

Reference Material 31.

Expert Witness Statement

Kurt Pritz

WITNESS STATEMENT OF KURT PRITZ

1. My name is Kurt Pritz. I am Executive Director of the Domain Name Association (“DNA”), a non profit global business association that represents the interests of the domain name industry. I make this witness statement in support of the request for Independent Review Process (“IRP”) submitted by Donuts Inc. (“Donuts”) pertaining to its New Generic Top Level Domain Name (“gTLD”) applications for .SPORTS, .SKI and .RUGBY.

Background and Qualifications

2. I am a citizen of the United States and reside in Thousand Oaks, California. I hold a Bachelor of Science in Physics from Rensselaer Polytechnic Institute, a Master of Science degree in Physics from Virginia Tech and an MBA from the University of Michigan. I am also a licensed attorney admitted to the California Bar.

3. I have extensive experience in the domain name industry. Currently with the A, I direct all activities designed to serve the interests of our domain industry members, comprised of country code and generic domain name registry operators and domain name registrars. I lead membership recruitment, and oversee the activities of our Technical, Marketing and Policy Committees, which all seek to improve the operation of the Domain name System and provide new choices for Internet users globally. More information about the organization appears at <http://www.thedna.org/>.

4. Prior to joining the DNA, I served as Chief Strategy Officer and Senior Vice President of Stakeholder Relations for ICANN for nearly ten years, where one of my primary responsibilities was to lead the introduction of the New gTLD Program, preparing and presenting many policy and implementation position papers to the ICANN Community and Board. I attach my current *curriculum vitae* for more information regarding my experience and expertise.

The New gTLD Program

5. As part of my work on the New gTLD Program, I engaged technology, business and policy leaders throughout the world on the safe, secure launch of the expansion of the namespace, and often served as the program's primary spokesperson. By way of example, in 2011 I served as a key witness during hearings conducted by the U.S. Senate and the U.S. House of Representatives' Energy and Commerce Subcommittee on Communications and Technology on New gTLDs.

6. Approximately 2000 new gTLD applications were received during the initial round. Applicants came in many varieties. Some are well known brands such as Amazon, Samsung and Volkswagen. Others report to represent geographic areas – *e.g.*, “.NYC” for New York City. Some applied for one or a small number of TLDs, and some for a large number as a “portfolio.” Donuts’ portfolio focuses on generic TLDs.

The Applicant Guidebook

7. I led, with others, the creation of an “Applicant Guidebook” (“AGB” “Guidebook”) in order to memorialize the basic policies and procedures that would govern the process of submitting New gTLD applications and transitioning them to delegation. The Guidebook was drafted iteratively, there were nine versions, each amended as a result of discussion among a wide variety of stakeholder groups— governments, individuals, civil society, business and intellectual property constituencies, and the technologists. Some of the comments and questions concerned protection of intellectual property rights and community interests; the demand, benefits and risks of new TLDs; the selection criteria that should be applied; and the contractual conditions that should be required for new gTLD registries going forward. The ICANN Board approved final Guidebook was issued on June 4, 2012.

8. All applicants are required to demonstrate the technical and financial wherewithal to operate a domain name registry. Applicants must pass a stringent, live, operational test prior to delegation.

9. All New gTLD registries are required to offer a set of a number of trademark and community protection mechanisms not found in legacy registry operators. These are minimum requirements for security, IP protection and addressing abuse in the New gTLD space.

The Objection Process

10. One component of the AGB (*i.e.*, “Module 3”) describes the various “objection” processes whereby those who meet specific criteria for “standing” can voice concerns with respect to a particular domain extension (the characters to the right of the dot). The GB enumerates four types of objections, with only those brought on “community” grounds relevant here.

11. The objections are handled as a “dispute resolution” process, with the objector bearing the burden of proof. Each type of objection has its own “dispute resolution service provider” (“DRSP”), with community handled by the International Chamber of Commerce (“ICC”).

Community Objections

12. Community objections require a party with standing to prove all four elements of (i) a clearly delineated community, (ii) substantial opposition from the “community” explicitly or implicitly “targeted” by the string, (iii) a strong association between the alleged community and the string, and (iv) likelihood of material detriment to the rights or legitimate interests of the proffered community. To prove “material detriment,” a would be community objector must show that something tangible (and bad) will happen in the “real world.” Section 3.5.4 of the Guidebook lays out specific factors for panels to consider in order to find a “likelihood” of material detriment:

- The nature and extent of damage to the reputation of the community represented by the objector that would result from the applicant’s operation of the applied for gTLD string;

- Evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely;
- Interference with the core activities of the community that would result from the applicant's operation of the applied for gTLD string;
- Dependence of the community represented by the objector on the DNS for its core activities;
- Nature and extent of concrete or economic damage to the community represented by the objector that would result from the applicant's operation of the applied for gTLD string; and
- Level of certainty that alleged detrimental outcomes would occur.

