

REFERENCE MATERIALS – BOARD SUBMISSION NO. 2018.10.03.1a

TITLE: **Further Consideration of *Gulf Cooperation Council vs. ICANN* Independent Review Process Final Declarations**

The following attachments are relevant to the Board’s further consideration of the Panel’s Final Declaration as to the merits and the Final Declaration As To Costs in the Gulf Cooperation Council (GCC) vs. ICANN Independent Review Process (IRP) regarding the .PERSIANGULF application:

- Attachment A is the Panel’s [Final Declaration](#) on the merits issued on 19 October 2016.
- Attachment B is the Panel’s [Final Declaration As To Costs](#) issued on 15 December 2016.
- Attachment C is the transcript of the 28 June 2018 dialogue between members of the Board and concerned members of the Governmental Advisory Committee regarding the .PERSIANGULF application.

BACKGROUND SUMMARY

The Gulf Cooperation Council (GCC) initiated Independent Review Process (IRP) proceedings challenging the New gTLD Program Committee’s (NGPC’s) decision on 10 September 2013 that “ICANN will continue to process [the .PERSIANGULF] application in accordance with the established procedures in the [Guidebook.]” (Resolution 2013.09.10.NG03 (Annex 1), <https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-09-10-en#2.c>.) The NGPC adopted this resolution after receiving the Governmental Advisory Committee (GAC) Durban Communiqué indicating that the GAC had “finalized its consideration” of the .PERSIANGULF application and “does not object” to the application proceeding. (GAC Durban Communiqué, <https://archive.icann.org/en/meetings/durban2013/bitcache/GAC%20Communiqu%C3%A9%20-%20Durban,%20South%20Africa.pdf>.) In its IRP, the GCC objected to the application for .PERSIANGULF submitted by Asia Green IT System Ltd. (AGIT) due to what the GCC described as a long-standing naming dispute in which the “Arab nations that border the Gulf

prefer the name ‘Arabian Gulf’” instead of the name “Persian Gulf.” (IRP Request, ¶ 3, <https://www.icann.org/en/system/files/files/gcc-irp-request-05dec14-en.pdf>.)

IRP Panel Final Declaration:

On 19 October 2016, the three-member IRP Panel (Panel) issued its Final Declaration as to the merits (Final Declaration) (<https://www.icann.org/en/system/files/files/irp-gcc-final-declaration-24oct16-en.pdf>). On 15 December 2016, the Panel issued its Final Declaration As To Costs (Costs Declaration) (<https://www.icann.org/en/system/files/files/irp-gcc-final-declaration-costs-15dec16-en.pdf>). The Panel’s findings and recommendation are summarized below, and the materials regarding the IRP are available in full at <https://www.icann.org/resources/pages/gcc-v-icann-2014-12-06-en>.

The Panel declared the GCC to be the prevailing party, and declared that the “action of the ICANN Board with respect to the application of Asia Green relating to the ‘.persiangulf’ gTLD was inconsistent with the Articles of Incorporation and Bylaws of ICANN.” (Final Declaration, pgs. 44-45, X.1, X.3) Specifically, the Panel stated that: (i) “we have no evidence or indication of what, if anything, the Board did assess in taking its decision. Our role is to review the decision-making process of the Board, which here was virtually non-existent. By definition, core ICANN values of transparency and fairness were ignored.” (emphasis omitted); (ii) “we conclude that the ICANN Board failed to ‘*exercise due diligence and care in having a reasonable amount of facts in front of them*’ before deciding, on 10 September 2013, to allow the ‘.persiangulf’ application to proceed”; and (iii) “[u]nder the circumstances, and by definition, the Board members could not have ‘*exercise[d] independent judgment in taking the decision, believed to be in the best interests of the company*’, as they did not have the benefit of proper due diligence and all the necessary facts.”

The Panel premised its declaration on its conclusion that the Board’s reliance upon the explicit language of Module 3.1 of the Guidebook was “unduly formalistic and simplistic” (Final Declaration, para. 126), and that the Board should have conducted a further inquiry into and beyond the Durban Communiqué as it related to the application even though the GAC “advice” provided in the Durban Communiqué indicated that the GAC had “finalized its consideration” of the application and “does not object” to the application proceeding. In effect, the GAC’s

communication to the ICANN Board provided no advice regarding the processing of .PERSIANGULF. The Panel, however, disagreed, stating that: “As we see it, the GAC sent a missive [in the Durban Communiqué] to the ICANN Board that fell outside all three permissible forms for its advice. According to the Panel, “[i]f the GAC had properly relayed [the] serious concerns [expressed by certain GAC members] as formal advice to the ICANN Board under the second advice option in Module 3.1 of the Guidebook, there would necessarily have been further inquiry by and dialogue with the Board.” (Final Declaration, para. 129.) “It is difficult to accept that ICANN’s core values of transparency and fairness are met, where one GAC member can not only block consensus but also the expression of serious concerns of other members in advice to the Board, and thereby cut off further Board inquiry and dialogue.” (Final Declaration, para. 130.)

