgage services (loans, insurance), homebuilders, real estate developers, notaries.

Donuts, in their ignorance of the sector, says that notaries are not part of the community. However, notaries in some countries like France are involved to finalize the sale of real estate and may also sell property under certain conditions. This means that Donuts is totally unaware of how the market is organized and regulated.

IMMO IS THE SIGN UNDER WHICH OVER 200,000 PROFESSIONALS COMMUNICATE

The term 'immo' is the well-known short form for the words meaning "real estate" in at least four languages: German, French, Italian and Catalan.

In these four languages "immo" is the well-known short form of the word meaning "real estate":

- "immo", short form of "Immobilien" in German;
- "immo", short form of "immobilier" in French;
- "immo", short form of "immobiliare" in Italian;
- "immo", short form of "immoble" in Catalan.

The term IMMO is understood and used by an estimate of 240 million Internet users in 41 countries. Real estate brokers and property managers covered by this term are represented by different European organizations, present in Austria, France, Belgium, Germany, Italy, Luxemburg and Switzerland, all affiliated to the Conseil Européen des Professions Immobilières - CEPI (European Council of Real Estate Professions), based in Brussels and the top sponsor both to IMMO community-based applications and to the current objection (see Appendix 2).

The overall population within CEPI has been estimated to be in excess of 200,000 corporations, representing an estimated 600,000 real estate professionals in continental Europe.

IMMO is therefore the term representative of both an economic sector and also linguistic communities.

IMMO IS NOT USED BY ANY OTHER SECTOR OR INDIVIDUAL

The term IMMO is only related to the real estate profession. The term IMMO term notes has two other extremely rare usages:

- A German male first name in Friese, used by less than 1,000 people (Friesische Kurzformen von Namen, die mit „Irm-" beginnen.),;
- A German family name used by only one family (http://www.verwandt.de/karten/absolut/immo.html)

THE COMMUNITY IS WELL ORGANIZED with several representative bodies at international and national levels.

Created in 1990, the Conseil européen des Professions immobilières (CEPI - European Council of Real Estate Professions) is an international non-profit association with headquarters in Brussels, Belgium.

CEPI is the main association of real estate professionals and property managers in the European Union. It comprises the Confédération européenne des Administrateurs de biens (CEAB) and the European Property Agents Group (EPAG).

42 national associations in 25 EU and EFTA countries bring together more than 200,000 real estate professionals. As a unifying body and a European network, the CEPI mission is to support European and cross-border property transactions by developing the work and activities of real estate professionals with the interests of the consumer in mind.

At regional or national level, a number of real estate associations represent and defend the profession's interests.

At European level, the CEI (European Confederation of Real Estate Agents) now has well over 66,000 members from hundreds of cities in 14 European countries, and represents an overall total of 90,000 operators in real estate.

In Germany, Austria and Switzerland, there are five major associations: The Schweizerischer Verband des Immobilienwirtschaft (SVIT), The Bauträgerverband (BTV), Immobilienverband Deutschland (IVD), The Südtiroler Maklervereinigung, Immobilien -und Vermöegnstreuhänder – Wirtschaft Kammer Österreich (WKÖ).

In France, the FNAIM (French National Real Estate Association created in 1946) brings together 100,000 property professionals specializing in over 14 different professions in the property sale, management expertise and consultancy sector. The UNIS (Real Estate Trade Unions Association) was created in 2009 by the merger of the three principal French property managers associations and brings together 4,000 property managers and brokers in France.

In a number of European countries, the real estate sector is governed by specific regulations or laws (http://www.cepi.eu/index.php?page=transeuropa&hl=en). Some countries like France even have a dedicated Ministry to this economic sector. The French "Ministère du Logement" was created in 1947, and the German Bundesanstalt für Immobilienaufgaben in 2005.

It is therefore obvious that the "IMMO" Community is clearly delineated from a legal, economic and historical point of view and has no other meaning.

THERE IS A STRONG ASSOCIATION BETWEEN THE TLD IMMO AND THE COMMUNITY

IMMO is obviously the designating name of the real estate community in German, French, Italian and Catalan speaking countries. It is precisely the key descriptive abbreviation used and recognized by the public to designate and more generally evoke real estate products and services.

IMMO IS THE COMMON ABBREVIATION FOR REAL ESTATE IN 4 LANGUAGES

As previously stated, the term IMMO is the abbreviation of Immobilien, Immobilier, Immobiliare and Immoble. IMMO is used as a descriptive term in:

- The name of real estate companies. In France, according to Infogreffe (www.infogreffe.fr, official database of registered companies) more than 27,000 companies working in the real estate sector use the term IMMO in their name
- Trademarks: almost 2,000 French trademarks in class 36 include the term IMMO
- Domain names: according to DomainTools (domaintools.com), 2778 active domain names starting with "IMMO-" are registered in gTLDs, and almost 30,000 domains starting with IMMO and 75,000 including IMMO are registered in gTLDs.

IMMO is clearly the designating and descriptive name of the real estate community in the targeted countries

THERE IS SUBSTANTIAL SUPPORT FROM THE COMMUNITY

Donuts points out in its letter the lack of support from the community to the IMMO Application, lists 9 supporting associations and 35 non-supporting associations.

Firstly, the list of supporting associations is far from being complete, including the main partner of Starting Dot: CEPI which is the largest international and European association (http://immo.com/community/main-partner/).

