



March 18, 2014

Dr. Stephen Crocker, Chairman of the Board
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Re: Application 1-1619-92115 for .SPA

Dear Steve:

We strongly urge the Board to advance the .SPA TLD through the processes enshrined in the Applicant Guidebook. While we respect the concerns raised by the City of Spa and the Belgian Government, we are confident that we have thoroughly addressed those issues, and that Donuts .SPA application is in full compliance with both the letter and the spirit of the rules set forth for the New gTLD Program.

Following the Beijing meeting in April 2013, Donuts engaged in discussions with representatives from the City of Spa, Belgium to resolve the objections that the Belgian government had raised about the .SPA domain. Although it is clear to us that "spa" is a widely used generic term that, as ICANN has determined, does not meet the standards for geographic consideration set forth in the Guidebook, we are committed to ensuring that all of our gTLDs operate in the best interests of all they serve.

To allay the concerns raised by representatives of the City of Spa, we offered several additional protections that extend beyond those mandated by the Guidebook, and those that Donuts offers through its Public Interest Commitments. Specifically, Donuts offered to block the registration of second-level addresses that could cause confusion, and offered the City of Spa priority registration for other names that it may wish to register. We also agreed to develop terms of use, specific to .SPA, to further protect the city's unique names, culture and trademarks.

Donuts is committed to providing these protections for .SPA regardless of the disposition of its discussions with the City of Spa or the Belgian Government. If Donuts becomes the registry for .SPA, the City of Spa's interests will be uniquely protected. Such protection would not exist for any other jurisdiction in any of Donuts' other TLDs.

As you know, the attorney for the City of Spa rejected our offer of additional protections and is holding fast to his original demand that his clients be granted even more rights, such as limited management authority over the TLD as well as a percentage of .SPA's profits in perpetuity.

As staunch advocates for the new gTLD process and the bottom-up multistakeholder policy development model, Donuts cannot, in good faith, agree to these demands. While the City of Spa maintains a historical link to the word "spa", that word long ago evolved as a globally recognized generic term by people who have never even heard of the city of its origin. The public interest served by making that term available to a global community of spa users far outweighs any risk of confusion with the city of the same name. And for those names that may cause confusion, Donuts has provided a rigorous series of additional protections and controls.

The City of Spa gave the word “spa” to the world many centuries ago, and the world has done a great deal with it. Just as attorneys for the City of Spa don’t fly around the world handing cease-and-desist notices to resort operators and hot-tub manufacturers, we do not believe it is appropriate for them to overrun ICANN procedure to try to exert control over how that term is used in the Internet’s global addressing system. While Donuts remains committed to the additional protections it has offered the City of Spa, it is not our belief that further discussions will yield an agreeable compromise. As the GAC has not offered consensus advice regarding the domain, we urge the Board to follow the guidebook and advance .SPA to the contention resolution process.

To be clear, ICANN already has determined that .SPA does not meet the criteria set forth for geographic names that require city endorsement. Section 2.2.1.4.2 of the Guidebook covers any application “*for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name.*” Nobody is arguing that this is the case with .SPA, which clearly is targeted at generic use.

Finally, the Memorandum of Understanding reached between the City of Spa and the other applicant for .SPA cannot, and should not, be given any weight in the determination of which registry wins the right to operate the domain. Nothing in the Guidebook permits outside stakeholders to pick winners and losers in the application process, and to allow that to occur here, where the two applicants are not at all similarly situated, would set an extremely negative precedent. The multipart process in place for resolving contention sets is the result of years of development through the multistakeholder process and should not be subverted based on the request of a single stakeholder.

As we move forward into an exciting new era of Internet governance led by the global multistakeholder community, it is more critical than ever that ICANN lead by example, and uphold its commitment to bottom-up policy development and implementation. The community has spoken with the input of the GAC, the policy is clear, and the time is now for ICANN to administer that policy as written.

Sincerely,

Jonathon L. Nevett
Co-Founder and Executive Vice President