

ICANN NEW gTLD PROGRAM COMMITTEE PAPER NO. 2013.07.13.2a

TITLE: Funding Objections

PROPOSED ACTION: For New gTLD Program Committee Approval

EXECUTIVE SUMMARY:

ICANN staff is presenting to the New gTLD Program Committee (“NGPC”) a request for approval to disburse fees due to the International Chamber of Commerce (“ICC”) for objections funded by ICANN on behalf of the Independent Objector, ALAC, and governments, per the applicant guidebook.

The Independent Objector, governments, and the ALAC have filed a total of 27 objections with the ICC. Per ICANN’s commitment in the applicant guidebook to fund these objections, the ICC has requested advance payment of fees to administer the proceedings and to pay expert panel members for their time in adjudicating the objections. The requested advance payment is in the amount of €2 361 600 (see Attachment A to Reference Materials), although the amounts could change depending on the nature of each proceeding. The New gTLD Program budget includes amounts for these fees.

Note that if any of the above referenced objectors are deemed to be the prevailing party in a particular proceeding, the advance payment for those fees will be refunded to ICANN.

STAFF RECOMMENDATION:

Staff recommends that the NGPC authorize the President, Generic Domains Division to disburse all amounts necessary to the ICC in order to fund objections filed by the Independent Objector, ALAC, and governments, and which ICANN committed to fund.

PROPOSED RESOLUTION:

Whereas, ICANN committed to fund certain objections by the Independent Objector, governments, and ALAC.

Whereas a total of 27 objections that ICANN committed to fund were filed by the Independent Objector, governments, and ALAC.

Whereas the International Chamber of Commerce (ICC) has accepted these objections, estimated the advance payment of costs, and invoiced ICANN.

Whereas, ICANN budgeted the amount needed to fund such objections.

Resolved (2013.07.13.NGxx), the New gTLD Program Committee authorizes the President, Generic Domains Division, to disburse all fees necessary to the ICC for the objection proceedings that ICANN committed to fund, which have been filed by the Independent Objector, governments and the ALAC.

PROPOSED RATIONALE:

As part of the new gTLD Program, ICANN made a commitment, as set out in the applicant guidebook, to fund objections on behalf of the Independent Objector, governments (one per government), and ALAC. Twenty-seven objections that ICANN committed to fund have been filed. Given that all of these objections were filed with the same dispute resolution service provider, the International Chamber of Commerce, Centre for Expertise (“ICC”), the ICC has requested advance payment of fees to administer the proceedings and to pay expert panel members for their time in adjudicating the objections.

ICANN must now fulfill its commitment and make a disbursement to the ICC to fund all 27 objections. Given that the amount is over \$500,000, in accordance with ICANN Contracting and Disbursement Policy, the Board must approve the disbursement.

This decision will have a fiscal impact on ICANN, but that impact was anticipated and budgeted for. This decision will not have any impact on the security, stability or resiliency of domain name system.

This is an Organizational Administrative Function that does not require public comment at this time. Although it is noted that ICANN’s commitment to fund these above-referenced objections has been subjected to public comment on more than one occasion.

Signature Block:

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2013-07-13-02b-NGPC Paper-CRM Implementation Project.docx

NEW gTLD PROGRAM COMMITTEE SUBMISSION NO. 2013.07.13.2a

TITLE: CRM Implementation Project for New gTLD

PROPOSED ACTION: Consent Agenda

EXECUTIVE SUMMARY:

Earlier this year, the New gTLD Program team started migrating off of the TLD Application System (TAS) onto Salesforce.com, which includes standard Customer Relationship Management (CRM) capabilities as well as offers a flexible, configurable platform to manage a variety of other operational activities. ICANN commissioned an outside provider to design and implement a pilot program to test the Salesforce.com CRM capabilities for New gTLD Program operational activities, including contracting and pre-delegation testing. The pilot program was successful and the New gTLD Program team is now prepared to begin full implementation.

Because the fees for this implementation work are estimated to exceed \$500,000 (approximately \$1,010,000), the New gTLD Program Committee (NGPC) must authorize this expenditure.

STAFF RECOMMENDATION:

Staff recommends that the NGPC authorize the President, Generic Domains Division to enter into one or more agreements, and make all disbursements required under the agreement(s), for the necessary CRM implementation work to support the upcoming phases of the New gTLD Program, including contracting and pre-delegation testing.