Secondly, 6 of the 35 non-supporting associations listed by Donuts are effectively supporting Starting Dot's Application:

- Asociace realitnich káncelaři České republiky (Czech Republic)
- Asociación Empresarial de Gestión Inmobiliaria (Spain)
- Associazione Nazionale Amministratori Condominiali e Immobiliari (Italy)
- Chambre Immobilière du Grand-‐Duché de Luxembourg (Luxemborg)
- Conseil Européen des Professions Immobilières (European Union)
- European Real Estate Council/Conseil Européen des Professions Immobiliéres

Thirdly, 17 associations of the 35 non-supporting associations are members of CEPI, Starting Dot's main partner:

- Association of Institutional Investors in the Netherlands (The Netherlands)
- CEAB (Assoc. Membre) Consejo General de Colegios de Administradores de
- Fincas (Spain)
- Círculo Imobiliário (Portugal)
- Nederlandse Vereniging van Makelaars in onroerende Goederen en

- Vastgoeddeskundigen (The Netherlands)
- Syndicat national des Professionnels immobiliers (France)
- The Society of Chartered Surveyors Ireland (Ireland)
- Dachverband Deutscher Immobilienverwalter e.V. (Germany)
- Dansk Ejendomsmaeglerforening (Denmark)
- Institut professionnel des Agents immobiliers (Belgium)
- Irish Property and Facility Management Association (Ireland)
- Fachverband der Immobilien und Vermögenstreuhänder (Austria)
- Kiinteistönvälitysalan Keskusliitto ry (Finland)
- Mäklarsamfundet (Sweden)
- Norges Eiendomsmeglerforbund (Norway)
- Norges TakseringsForbund – Norwegian Valuers and Surveyors Association
- (Norway)
- Polska Federacja Rynku Nieruchomości (Poland)
- Polska Federacja Stowarzyszen Zarządców Nieruchomości (Poland)
- Suomen Isännöintiliitto ry (Finland)

Fourthly, 6 associations of the 35 non-supporting associations are not part of the IMMO Community because located outside of German, French, Italian or Catalan speaking countries:

- Turkish Counsel of Shopping Centers (Turkey)
- Ejendomsforeningen Danmark (Denmark)
- Hungarian Real Estate Association (Hungary)
- GYODER, Turkish Association of Real Estate Companies (Turkey)
- Scandinavian International Property Association (Europe)
- CoreNet Global

Fifthly, 6 associations are non relevant or have no relationship with the IMMO Community:

- Confédération des Immobiliers de Belgique (Belgium): 28 members
- European Association of Investors in Non-listed Real Estate Vehicles (Europe): association of shareholders
- European Public Real Estate Association (Europe) and European Public Real Estate Association (global): affiliates of Insurance companies
- Ordre des Géomètres-Experts (France): related to the construction industry
- European Real Estate Society (Europe): UK researchers
- Fédération Internationales des Professions Immobilières: FIABCI, club of realtors, with less than 1,000 members targeted by the IMMO Application; all these members are also part of official associations supporting the Starting Dot IMMO Application.

In conclusion, all the associations cited by Donuts support Starting Dot's IMMO Application. Taking into account other associations not referred to by Donuts, the whole membership of the IMMO Community supportsStarting Dot's Application.

OPPOSITION TO THE COMMUNITY IS NOT RELEVANT OR NON-EXISTENT

The sole opposition mentioned by Donuts refers to Public Comments published on ICANN's website. One letter comes from a member of the German association IVD who supports Starting Dot's Application. IVD has around 6,000 members (http://ivd.net/der-bundesverband/der-ivd/der-ivd.html).

It cannot be seriously considered that one single opposition out of 6,000 members is relevant, and even less so when compared to the 200,000 members of the profession. Saying that "this opponent seems to speak for an entire segment" is disinformation, if it is not a falsehood.

REGISTRATION AND ENFORCEMENT POLICIES SUPPORT COMMUNITY GOALS

Registration policies are extremely detailed in the Application Q18(b)(iv). The list of eligible members is restricted to the members of the community. Eligibility criteria have been carefully designed to allow Community members to register domain names and at the same time be compliant with national laws and regulations. Due to the location of community members in several countries, different regulations may apply based on nationality or location of the members.

The eligibility criteria are designed to accommodate these specificities in order for members to register domain names should they comply with their national regulations.

Nevertheless, identification of members may be done by business ID membership (registration is allowed only to professionals), which will allow the eligibility of the registrant to be checked. Moreover, a European framework defines the different business sectors (http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Glossary:Statistical_classification_of_ economic_activities_in_the_European_Community_%28NACE%29/fr). This European framework is linked to a national identification system, which will allow a consistent check of registrants' eligibility.

Finally, Starting Dot has defined a set of measures to protect the interest of the Community. The Reserved Name Policy is published on http://immo.com/discover-immo/policy/ and includes a Reserved Name List (RNL):

The RNL will at least include the following domain names:

- CEPI and European National Real Estate Associations acronyms and trademarks, such as "ivd.immo" or "fnaim.immo";
- Territorial names from the 8 principal markets of the TLD, as those names stand for real estate market units and are used by internet users to search for properties and rentals. They cannot be registered as domain names by eligible registrants because these names are protected from being used as brands or business names. Territorial names are defined as:
    - all the territory names related to the first three levels of EC NUTS nomenclature, as defined in Regulation EC N° 1059/2003, i.e. "NUTS-1″, "NUTS-2″, "NUTS-3″;
    - all territory names related to level "LAU-1″ of EC NUTS nomenclature with a total population above 20,000 inhabitants as of January 1, 2011, based on Eurostat and national statistic administration data. The IMMO 8 principal markets are Austria, Belgium, France, Germany, Italy, Luxemburg, Switzerland and Catalonia (autonomous community of Spain).

