

**Date:** 19 September 2019

**To:** Jeff Neuman, Cheryl Langdon-Orr and the members of the Subsequent Procedures PDP Working Group (SubPro WG)

**Fr:** The At-Large Advisory Committee (ALAC)

**Re:** ALAC comments regarding “high standard” for applicants for any new round

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In a query delivered to Justine Chew, our At-Large liaison for Subsequent Procedures during the Subsequent Procedures Working Group call of 19 August 2019, the ALAC were asked to elaborate on the plea to maintain a high standard for potential applicants in a potential new round. This plea was expressed in the ALAC Statement dated 3 October 2018 in response to the Public Comment call for the Initial Report on the New gTLD Subsequent Procedures PDP of July 2018.

At the time of submission, the ALAC were deeply concerned about the high rates of abusive domain name registrations at the second level which was conceivably thought to continue to increase should TLDs be delegated to questionable applicants that care little about the credibility of their TLD downstream registrants or in reigning in abusive domain name registrations. While this concern remains high within the ALAC’s areas of interest, it was the opinion of the ALAC at that time that several controversies were well documented and not worth retreading in a written document, so our statement was kept general (if perhaps hyperbolic) and forward looking.

That said, if specific examples would aid the process of preventing such appearances of impropriety in the future, we offer a few examples below. It is not our intention to relitigate these circumstances but instead to remind the SubPro WG of certain noted controversies that arose during, or related to, the 2012 round.

### **Stronger Due Diligence in Background Screening of Applicants**

#### **1. Demand Media and DONUTS**

Sections 1.2.1 and 2.1.2 of the 2012 Applicant Guidebook (AGB) clearly provided that in the evaluation of applicants, any entity with or including any individual that/who has been involved in 3 or more adverse UDRP decisions in the last 4 years (i.e. constituting a pattern of cybersquatting behaviour) would be disqualified from applying in the 2012 round. Demand Media group of companies comprising Demand Media Inc, its eNom and Demand Domains subsidiaries) had significant records of adverse UDRP decisions and lingering accusations of impropriety, even criminal activities, but were still able to apply by simply reconstituting new companies with which to apply. Paul Stahura and Richard Tindal, founders of DONUTS were both a part of Demand Media when several adverse UDRP decisions were handed down. The importance and paramount need for completeness and veracity in information to be included in applications as intended section 1.2.1 of the AGB must not be taken lightly. The case against DONUTS was most comprehensively outlined here: <http://domainincite.com/docs/Ltr-re-gTLD-Applications-2012-07-28-c.pdf>.

## **Strengthen Review Criteria for Questionable Applicants**

### **2. Rob Hall, Momentus, Vox Populi and .SUCKS**

All of this activity could well be a lengthy memo unto itself with Rob Hall having to pay nearly \$1mil in back fees before being able to apply for new gTLDs and what appeared to be a “leverage” based business model for .SUCKS. Rob Hall was at the head of a company with a proven track record of non-payment but was able to be an applicant for new TLDs by simply writing a big check to ICANN. See: <http://domainincite.com/18282-that-mystery-1-million-sucks-fee-explained-and-its-probably-not-what-you-thought>

Apparently, millions were made during the sunrise period for .SUCKs, in the form of defensive registrations by brand owners. The business model of .SUCKS was to use the Trademark Clearinghouse repository to form their “premium” domain list (thereby calling into question the value of the list) and then engaging in discriminatory pricing to extract as much as possible from brand owners. See: <http://domainincite.com/18246-halt-perverted-sucks-shakedown-now-demands-ipc>, with a letter from the IPC helping to explain some of the concerns: [IPC Letter](#)

This exemplifies a need to hold applicants with bad records to a higher standard of evaluation not only in financial terms but also whether use of their applied-for string serves a public benefit.

## **Avoiding Appearance of Potential Conflict of Interest Situations and/or Ability to Influence ICANN Org Decisions**

### **3. Peter Dengate Thrush**

Shortly after a fairly insistent push to launch the 2012 round, ostensibly for his legacy as Chairman of the ICANN Board, Peter Dengate Thrush was appointed Executive Chair of Top Level Domain Holdings Limited (TLDH), a firm focused on the acquisition of new gTLDs. Even their own press release drew a bright line between the two when Antony Van Couvering, CEO of TLDH, said: *Peter championed successfully the approval of the new gTLD programme at the highest levels and with Peter on board I have every confidence we will achieve the same success at TLDH.* Given the misgivings of many in the community (including the ALAC) about ICANN’s readiness for a new round, the timing of this announcement was unfortunate.

See:

[http://www.circleid.com/posts/20110717\\_minds\\_machines\\_parent\\_company\\_tldh\\_appoints\\_peter\\_dengate\\_thrush/](http://www.circleid.com/posts/20110717_minds_machines_parent_company_tldh_appoints_peter_dengate_thrush/)

### **4. Akram Attallah and Fadi Chehade**

In 2018 Akram Attallah was tapped to head DONUTS, after having been the chief administrator of the new gTLD program inside ICANN. This isn’t an “applicant” reference *per se* but still cast some shadow over the new gTLD program. It is no small irony that DONUTS was eventually acquired by Abry Partners where Fadi Chehade is now a partner.

Hopefully, these examples serve, not so much as recriminations, but of activity and business models that might well be frowned upon in subsequent procedures or any potential new round.