13. Importantly, the Guidebook at page 3 24 also specifies one thing that should *not* be considered "material:"

An allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment.

Inconsistency in Community Objection Results

14. There is no doubt that the New gTLD Program objection results are inconsistent, and not predictable. That fact is most easily demonstrated in the "string confusion," objections where challenges to exactly the same strings yielded different results. It is also appears throughout the category of community objections. One can read the decisions and see where, on essentially the same fact set, one panelist deems a "community" to exist or finds material detriment, and another panelist concludes the opposite. While some variance is to be expected, these frequent and material inconsistencies lead to unpredictable results.

15. Lack of consistency in results violates ICANN's adopted New gTLD Policy. First and foremost, the Policy states that, "new generic top level domains (gTLDs) must be introduced in an orderly, timely and predictable way... All applicants for a new gTLD

registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.”¹

16. Violations of this Policy (absence of predictability and transparent criteria, and the addition of subsequent criteria) resulted for several reasons.

a. The number of objections far exceeds what ICANN expected. The New gTLD program was designed with 500 applications in mind; that was the figure most mentioned in public meetings. Four times the applications translates into four times the objections.

b. Compounding the problem is applicants’ use of the objection as an anti competitive weapon. When designed, it was thought and publicly stated that the “loser pays” aspect of the objection processes would deter frivolous objections or objections filed in an attempt to eliminate contending applicants. That assumption has proven significantly off the mark. Many objections have been filed by TLD applicants or current TLD operators.

17. The high number of applications means a geometrically greater number of “contention sets” – *i.e.*, situations where more than one party applies for the same TLD. Many contention sets get resolved by means of auction. Auctions have proven that new TLD registry ownership can be worth millions of dollars (mid seven figures). That value will go up as more valuable, contending applications are auctioned. The high value means that the objection fees are a low cost gamble to eliminate a competitor – that is, if an applicant prevails on an objection it would save of millions in auction costs.

18. Thus, the greater number of applications and contention sets has had the effect of eliminating barriers to filing what might be considered a frivolous objection. Instead of a few community objections to protect, say, indigenous names such as

¹ http://gnso.icann.org/en/issues/new_gtlds/pdp_dec05_fr_parta_08aug07.htm#

.NAVAJO or religious communities such as .CATHOLIC, there have been well over a hundred community objections,² many by applicants for the singular purpose of turning the intended protection mechanism into an anti competitive device.

19. The several fold increase in the number of objections filed caused the system to fail with respect to the ICANN Policy. With globally diverse, multiple panelists invoking untried standards and questions of first impression in an industry with which they were not familiar and had little training, the panelists were bound to deliver inconsistent, unpredictable results. ICANN put no mechanisms put into place to rationalize or normalize the answers.³

20. Comparing the initial evaluation process of the gTLD applications themselves, ICANN put into place an oversight mechanism that developed procedures for ensuring evaluation panels arrived at consistent results based upon the standards provided in the Guidebook. This is because evaluators were facing up to 2000 applications. Using untried standards and providing consistent, predictable outcomes posed a difficult logistics and coordination problem. Accordingly, extensive measures were taken to ensure consistent results.

21. Facing a similar situation (*i.e.*, many objections/evaluations placed in front of panelists using brand new standards), no measures were published to: ensure that the panelists employed the new criteria in a consistent manner; ensure panelists used only the criteria published by ICANN in the Guidebook; and explain the Guidebook criteria to the panelists. In the cases of community objections, the category in which the number of objections was the largest, and the standards were the most complex

² See http://newgtlds.icann.org/en/program_status/odr/determination.

³ This despite the fact that the ICC made clear that it would not review or correct any expert determination on the merits. See http://newgtlds.icann.org/en/program_status/odr/webinar_icc_09jan14_en.pdf at .

and highly disputed when formulated, the likelihood for unpredictability was the greatest.