Again, assertions from Donuts allegedly claiming that the criteria of eligibility are too vague are not documented and contradict the facts. Stating that "Starting Dot is gaming the CPE procedure […]" is not far from being defamatory and deceptive practice.

Similarly, enforcement policies criticized by Donuts are far from being non-existent. Enforcement policies include:

- Systematic validation of registrant eligibility within 3 months after registration;
- Domain name hold in case registrant eligibility is challenged;
- Single Point of Contact for Complaints related to registrant eligibility.

These policies are widely used by different restricted based Registries and have proven to be efficient. Furthermore, enforcement policies and enforcement actions will be put under the supervision of the Policy Advisory committee chaired by CEPI, the main international association and partner of Starting Dot.

Donuts criticizes the lack of information that is not required in the AGB (budget, staffing) and is concerned about the defense of the community IMMO TLD while it plans to launch an open IMMO TLD that ignores the legitimate interests of the Community.

CONCLUSION

It appears that Donuts' letter contains obvious errors, misleading statements and falsehoods. This argument has the sole purpose of defending the commercial interests of Donuts. To divert the answers to the CPE by citing extracts out of context reveals Donuts' bad faith and total ignorance of the real estate market in Europe.

Starting Dot has the support of associations representing 200,000 professionals in the real estate market and would deserve to operate the IMMO TLD on Community standards to the benefit of the Community itself.

APPENDIX 1

DONUTS' comments regarding Community Priority Evaluation
for the .IMMO string

October 23, 2013

Internet Corporation for Assigned Names and Numbers

Via e-mail: newgtld@icann.org

Dear ICANN:

Attached here is Donuts' comments regarding Community Priority Evaluation for the .IMMO string.

Thank you for your review of our input, and for forwarding this document to the evaluation panel.

Sincerely,

Donuts Inc.

Starting Dot Application for .IMMO: Comment to Community Priority Evaluation

INTRODUCTION

The Community Priority Evaluation ("CPE") is a serious undertaking. While it protects communities and their names, a "successful" CPE also disqualifies other applicants that otherwise have met the rigorous criteria to obtain a top-level domain:

> [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.

Applicant Guidebook ("Guidebook" or "AGB") § 4.2.3 at 4-9. Accordingly, ICANN created scoring to "identify qualified community-based applications," while preventing "false positives" -- *i.e.*, "awarding undue priority to an application that refers to a 'community' construed merely to get a sought-after generic word as a gTLD string." *Id.*

To obtain community priority, an application must score 14 out of 16 possible points. *Id.* at 4-10. "In cases of generic words submitted as community based strings, test runs by [ICANN] staff show that the threshold is difficult to attain .…" *See* http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf. The Starting Dot application for <.IMMO> does not meet the criteria to garner nearly the 14 points necessary to "win" the CPE and disqualify other applicants.

Starting Dot appears to attempt to manufacture a community around many disparate functions involved in some way with real estate, to which the term "IMMO" can refer. Rather than choose a unique string such as perhaps .CEI, denoting the European organization that supports the .IMMO community application, Starting Dot applies for the easier-to-find, more globally-used and generic term "IMMO." This understandable business decision, however, sacrifices the "nexus" and "uniqueness" factors necessary to qualify as a community TLD. The generic word "IMMO," moreover, does not clearly reference a single community with identifiable boundaries or measurable size or longevity.

One cannot reasonably say that a cohesive "IMMO" ("real estate") community exists. Yet, undertaking the CPE presents a low cost, high reward gamble for Starting Dot, since "prevailing" in CPE process would eliminate all competing non-community applications and avoid the contention set resolution process that Starting Dot otherwise would have to go through. As this analysis reveals, however, Starting Dot cannot reach the 14-point minimum required to secure community priority.

ANALYSIS

The Guidebook allows the CPE panel to award up to four points in each of four categories (maximum points in parentheses):

- "Community establishment," which involves "delineation" (2) and "extension" (2), AGB at 4-10 *et seq.*;

- "Nexus," meaning both "nexus" (3) and "uniqueness" (1), *id.* at 4-12 *et seq.*;

- "Registration policies," consisting of "eligibility" (1), "name selection" (1), "content and use" (1) and "enforcement" (1), *id.* at 4-14 *et seq.*; and

- "Community endorsement," which considers "support" (2) and "opposition" (2), *id.* at 4-18 *et seq.*

Applying the standards established by ICANN for these criteria, and giving Starting Dot the benefit of all doubts on each, its application cannot reach four points on any of them. A fairer reading finds the application well short on each, making a total of 8 its highest reasonably achievable score.

> **CRITERION 1: The Starting Dot application does not establish a "community" under either the "delineation" or "extension" tests, thus yielding well less than the maximum of four points.**

A "community" as described in the Guidebook "impl[ies] more cohesion that a mere commonality of interest." AGB at 4-11. As such, the Guidebook calls for examining the claimed community in terns of its "delineation" and "extension." These concepts focus on (a) recognition of the alleged community by its members, (b) existence of the named community prior to September 2007, the commencement of the new gTLD program, and (c) the community's "tenure" into the future. *Id.*

Starting Dot describes the "community" identified by the .IMMO string as "the real estate community... composed of different business segments." Applic. § 20(c). This imprecisely defined "community" has no clear boundaries or global or regional organization. Consequently, the application does not provide any specificity regarding size and longevity of any "community" known by an "IMMO" label.