PROPOSED RESOLUTION:

Whereas, ICANN has successfully completed a pilot program for Customer Relationship Management (CRM) implementation on the salesforce.com platform to support New gTLD Program operational activities, and is now prepared to begin full implementation.

Whereas, because the estimated fees for this implementation work exceed \$500,000 (approximately \$1,010,000), New gTLD Program Committee authorization is required.

Resolved (2013.07.13.NGxx.), the New gTLD Program Committee authorizes the President, Generic Domains Division to enter into one or more agreements, and make all disbursements required under the agreement(s), for the necessary CRM implementation work to support the upcoming phases of the New gTLD Program, including contracting and pre-delegation testing.

PROPOSED RATIONALE:

In order to support the effective and efficient continued operations of the New gTLD Program, program management has determined that it is necessary to migrate from the TLD Application System (TAS) to a more robust, flexible and configurable Operations platform. New gTLD Program management, working with IT, has evaluated multiple options and selected Salesforce.com as the Customer Relationship Management (CRM) and operations platform. The team piloted the platform to prove that it is a viable operational solution. In order to utilize the Salesforce.com platform for phases of the New gTLD Program beyond Initial Evaluation, additional systematic capabilities are required to be designed, developed and deployed. A project has been scoped, and preliminary design begun to implement these new system capabilities including, Extended

Evaluation, Contracting, Pre-Delegation Testing, Community Priority Evaluations and Auctions. The New gTLD Program Committee is approving this expenditure because the project is estimated to exceed \$500,000 (approximately \$1,010,000).

This action is not expected to have an impact on financial or other resources of ICANN that are not already anticipated. This action is not expected to have an impact on the security, stability or resiliency of the DNS, though the outcomes of this work may result in positive impacts.

This is an Organizational Administrative Function that does not require public comment.

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2013-07-13-02c-NGPC Paper-Response to Ombudsman Reports.doc

NEW gTLD PROGRAM COMMITTEE PAPER NO. 2013.07.13.2c

TITLE: **Ombudsman Reports to Board Regarding Dispute Resolution Service Provider Decisions**

PROPOSED ACTION: **For New gTLD Program Committee Consideration**

EXECUTIVE SUMMARY:

The Ombudsman has asked the Board (in this case the New gTLD Program Committee (NGPC)) to consider two Dispute Resolution Service Providers' ("DRSPs") decisions, one to not accept an objection and one to not accept a response to an objection, even though the DRSPs' decisions were technically in accordance with the rules set out in the Applicant Guidebook ("AGB"). Specifically, the Ombudsman suggests that, following his investigation of the circumstances surrounding the two late filings at issue, denying the filings at issue would be unfair or at least raise concerns of unfairness. The Ombudsman's specific reports attached to the Reference Materials (see Attachments A and B) both suggest that strictly adhering to the deadlines set out in the New gTLD Dispute Resolution Procedure may not be the fairest approach.

One instance relates to an objection to an application for .AXIS for which the applicant's response was filed on a Monday, rather than a Saturday. Following the Ombudsman investigation, where he also noted some cultural issues leading toward flexibility, he has specifically requested that the Board ask the applicable DRSP (the World Intellectual Property Organization) to reconsider its stance of strictly adhering to the deadlines set forth in the applicant guidebook and therefore not accepting the applicant's response submitted on Monday rather than a Saturday. The Ombudsman noted that accepting the response "is a fairer result, than letting the [applicant's] effort over a number of years and the considerable expenditure be wasted by a formalistic approach to the time deadline." In the second instance related to an objection by GOProud against a .GAY application, the Ombudsman has raised fairness concerns about the DRSP refusing an objection when it appears that a notice to the objector may have been sent to an email other than the one used to submit the original objection. In this case, the Ombudsman has not asked the Board to take any specific action, but has

indicated that he thinks that given “some unfairness [he thinks] the matter should be revisited.”

In addition to these two matters for which the Ombudsman has issued specific reports to the Board, ICANN has received several other inquiries, from objectors, applicants and the DRSPs, about issues related to late filings and whether the DRSPs have the discretion to deviate from the specific deadlines set forth in the Applicant Guidebook.

OMBUDSMAN RECOMMENDATION:

The Ombudsman recommends to the Board, for the sake of fairness, as follows: (i) with respect to the objection related to the application for .AXIS, “that WIPO be asked to reconsider the stance with regard to the rejection of the response.”; and (ii) with respect to GOProud’s objection to a .GAY application, “that the matter should be revisited.”