22. In the cases under review in this proceeding, panelists relied on, among other inapplicable sources, 2007 SO Implementation Guidelines to say that the term community should be interpreted “broadly.” The 2007 Implementation Guidelines are specifically not part of the standard. They were presented to the community as Guidelines – advice that could be taken into consideration when creating the standards and the rest of the Guidebook criteria. After four years of public discussion and argument, the community objection criteria looked nothing like that 2007 guideline. In its community agreed upon implemented form, the term “community” is defined *narrowly* to prevent abuses in the objection process – the type of abuse to which panelists opened the door when improperly altering the standard.

23. When faced with the surprise of many times the number of objections expected, a change should have occurred in the planning and administration of the objection process. Proper due diligence would have avoided the unpredictability and other policy violations. A bigger factory, churning out more product requires increased quality assurance measures to ensure all employees are using the right tools, the right measuring sticks, and are trained to use them properly.

24. These measures were not taken. When the applicants and others first complained of inconsistent results, DRSPs held a webinar where they stated that while they had put some oversight measures in place for *procedural* consistency, they implemented *none* to ensure *substantive* consistency or proper use of and adherence to standards.⁴ The results between pairs of objection results were often diametrically opposed: finding a clearly delineated, well bounded community in some cases but, not in others when the factual set was nearly the same or even slanted in a way opposite of

⁴ http://newgtlds.icann.org/en/program_status/odr/webinar_icc_09jan14_en.pdf at .

the result. Some panelists required only the possibility of detriment to satisfy the material detriment element where others required much more certainty. Some panelists found certain safeguards adequate to prevent detriment while others found the same safeguards did not.

25. It is my opinion that ICANN, having proven in the initial evaluation context that it could do so, should have implemented measures to create as much consistency as possible on the merits in objection rulings, requiring DRSPs to educate and train their experts as to the specific (and only) standards to employ, and to review and correct aberrant results. The failure to do so resulted in violation of the overarching policy articulated by the GNSO and adopted by the Board at the outset of the New gTLD Program, as well as policies stated in the Bylaws and Articles of Incorporation concerning non discrimination, application of documented policies neutrally, objectively and fairly, promotion of competition, and accountability.

Being in full agreement with the statements contained in this document, hereby sign it and acknowledge its contents as of this 8th day of October, 2014.

A handwritten signature in blue ink, appearing to read 'Kurt Pritz', is positioned above a horizontal line.

Kurt Pritz

KURT J. PRITZ

PROVEN OPERATIONS EXECUTIVE WITH 25+ YEARS EXPERIENCE

- *SKILLED COMMUNICATOR AND NEGOTIATOR* • *EFFECTIVE MANAGER OF LARGE AND COMPLEX PROJECTS* • *EXEMPLARY LEADER IN MULTI-STAKEHOLDER ENVIRONMENTS*
-

EXECUTIVE SKILLS

Leadership. Built and led successful teams that transformed three industries:

- Directed ICANN’s global policy effort that opened the door to an expansion of top level Internet domains, providing greater choice, innovation and competition to the world’s Internet users. In addition to .com and .net, here may soon be .bank, .shop, 公益 and hundreds of others.
- Developed state of the art surface mount manufacturing techniques that enabled reliable production of miniaturized avionics to support immediate delivery requirements and establish new industry methods.
- Grew Walt Disney Imagineering Production’s operations to design and deliver technically complex shows and rides for the “Disney Decade” to Disneyland, Walt Disney World, Disneyland Paris and Tokyo Disneyland.

Growth Management. Successfully managed start ups, rapid growth and company culture changes:

- Ensured stability of ICANN’s operations, increasing revenues from \$8 million to \$80 million in eight years by negotiating increased stakeholder contributions.
- Expanded engineering and production operations at Walt Disney Imagineering by 300% while controlling overhead spending and meeting all quality, schedule and cost goals.
- Directed automated production facility start up for Eaton Corporation, shipping product within 6 months of the start of construction to support critical schedule requirements of a \$2.2 billion program.

Policy Development and Stakeholder Relations. Developed solid relationships with business and government leaders around the world. Resolved difficult Internet policy issues through negotiation and public participation. Negotiated global supply chain agreements.

Systems Implementation. Implemented MRP/ERP, finance and earned value systems; integrated estimating, planning, product development and production processes. Successfully implemented ISO compliant systems, statistical process controls and six sigma methodologies.

Teambuilding and Organizational Design. Built powerful, cross functional and geographically diverse teams by focusing on customer satisfaction and frequent, effective communication, and by reducing direct reports and organizational layers.