Nor does the alleged community pre-exist the new gTLD program in any such form. It seems invented by Starting Dot to gain a preference over other applicants. Such shortcomings limit the application to no more than 2 of the 4 possible points under this "community establishment" criterion.

> **The application exhibits no clear "delineation" of any "community."**

The "delineation" test, AGB at 4-11, considers three factors:

- "Delineation" of the membership of a community – "a clear and straightforward membership definition scores high, while an unclear, dispersed or unbound definition scores low." Guidelines include the following (*id.* § 3.5.2):

- The level of public recognition of the group as a community at a local and/or global level; and

- The level of formal boundaries around the community and what persons or entities are considered to form the community.

- Whether the alleged community "pre-exists" the new gTLD program—i.e., existed as a community before 2007; and

- The level of "organization" of the community, meaning that at least one entity dedicates itself mainly to the community, with documented evidence of community activities.

An application that satisfactorily demonstrates *all three* relevant parameters (delineation, pre-existing and organized) can score a 2. *Id.* at 4-12. The Starting Dot application does not do so, and therefore cannot receive 2 "delineation" points.

The application does not convey the required sense of community, unity of purpose, or cohesion. Instead, it artificially combines many disparate businesses that serve the real estate business in some way:

> Real estate is made up of different business segments … real estate construction services such as property development and home building, refurbishments, etc.; Realtors (rental or sale); Property traders (purchase and sale); Property managers … Commercial and Residential Real Estate Agents and Brokers; Rental Property Management Services; Real Estate Publishers (Information Media, Classified Media, Management Software); Service Providers for Real Estate Professionals; Real Estate Mortgage services (Loan, Insurance); Homebuilders; Real Estate Developers; Notaries. [Applic. § 20(c).]

More specifically, the CPE Guidelines (ver 2.0) ask: "Is there at least one entity mainly dedicated to the community?" Starting Dot answers:

> *There is no international umbrella organization spanning the entire community. …* Some industry segments however are neither organized nor represented by national associations, notably: - Real estate mortgage brokers or issuers; - Real estate publishers (management software, information media). *Starting Dot* has therefore mainly *built* relationships with *segments* of the real estate community…" [Applic. § 20(b) (emphases added).]

The application thus admits that no one organization dedicates itself to the community as the applicant defines it. To the contrary, Starting Dot touts that it has stepped in to build relationships where it concedes none previously existed. Admittedly lacking organization and not pre-existing as a community, the asserted community cannot receive 2 points.

The "community" also lacks clear "delineation," which looks to the "level of *formal boundaries* around the community and what persons or entities are considered to form the community." AGB § 3.5.2. Here, the application states membership can come from within one of many disparate groups that have no formal collective organization.

Again, "community" implies "more cohesion" than a "mere commonality of interest." AGB at 4-11. The dictionary defines "cohesion" as "the act or state of cohering; tendency to unite, to 'stick together.'" The Starting Dot application does not assert or demonstrate such "cohesion" among the over 600,000 different businesses and professions that the application states have varying levels of involvement in real estate. While those engaged in such endeavors may have common interests, they do not "tend to stick together." Real estate-related professionals and organizations sometimes may participate in common activity based on certain shared interests, but otherwise largely compete with one another.

The Starting Dot application cannot receive two points for community delineation. Even if the evauation panel finds some loosely delineated IMMO community, it could not award more than a single point.

<center>**Applicant does not show the "extent" of the claimed "community."**</center>

To receive one or two points for "extension," an application must demonstrate a "community of considerable size and longevity." "Extension" relates to the dimensions of the community, regarding its number of members, geographical reach, and foreseeable activity lifetime, as further explained below. If an application satisfactorily demonstrates both community size and longevity, it scores two "extension" points.

On this subject, ICANN requests the following:

- o When was the community established, including the date(s) of formal organization, if any, as well as a description of community activities to date?

- o The current estimated size of the community, both as to membership and geographic extent.

Applic. § 20(a). Starting Dot answers that "IMMO" describes "an industry that has defined itself for many decades. Real estate related activities and transactions first appeared in Europe during the 12th century." *Id.*

To reiterate, the Starting Dot application makes clear that many organizations support *segments* of the real estate industry, but admits that no organization exists to represent or serve the *entire* averred community. Starting Dot instead announces its intent to form a *new* community where "no international umbrella organization" had previously existed "spanning the entire community." *Id*. § 20(b).

The Guidebook clearly requires an identifiable formation date. Starting Dot answers that a real estate "community" has existed since land transactions in the 12th century,

and that Starting Dot itself, which has existed only two years, will unite the disparate interests within that "community." This does not suffice. If a community exists, it must, by Guidebook standards, have a specific beginning. The applicant cannot identify it because it cannot meaningfully describe its postulated community. Real estate involves disparate skills, interests, participants and business models – not a single community with clearly discernible age and size boundaries.

A new organization such as Starting Dot cannot satisfy the Guidebook criteria. It appears relatively unknown to the rest of the world, and even to its own claimed community. The application itself reveals Starting Dot's inability to specify the size and age of its "community." It certainly does not do so with the precision required for an award of two points.

If the CPE panel sees any points at all available, it cannot award more than one. Combined with its reduced (if any) "delineation" points, Starting Dot can receive a total of no more than two of the four available "community establishment" points.