STAFF RECOMMENDATION:

Staff recommends that the NGPC: (i) follow the Ombudsman’s recommendation with respect to the response from the relevant .AXIS applicant and ask WIPO to review its decision in light of the Ombudsman’s report; (ii) ask the relevant DRSP (the International Chamber of Commerce, Centre for Expertise (ICC)) revisit its decision relating to the denial of GOProud’s objection in light of the Ombudsman’s report; and (iii) make an statement that, in the interests of fairness and reasonableness, notwithstanding the deadlines set out in the Applicant Guidebook the DRSPs are instructed that they are free to use their discretion, in light of the facts and circumstances of each matter, as to whether to grant extensions, or deviate from the deadlines set forth in the Applicant Guidebook.

PROPOSED RESOLUTION:

Whereas, the Ombudsman has issued two reports to the ICANN Board relating to deadlines found in the New gTLD Dispute Resolution Procedures and set out facts based on his investigations and made specific recommendations in each report.

Whereas, given the subject matters of the reports, the New gTLD Program Committee (NGPC) has reviewed those reports.

Whereas, the two issues relating to deadlines addressed by the Ombudsman's reports to the Board are not the only inquiries about whether the Dispute Resolution Service Providers (DRSPs) must strictly adhere to the deadlines set forth in the New gTLD Program Dispute Resolution Procedures in all circumstances.

Resolved (2013.07.13.xx), the New gTLD Program Committee directs the President, Generic Domains Division, or his designee, to forward to WIPO the Ombudsman's report about the applicant's response to the objection relating to .AXIS and ask WIPO to reconsider its stance with regard to the rejection of the applicant's response in light of the facts and analysis stated in the Ombudsman's report.

Resolved (2013.07.13.xx), the New gTLD Program Committee directs the President, Generic Domains Division, or his designee, to forward to the ICC the Ombudsman's report about GOProud's objection to a .GAY application and ask the ICC to revisit its decision in light of the facts and analysis stated in the Ombudsman's report.

Resolved (2013.07.13.xx), in the interests of fairness and reasonableness, notwithstanding the deadlines set out in the Applicant Guidebook, in the future, the DRSPs are free to use their discretion, in light of the facts and circumstances of each matter, as to whether to grant extensions, or deviate from the deadlines set forth in the Applicant Guidebook.

PROPOSED RATIONALE:

The ICANN Ombudsman reports directly to the ICANN Board. The purpose of the Ombudsman is to ensure that the members of the ICANN community have been treated fairly. The Ombudsman acts as an impartial officer in attempting to resolve complaints about unfair treatment by ICANN using ADR techniques. Where, in the conduct of an investigation of a complaint, the Ombudsman forms an opinion that there has been a serious breach of administrative fairness or maladministration, the Ombudsman may notify the Board of Directors of the circumstances.

The Ombudsman has issued two reports to the Board (through the NGPC) regarding decisions made by two Dispute Resolution Service Providers (“DRSPs”) in the New gTLD Program. In one instance, the Ombudsman has requested the NGPC ask the applicable DRSP to reconsider its stance of strictly adhering to the deadlines set forth in the Applicant Guidebook. In the other instance, although the Ombudsman does not request specific action from the Board, he thinks the matter should be revisited. Both reports and respective requests therein are presented in the spirit of fairness and reasonableness to the affected parties. Beyond the two Ombudsman reports, ICANN has received several other inquiries from objectors, applicants, and the DRSPs about issues related to late filing and whether the DRSPs have the discretion to deviate from the specific deadlines set forth in the Applicant Guidebook.

In the interest of fairness and reasonableness, and after a review of the Ombudsman reports, the NGPC has determined that it is appropriate for the NGPC to ask the DRSPs, in light of the circumstances presented by the Ombudsman, to reconsider their strict adherence to the deadlines set forth in the Applicant Guidebook and apply reasonable judgment in such matters. Taking this action will have a positive impact on ICANN’s accountability to the community, as it is appropriate to review of all applicable circumstances when taking decisions that have significant impact on participants within ICANN.

This decision will not have direct fiscal impact on ICANN. There is potential financial impact to the filing parties to the Objection proceedings, although ICANN cannot infer the magnitude of such and the impact is dependent upon the DRSP response to the NGPC directive. This decision will not have any impact on the security, stability or resiliency of domain name system.

This is an Organizational Administrative Function that does not require public comment.

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