PROFESSIONAL EXPERIENCE

Domain Name Association

Executive Director

Los Angeles, California; Boston, Massachusetts, 2013-present

Led start up of global trade association representing the Internet's Domain Name Industry members such as Google, Amazon, GoDaddy, Nominet (operator of .uk), and Verisign (operator of .com). In first six months: grew membership 200%; established Marketing, Technical and Policy Committees; influenced important, global Internet governance and policy discussions through public interventions and interactions with governments. Facilitated several business start ups: providing financial, strategy, legal and technical direction.

ICANN

Chief Strategy Officer; Senior Vice President, Services; and Vice President, Business Operations

Los Angeles, California, 2003-2012

ICANN is the not for profit responsible for development of global Internet policy, distribution of IP addresses worldwide, and oversight of the sale and use of domain names such as .com, .net. and .org. Drove the strategic planning process and business operations for the non profit organization responsible for the technical coordination and stability of the global Internet's domain name system. Led stakeholder relations with national governments, multinational corporations, intergovernmental organizations, Internet service providers, domain name managers, intellectual property interests and the world's Internet users.

- Headed the team responsible for major expansion of Internet namespace. Directed key Internet policy initiatives to create competition and choice for Internet users globally.
- Led formulation of strategy and operating budgets, approved by Board of Directors and key stakeholders.
- Named one of the 50 most influential people by *Managing Intellectual Property* magazine (2011 and 2012).
- Represented ICANN in testimony before U.S. Congress on three occasions.
- Negotiated and managed agreements with domain name service providers that: increased ICANN's revenues from \$16MM to \$70mm; and improved Internet stability, security and resiliency; and added protections for trademark owners and Internet users.
- Managed successful delivery of outcomes required in ICANN's agreement with the US Government.
- Reduced lead times for key services to governments and top level domain managers from 8 to 5 days.

Pritz & Associates

Consultant and Attorney

Westlake Village, California, 2000-2003

Partnered with clients Universal Studios, Wet Design and J. Robert Scott to create new business segments, build effective, cross functional teams and reduce product and operational costs.

- Developed contract maintenance business, increasing architectural services firm revenue by 10%.
- Reduced product lead times by up to 50% and operating costs by \$900K through enhanced teamwork and streamlined development/manufacturing processes, enabling company to pursue new markets.

Walt Disney Imagineering

Vice President, Engineering & Production

Glendale, California, 1991-2000

Led a staff of 500+ and a geographically diverse vendor base in the design, production and installation of highly technical theme park shows and rides worldwide.

- Grew production operations from \$25 million to \$100 million; created partnerships through worldwide supply chain; implemented flexible organization to accommodate demand; employed new technology.
- Improved team effectiveness by reducing direct reports 50% and eliminating management layers.
- Implemented earned value, activity based costing and other cost control metrics, enabling under budget production of an \$80+ million project involving 20,000 deliverables.
- Applied digital production processes, shortening development lead times from 4 weeks to 2 days.
- Injected real invention into *audio-animatronics figures*; reduced costs 30% and improved reliability.
- Implemented production management MRP/ERP) systems.

Eaton Corporation

Manager, Advanced Assembly Facility, and Quality Assurance Manager

Westlake Village, California; Athens, Georgia, 1982-1991

For provider of technically advanced electronic avionics sub systems, hybrid circuits, electronic sensors:

- Led plant start up; hired and directed staff of 100+.
- Shipped product within 6 months of construction start to meet critical delivery demands of \$2 billion contract.
- Implemented state of the art automated surface mount technology clean room assembly facility.
- Managed international supply chain quality, supplier relationships and customer service.
- Implemented automated test equipment, sell six sigma and lean manufacturing methodologies.
- Authored and implemented quality assurance manual, plant wide procedures and statistical process.

EDUCATION AND COMMUNICATION

Bachelor of Science, Physics	Rensselaer Polytechnic Institute	Troy, New York
Master of Science, Physics	Virginia Tech	Blacksburg, Virginia
Master of Business Administration	University of Michigan	Ann Arbor, Michigan
Juris Doctorate	University of LaVerne	Los Angeles, California

Admitted to California bar

Published in manufacturing, technology, physics, and law journals

Frequent speeches, keynotes, and presentations in Americas, Africa, Asia/Pacific, and Europe

Named one of the 50 most influential people by Managing Intellectual Property magazine (2011 and 2012)

Held USG Secret Clearance

Contact Information Redacted

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