> **CRITERION 2: The Starting Dot application does not establish a sufficient "nexus" to any "community" described by the word "IMMO," and the word certainly does not "uniquely" describe any such community.**

Criterion 2 requires a "nexus" between the asserted community and the applied-for string. AGB at 4-12. The test consists of a "nexus" factor of up to three points, and a "uniqueness" score of zero to one.

The application does not show that the claimed community, if it exists, goes by the specific name "IMMO" in the same sense that, for example, the "Navajo" and "Boy Scout" communities go by those precise names. The "IMMO" label has many uses made by diverse groups such that it cannot attach uniquely to an identifiable community desigmated by that term. As such, the application can achieve no more than two of a possible four "nexus" points.

> **The .IMMO string does not "match"or even "identify" a "community."**

The Guidebook scores "nexus" as follows:
- For a score of 3: The string matches the name of the community or is a well-known short-form or abbreviation of the community name;

- For a score of 2: String identifies the community, but does not qualify for a score of 3; and

- For a score of 0: String nexus does not fulfill the requirements for a score of 2.

AGB § 4.2.3. 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." *Id.* at 4-13. "If the string appears *excessively broad* (such as, for example,

a globally well-known but local tennis club applying for ".TENNIS") then it would **not** qualify for a 2." *Id.* (emphases added).

When asked to explain the relationship between the applied-for gTLD string and the community identified in the application, Starting Dot answers that the string derives from the Latin root "immobilis," meaning that "which cannot be moved or removed." It goes on to describe common usage of the term "immo" as a short form for the term "immobilier," or real estate. Applic. § 20(d).

To qualify for a 3, the applied-for <.IMMO> string must specifically name a community. One can belong to the boy-scouts-of-america or to the uk-philately-society, but not an "IMMO" or even a "real estate" community because it does not exist. The Guidebook holds out the score of 3 to those special cases only where a group decides to apply for for a string that states its name exactly.

A "2" means the applied-for string closely describes the community or its members "without over-reaching substantially beyond the community." AGB at 4-13. The Guidebook's example of a globally known but local tennis club not qualifying for a "2" as to the generic TLD <.TENNIS> applies to the <.IMMO> string that Starting Dot submits for CPE. Its application boasts a commonly accepted name, but also claims that, over time, "the .IMMO gTLD will gain general acceptance among real estate professionals." A name projected to gain acceptance over time cannot identify a well known and already existing community.

Based on the foregoing, the Starting Dot application *should* receive a score of zero for nexus, but *cannot* under *any* circumstances garner *more* than two points.

"IMMO" does not "uniquely" identify the claimed "community."

An applicant can earn a uniqueness score of 1 if the applied-for string has no other significant meaning beyond identifying the community described in the application; a score of zero does not fulfill this requirement. AGB § 4.2.3.

> To be an unambiguous identifier, the "ideal" string would have no other associations than to the community in question. This arguably can be achieved by using the community institution abbreviation as string, but there are other possibilities—for example, by putting a prefix or suffix on a generic string to make it distinctly and uniquely associated with the relevant community (again for example, prefixing "boy" to "scouts" for the community of boy scout organizations, or suffixing "growers" to "apple" for the associations of apple growers).

See http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf, p.103. This puts the necessary balancing in the hands of applicants. Does an applicant select a popular, well-recognized term that does not uniquely identify

a community, such as <.SCOUTS> or <.SCOUTING>? Or does the applicant select its own unique name, such as <.BOYSCOUTSOFAMERICA>?

"'Uniqueness' relates to the meaning of the string." *See* http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv3-15feb10-en.pdf, p.65. Here, by touting the common use of "IMMO," Starting Dot also exposes it as an ambiguous identifier. Applicant points out that the term serves as "a well-known short-form of words meaning real estate in several languages;" that "major property developers have included 'IMMO' ... , in their brand or domain name," and that consumers likewise recognize "IMMO" as a short-form meaning real estate. Applic. §20(d).   According to applicant, "'IMMO" is "commonly used in the real estate industry as part of a real estate professional's brand or trade name." *Id.*

In addition, the Guidebook states that the phrase "beyond identifying the community" implies a that the string must identify a community – *i.e.*, score 2 or 3 for "nexus" – in order to score 1 for "uniqueness." AGB at 4-14. Because it fails to show "nexus," Starting Dot cannot score a point for uniqueness.

Evidence of common use of the term "IMMO" may make the term an excellent choice for a top-level domain. However, its ubiquity betrays the applicant's claim to a label uniquely matched to its community. Starting Dot had to choose between a well-known, broadly used term and a string unique to a specific segment of a broad industry, and chose the latter. While this may have been a wise business decision, it sacrificed Starting Dot's ability to achieve points in nexus and uniqueness necessary to carry the day as a community applicant. Of the four total points available for "nexus," Starting Dot can earn no more than two.

> **CRITERION 3: The Starting Dot application can receive few, if any, points for registration policies: it imposes vague restrictions on eligibility, and none on content and use; its enforcement plan lacks rigor; and it employs essentially no name selection restrictions.**

"Registration policies" represent the conditions that the registry will set for prospective registrants – *i.e.*, those desiring to register second-level domains. A community application will recceive one point for each of the four following polcies:

- Eligibility restricted to community members (a largely unrestricted approach to eligibility receiving zero points);

- Name selection rules consistent with the articulated community based purpose of the applied for gTLD;

- Rules for content and use consistent with the articulated community based purpose of the applied for gTLD; and

- Specific enforcement mechanisms.