The Panel further stated that the Board should have reviewed and considered: (i) the GAC member concerns that were reflected in the GAC Durban Meeting Minutes (which, it should be noted, were posted by the GAC in November 2013 – one month after the NGPC’s 10 September 2013 Resolution to continue processing the .PERSIANGULF application), the “pending Community Objection, the public awareness of the sensitivities of the ‘Persian Gulf’-‘Arabian Gulf’ naming dispute, [and] the Durban Communiqué itself[, which] contained an express recommendation that ‘*ICANN collaborate with the GAC in refining, for future rounds, the Applicant Guidebook with regard to the protection of terms with national, cultural, geographic and religious significance.*’” (Final Declaration, para. 131.)

In addition, the Panel concluded that “the GCC’s due process rights” were “harmed” by the Board’s decision to proceed with the application because, according to the Panel, such decision was “taken without even basic due diligence despite known controversy.” (Final Declaration, para. 148.) Further, according to the Panel, the “basic flaws underlying the Board’s decision cannot be undone with future dialogue.” (Final Declaration, para. 148.) The Panel therefore recommended that “the ICANN Board take no further action on the ‘.persiangulf’ gTLD application, and in specific not sign the registry agreement with Asia Green, or any other entity, in relation to the ‘.persiangulf’ gTLD.” (Final Declaration, pg. 44, X.2.)

Prior Board Consideration:

The Board considered the Final Declaration and the Costs Declaration at its 16 March 2017

meeting. After thorough review and consideration of the Panel's findings and recommendation, the Board noted that the IRP Panel may have based its findings and recommendation on what may be unsupported conclusions and/or incorrect factual premises. The Board determined that further consideration and analysis of the Final Declaration was needed, and directed the ICANN President and CEO, or his designee(s), to conduct or cause to be conducted a further analysis of the Panel's factual premises and conclusions, and of the Board's ability to accept certain aspects of the Final Declaration while potentially rejecting other aspects of the Final Declaration.

(Resolution 2017.03.16.08, <https://www.icann.org/resources/board-material/resolutions-2017-03-16-en#2.b>.) The Board further considered the Final Declaration and Costs Declaration at the Board meeting on 23 September 2017. The Board determined that further review was needed; no resolution was taken. (See <https://www.icann.org/resources/board-material/minutes-2017-09-23-en>.)

The Board further considered the Final Declaration at its meeting on 15 March 2018. The Board accepted that the IRP Panel declared the GCC as the prevailing party in the GCC IRP, and that ICANN reimburse the GCC its IRP costs, which was completed in April 2018. The Board further directed the BAMC: (i) to follow the steps required as if the GAC provided non-consensus advice to the Board pursuant to Module 3.1 (subparagraph II) of the Applicant Guidebook (Guidebook) regarding .PERSIANGULF; (ii) to review and consider the relevant materials related to the .PERSIANGULF matter; and (iii) to provide a recommendation to the Board as to whether or not the application for .PERSIANGULF should proceed. (Resolutions 2018.03.15.12-2018.03.15.14, <https://www.icann.org/resources/board-material/resolutions-2018-03-15-en#2.b>.)

Board/GAC Dialogue Regarding .PERSIANGULF – 28 June 2018:

Pursuant to the Board's directive, members of the Board Accountability Mechanisms Committee (BAMC) and concerned members of the GAC engaged in a dialogue regarding .PERSIANGULF on 28 June 2018, at ICANN62 in Panama City. (See transcript, Attachment C to the Reference Materials.) Representatives from the United Arab Emirates (UAE), Bahrain, and Oman attended the dialogue. In addition, the UAE representative indicated that he was speaking on behalf of his own country as well as on behalf of Kuwait and the Gulf Cooperation Council (whose members are the UAE, Bahrain, Oman, Kuwait, Saudi Arabia, and Qatar). The UAE and Bahrain representatives reiterated the previously-expressed concerns regarding the .PERSIANGULF

application, referencing the long-standing “Arabian Gulf” vs. “Persian Gulf” naming dispute and indicating that:

- “All the Arab countries call that body throughout the history as Arabian Gulf.” The “Persian Gulf” name “misrepresents what we believe as our region.”
- “[T]he applicant is targeting us as a community, the people, the culture of the Arabian Gulf, but basically is not taking into consideration the sensitivity of this issue on the naming, and basically there’s no consultation, there’s no involvement, there’s no inclusiveness of the application.”
- “[T]here’s only one country that recognizes it as the Persian Gulf.” If this name were permitted, “it would spur more of an emotional setback to the rest of the region that others would recognize that [name] as being a body of water that is related to one country, and it’s not.” There are eight countries that surround that body of water.
- “We don’t recognize the name [Persian Gulf]. It is very, very sensitive to us. So, we don’t want the name basically.” “[W]e don’t envisage any solution other than, you know, ...the application being terminated.”

