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SUBJECT Applications for the top-level domain “.gmbh”

Dear Mr Chehadé,

I am writing to you today with regard to a matter that I previously raised in my letter of 9 July 2013 and which was highlighted by the German, Swiss, and Austrian governments in the early warnings released in November 2012.

In all of its submissions to ICANN, the Federal Government has made clear that the operator of a future registry will have to ensure that anyone wishing to register for the top-level domain “.gmbh” fulfils a number of requirements which apply under German law:

-Applicants for SLDs under “.gmbh” have to be companies which are already organized as “Gesellschaft mit beschränkter Haftung” according to the regulations valid in Germany, Austria, Switzerland or Liechtenstein, or they should be able to prove that such a registration is pending in at least one of these countries. Compliance with these requirements has to be regularly reviewed.

- Applicants for SLDs have to prove that they are subject to liability as a GmbH by forwarding a full set of valid documents from their respective place of jurisdiction.

As a logical consequence, the GAC’s Beijing Advice categorises “.gmbh” as a “sensitive string”. As with other strings that represent corporate identifiers, ICANN’s New gTLD

Page 2 / 2 Program Committee (NGPC) has adopted this requirement and has assigned the string ".gmbh" to the category of highly-regulated sectors.

As was discussed at the last ICANN meeting in London in the joint session of the GAC and the ICANN Board, as well as is reflected in the GAC Communiqué, a number of GAC members are still unclear as to in what form and how registrants are to provide the credentials and certificates as stipulated in the GAC Advice. This uncertainty particularly relates to applications for the string ".gmbh".

It is true that top-level domains are, in general, open to registrants from around the world. However, given that the legal form GmbH is limited to German-speaking countries, it would therefore seem logical and justified that the future registry be based in either Germany, Austria, or Switzerland and be subject to the law of that country.

I would therefore like to point out once again that unless it can be ensured that the criteria set out by the governments of German-speaking countries will be complied with in the most rigorous manner, there are likely to be a vast number of court cases which will result in a lack of legal certainty for all involved. Whilst competition law prevents the Federal Government from explicitly speaking out in favour of one of the two German applicants, the Government would like to point out that only operators from German-speaking countries would be bound by the respective national or European legislation. Choosing an operator from a German-speaking country would thus eliminate the possibility of any conflicts between different legislations, for instance with regard to data protection or liability rules.

May I remind you that almost one million companies registered as GmbHs will be affected by the issuing of the new TLD ".gmbh". Any decision to approve applications that do not meet the requirements imposed by applicable law will lead to a loss in confidence in the legal form "GmbH" and thus to an erosion of confidence in the ICANN model.

I am sending copies of this letter to German ICANN Board members Erika Mann and Professor Wolfgang Kleinwächter.

Yours sincerely,

B. Vöpel-Middelberg