Guidebook § 4.2.3. The panel should score applications from a holistic perspective, applying these categories to the particularities of the community explicitly addressed. The restrictions and corresponding enforcement mechanisms proposed by the applicant should show an alignment with the community-based purpose of the TLD and demonstrate continuing accountability to the community named in the application. *Id.*

Due to its sweeping definition of an "IMMO" community, Starting Dot's broad eligibility requirements do not meet the specific Guidebook criteria. It does not prescribe name selection rules beyond those associated with premium names. It describes essentially no content and use restrictions in the application. And, Starting Dot says it will employ post-delegation sampling techniques to detect non-compliance and undertake enforcement actions, but provides no further detail. These shortcomings could eliminate all four "registration" points, but even liberal interpretation could yield no higher than three, and more likely two or less.

Starting Dot does not establish eligibility criteria consistent with its community application.

An applicant must undertake a strict registration policy to score an eligibility point. In a policy advisory, ICANN noted:

> Registration policy is a criterion where a balance is needed between what is reasonably the most appropriate registration policy for a community and the risk for gaming of the process by an "open" application declaring itself as "community-based" to get an advantage in a contention situation. The approach taken is conservative in this respect, with the high score reserved for a registration policy only permitting members of the community to register.

http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf, p.103.

Starting Dot does describe candidate eligibility restrictions, but in a wide "funnel." In its application, Starting Dot indicates that it can verify registrants as participants in the real estate industry. Applic. § 20. The application lists community "members" such real estate construction services, realtors, property traders and managers, commercial and residential real estate agents and brokers, etc. *Id.* This over-broad classification does not limit registration by any objectively verifiable standards.[1] It makes the creation and

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[1] The list includes a number of subcategories that could extend the reach of the TLD even further. For example, the application seems to allow "notaries" to register a .IMMO domain if "entitled to practice in the field of real estate under their national law." *See* Applic. § 20(e). Yet, Starting Dot also points out that "[r]eal estate practice is not subject to one single law but to different national laws and in some countries to none." *Id*. § 18(b). Will notaries practicing in countries without formal regulation simply be "given a pass" because there is no specific limitation on their activities? As another example, banks and insurance companies would

monitoring of eligibility requirements difficult or ineffective. While not tantamount to "open" application eligibility, the vagueness of the criteria makes it seem as if Starting Dot is "gaming" the CPE procedure in a way discouraged by the ICANN comment above. Its largely unrestricted approach to eligibility should receive zero points.

Starting Dot does not establish name selection restrictions consistent with its community application.

Name selection restrictions protect the identified community if their rules align with the articulated community-based purpose of the applied for gTLD. In this case:

> Starting Dot will comply with the restrictions on registration of character strings set forth at Specification 5 of the Registry Operator Agreement. Starting Dot also intends to define and control a list of domain names that have a value for the entire real estate community, in order to delegate them to registrants that commit to use these in order to support the community for which the .IMMO gTLD is initially intended. [Applic. §20(e).]

It goes on:

> Each name applied for will have to be a name to which there is a right that has been established through rights registration or use thereof. Such rights can consist of, but are not necessarily limited to, registered or unregistered trademarks, trade names, company names, business identifiers, etc. *Id.*

Additionally, "the list of prohibited names under the .IMMO gTLD includes" abusive, racist, obscene and criminal terms. *Id.*

Most of the foregoing describes minimal ICANN requirements. The applicant has added that each name must be one to which the registrant has a legitimate right, but this could be almost any name. The only names to which a registrant does not have a right are those already owned by others. While the names might relate to the broad category of real estate, they might also involve other subjects. Absent some ongoing type of name restrictions, the application cannot receive a point for name selection.

Starting Dot does not describe any content and use policy consistent with its community application.

The Starting Dot application does not meet the "content and use" criteria and does not merit a point for this area. The Guidebook provides for the community gTLD operator to restrict content provided, and the use of any second-level domain name, in the registry. [CITE to AGB] In other words, the application needs to impose content and use

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seem to be permitted so long as they "offer," even if they do not specialize in, loans or insurance for "housing."

restrictions that correlate to serving and protecting the global real estate "community" in order to score a point on this element.

By contrast, the applicant states:

> Use of a domain name that is barred or prohibited by law or legal proceeding in any jurisdiction, or is considered to be defamatory will permit Starting Dot to revoke the domain name. Policies to this end will be developed by the registry and published in due time following ICANN's delegation of the .IMMO gTLD to Starting Dot.

Applic. § 20. This indicates that the applicant has not determined restrictions on use and content specific to the community it purports to represent. Its "restrictions" do not restrict at all; they merely state that using a name expressing some involvement with real estate represents evidence of eligibility. While this may go to the "name selection" factor, it does not at all constitute content or use limitation. Such restrictions would set out policies for how registrants must operate their domains.

The lack or weakness of content and use restrictions does not derogate from the value of a .IMMO string. The applicant proposes a legitimate and useful way to operate a TLD targeting the real estate professionals and their supporting organizations. However, such a TLD, with its openness to all, cannot also legitimately adopt the community label within the meaning of the Guidebook. Having made that choice, Starting Dot cannot earn a point for content and use restrictions.

Starting Dot's enforcement procedures fall short.

Award of a point on enforcement requires specificity: investigation practices, penalties, and takedown procedures. As described above, the subject application is scant on registration policies and restrictions, including those on enforcement procedures:

> In principle, each new .IMMO domain name registrant will be verified within 3 month following registration. Starting Dot will verify whether a registrant meets the eligibility requirements and/or domain name restrictions on the basis of public information, such as the information displayed on the registrant's website, as well as other sources (Internet, public registries). When in doubt, the Registry Operator will put the domain name on hold, and contact the registrant and the registrar with the request to provide proof that the registrant is meeting such requirements within a reasonable timeframe (e.g. copy of professional card). Furthermore, Starting Dot's Complaints Point of Contact will handle any complaints in relation to a .IMMO domain name registration, including where the complainant alleges that a particular registrant does not meet the eligibility requirements or domain name restrictions.

While the application provides some basic direction, the enforcement plan lacks the specifics that the Guidebook requires to ensure that the community applicant takes protection of the community label seriously and adequately plans for enforcement of the registry restrictions. The current plan lacks policies, procedures, budget, staffing, resources and other indicia of a meaningful enforcement plan or compliance regime. While Starting Dot signals a willingness to enforce restrictions, the planning thus far does not rise to the level that a point should be awarded. According to the application, registrants will self-certify that they meet registrations requirements and the applicant will "in principle" work to verify those credentials after three months of operation.

A few sentences in the application do not satisfy the need for procedures regarding detection, penalties and appeal. Given the practically non-existent restrictions in the planned TLD, its vague enforcement mechanisms render protections ineffective.

While each of the four "registration policy" elements falls short and merits zero points, even a liberal reading of the criteria collectively yields less than the four possible points. The applicant laudably seeks to serve all those who define themselves as associated with real estate industry. To accomplish that goal, it has foregone the ability to enact strict eligibility, content and use, name selection and enforcement policies.

> ### CRITERION 4: The Starting Dot application does not have support from a majority of the newly formed "community," nor does it show how even that limited support was developed.

The "support" criterion actually looks at both support and opposition in awarding up to four points to an application. For "support," the applicant must demonstrate that:

- It is, or has documented support from, the recognized community institution(s)/member organization(s) or has otherwise documented authority to represent the community. It must have documented support from institutions/organizations representing a *majority* of the overall community in order to score 2.

- Documented support from at least one group with relevance may allow a score of 1, but does not suffice for a score of 2.

For consideration as relevant support, documentation *must contain a description of the process and rationale used in arriving at the expression of support*. Support is not based merely on the number of comments or expressions of support received. AGB § 4.2.3.

On the opposition side, an application will earn two points where it lacks any opposition of relevance, and one where it has "relevant" opposition from "one group of non-negligible size." It will be awarded no points in the case of "relevant opposition from two or more groups of non-negligible size." *Id.*

Starting Dot has assembled support letters from several organizations, but they do not represent the majority of the "community" that Starting Dot attempts to create.

Neither do the nearly identical form letters demonstrate the process by which Starting Dot developed that support. These factors prevent a score of two, allowing one at most.

The applicant provides letters of support from:

- C.E.I. (European Union)
- F.N.A.I.M. (France)
- U.N.I.S (France)
- S.V.I.T. (Switzerland)
- U.S.P.I. (Switzerland)
- F.F.2.I. (France)
- B.T.V. (Austria)
- I.V.D. (Germany)
- Südtiroler Maklervereinigung (Italy)

However, a cursory search reveals many other such associations:

- Asociace realitnich káncelaři České republiky (Czech Republic)
- Asociación Empresarial de Gestión Inmobiliaria (Spain)
- Association of Institutional Investors in the Netherlands (The Netherlands)
- Associazione Nazionale Amministratori Condominiali e Immobiliari (Italy)
- CEAB (Assoc. Membre) Consejo General de Colegios de Administradores de Fincas (Spain)
- Chambre Immobilière du Grand-Duché de Luxembourg (Luxemborg)
- Círculo Imobiliário (Portugal)
- Confédération des Immobiliers de Belgique (Belgium)
- Conseil Européen des Professions Immobilières (European Union)
- CoreNet Global (Europe)
- Dachverband Deutscher Immobilienverwalter e.V. (Germany)
- Dansk Ejendomsmaeglerforening (Denmark)
- Ejendomsforeningen Danmark (Denmark)
- European Association of Investors in Non-listed Real Estate Vehicles (Europe)
- European Public Real Estate Association (Europe)
- European Public Real Estate Association (global)
- European Real Estate Council/Conseil Européen des Professions Immobiliéres
- European Real Estate Society (Europe)
- Fachverband der Immobilien- und Vermögenstreuhänder (Austria)
- Fédération International des Géomètres (Europe)
- Fédération Internationales des Professions Immobilières (global)
- GYODER, Turkish Association of Real Estate Companies (Turkey)
- Hungarian Real Estate Association (Hungary)
- Institut professionnel des Agents immobiliers (Belgium)

- Irish Property and Facility Management Association (Ireland)
- Kiinteistönvälitysalan Keskusliitto ry (Finland)
- Mäklarsamfundet (Sweden)
- Nederlandse Vereniging van Makelaars in onroerende Goederen en Vastgoeddeskundigen (The Netherlands)
- Norges Eiendomsmeglerforbund (Norway)
- Norges TakseringsForbund – Norwegian Valuers and Surveyors Association (Norway)
- Ordre des Géomètres-Experts (France)
- Polish Real Estate Federation (Poland)
- Polska Federacja Rynku Nieruchomości (Poland)
- Polska Federacja Stowarzyszen Zarządców Nieruchomości (Poland)
- Real Estate Council of the Netherlands (The Netherlands)
- Scandinavian International Property Association (Europe)
- Suomen Isännöintiliitto ry (Finland)
- Syndicat national des Professionnels immobiliers (France)
- The Society of Chartered Surveyors Ireland (Ireland)
- Turkish Counsel of Shopping Centers (Turkey)

Based on these lists, it does not appear that Starting Dot has secured backing from the majority of the real estate "community" as defined in the application. Starting Dot does not demonstrate that its support comes from a majority of the alleged community. Its own application suggests otherwise, as the letters it offers show no concurrence from important segments of the "community" that Starting Dot has self-defined, such as development companies, surveyors, notary publics and publishers of real estate media.

Just as importantly, the letters lack the requisite *description of the process and rationale used in arriving at the expression of support*. Each of the letters states, "[this organization], is glad to confirm its support to your initiative to develop a new generic top level domain." None includes any description of the process for arriving at that conclusion (as required for a score of even one point). Further, these letters seem to match each other in content, suggesting a form drafted by Starting Dot as to which the signing organizations have given little if any independent thought showing them arriving at a consistent position on their own. The "cookie-cutter" nature of the letters, unsubstantiated and lacking the requisite foundation describing process, belies a claim of true "support," such that the panel may not consider them "relevant" under the AGB.

Again, this does not diminish the effort and preparation exhibited by Starting Dot's application and supplementary materials. One would expect to find it exceedingly difficult to gain the requisite support required from such a large, unbounded "community" that Starting Dot attempts to create. This is why ICANN has set the CPE criteria so high—to prevent the creation of artificial communities in order to gain an advantage in the new gTLD process.

One letter opposes the application. Generally, one letter will not suffice to delete a point. However, this opponent seems to speak for an entire segment of this newly created real estate industry combination, and also provides independent feedback regarding the vagueness of the proposed community definition:

> We are convinced that .IMMO by StartingDot refers to a "community" construed merely to get a sought-after generic word as a gTLD string. As a member of this community we are not properly represented by this application and ask ICANN not to award a community status to .IMMO by Starting Dot.
>
> Additionally we would like to state that some of the proposed community members, such as notaries, banks and insurances are definitely not members of the real estate ([i.e.,] IMMO) community. It is utterly ridiculous to construct such a relationship.

The application should lose three of four points in this area. The application lacks support from a majority of "community" members, and the form letters that Starting Dot has gathered do not describe how the various organization came to support the application (if indeed they did). The opposition from one putative "community member" itself points out that Starting Dot has over-reached in its attempt to create such a broad diverse organization and call it a "community."

As outlined above, since Starting Dot should garner no more than a single point for this factor it must therefore also fail the CPE test as a whole, even if the severe shortcomings in other factors such as delineation or nexus are not considered. Starting Dot simply cannot obtain the 14 out of 16 points necessary to pass when it scores either a 0 or only 1 point for any single factor.   AGB at 4-10.

APPENDIX 2

CEPI LETTER OF SUPPORT TO .IMMO

CEPI

**Conseil européen
des Professions
immobilières** aisbl

European Council
of Real Estate
Professions

To Mr Godefroy Jordan,
President
Starting Dot s.a.s.
3 bis bd de la Saussaye
F-92200 Neuilly-sur-Seine
France

Ref : L370113/ClS

20 September 2013

Dear Mr. Jordan,

Subject: Support to STARTING DOT application to ICANN

Created in 1990, the Conseil Européen des Professions Immobilières (CEPI - European Council of Real Estate Professions) is an international non-profit association with headquarters in Brussels, Belgium. CEPI is the main association of real estate (RE) professionals including property agents and property managers in the European Union. It comprises the European Property Agents Group (EPAG) and the Confédération Européenne des Administrateurs de Biens (CEAB).

25 national associations in 17 EU and EFTA countries bring together more than 200,000 real estate professionals. As a unifying body and a European network, CEPI mission is to support European and cross-border property transactions and management at the European and cross-border level, by developing the work and activities of RE professionals with the interests of the consumer in mind.

CEPI officially supports Starting Dot's community application for the .IMMO gTLD and signed an agreement with Starting Dot to collaborate to the development of the .IMMO new top-level domain and participate to the Immo Advisory Policy Committee.

The .IMMO new gTLD will heavily contribute to CEPI and the European Commission's common objective to develop a single real estate market, which requires a uniform label of recognition for both property buyers and professionals, such as the .IMMO gTLD

The .IMMO application by Starting Dot is the only one complying with the rules regulating our professional community. We believe that Starting Dot has thoughtfully considered the various matters related to running the .IMMO domain and that Starting Dot will represent the interests of the community that will use and benefit from this space.

Thanks to the focus and commitment of Starting Dot to limit .IMMO to verifiable and legitimate companies, groups and organizations within the real estate community, consumers and trade participants will know that they are dealing with regulated and professional entities who have earned a place in the .IMMO community.

Our associations and its member national real estate association, believe that the community-based and multi-stakeholder approach promoted by Starting Dot is the most efficient way to manage the .IMMO top-level domain for the benefits of the real-estate community.

Starting Dot is clearly the preferred, and the only acceptable, applicant by the real estate professional community for the .IMMO new TLD.

I want to personally wish you the best of luck in the current process of application

Best regards,

Claudine Speltz
President