OVERVIEW OF RELEVANT MATERIALS RELATED TO .PERSIANGULF MATTER

In addition, the BAMC and the Board reviewed the relevant materials related to the .PERSIANGULF matter. AGIT filed its .PERSIANGULF application in early 2012; soon thereafter, the ICANN community submitted more than 60 comments on the application, and the governments of the UAE, Bahrain, Qatar, and Oman began voicing their objections against the application.

Public Comments:

In July through September 2012, the ICANN community submitted more than 60 comments regarding the .PERSIANGULF application. The majority of the comments were by individuals, on their own behalf (<https://gtldcomment.icann.org/applicationcomment/viewcomments>). Approximately 50 comments supported the application – supporters included, among others, individuals, AGIT, and the Iranian ICT Guild Organization (IIG). In its comment, the IIG noted that: “IIG believes that this TLD will expand the culture of peace and friendship among the people of the Middle East (the community that IIG’s member proudly belong to), hence bringing the opportunity of equal access to new technologies on internet for them in comparison to the

developed countries. So IIG requests ICANN to approve this application to provide this opportunity to the related communities.” According to IIG’s website, IIG members are “companies, and individuals in Iran engaged in the business of ICT (IT Services, Software Products, Engineering Design, Internet, eCommerce and Gaming, etc.)” Approximately 13 comments opposed the application – objectors included, among others, individuals, the Communications and Information Technology Commission (CITC) of the Kingdom of Saudi Arabia, and the Telecommunications Regulatory Authorities of the UAE and Bahrain. In its comment, the CITC of Saudi Arabia noted that: “The name ‘Persian Gulf’ represents a geographic name that is still under dispute and therefore is not only sensitive but also potentially problematic.”; “We disagree that ICANN should bring this dispute into the cyber world and by doing so give credence to one side over the other. We do not believe that it is ICANN’s role to adjudicate over such matters.”; “To approve the application of such a ‘string’ could cause distress and division in the relevant communities/countries, and we believe that no applicant should be considered to have the authority to register such domain name.”

Correspondence From Objecting Countries – October 2012:

In October 2012, the governments of the UAE, Bahrain, Qatar, and Oman sent letters to ICANN indicating that the “naming of the Arabian Gulf has been [a] controversial and debatable subject in various national and international venues and levels,” “.persiangulf should not be allowed to be registered as a gTLD unless there is consensus on a single name recognized by all countries bordering the Arabian Gulf,” and the governments “raise [their] disapproval and non-endorsement to this application and request the ICANN and the new gTLD program evaluators to not approve this application.” (See Attachment D to the Reference Materials.)

GAC Early Warning:

Subsequently, on 20 November 2012, the GAC issued an Early Warning on the application indicating that the “governments of Bahrain, Oman, Qatar, and the UAE would like to express [their] serious concerns” regarding the .PERSIANGULF application in that the “applied for new gTLD is problematic and refers to a geographical place with [a] disputed name” and “[I]ack[s] ...community involvement and support.” More specifically, the Early Warning noted that the “naming of the Arabian Gulf has been a controversial and debatable subject in various national and international venues and levels,” the “Arab countries bordering the Arabian Gulf including the UAE only recognize the name ‘Arabian Gulf,’” and “it is important to note that there is no

general consensus on a single unified name.” With respect to lack of community support, the Early Warning indicated:

- “To the best of our knowledge the applicant did not consult with the majority of the targeted community in regards to [the] launch of the proposed TLD, its strategy and policies.”
- “The applicant did not receive any endorsement or support from the community or any of its organizations, or any governmental or non-governmental organization[s] within this community.”
- “Given that there is no consensus on the name of the gulf and considering that [the] majority of the targeted community recognize[s] the name ‘Arabian Gulf’ as oppose[d] to the name ‘Persian Gulf’ it would limit the interest of the targeted community to the proposed name space. This will also impact the sustainability and growth of the name space.”

(GAC Early Warning,

<https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings?preview=/27131927/27197754/Persianguf-AE-55439.pdf>.)

ICANN Independent Objector:

In December 2012, ICANN's Independent Objector (IO) reviewed the concerns and support expressed regarding the .PERSIANGULF application, and concluded that a limited public interest objection was not warranted and that a community objection by the IO was “unadvisable.” With respect to a potential limited public interest objection, the IO determined that the application was not contrary to generally accepted legal norms of morality and public order in that “there are no relevant binding international legal norms which could help settle the [naming dispute] issue.” With respect to a potential community objection, the IO did note that there was substantial opposition to the application from a significant portion of the clearly delineated community. Regarding the fourth requirement (likelihood of material detriment), the IO indicated that “it is most debatable that [this requirement] is fulfilled: it is a matter of fact that there is a long-term dispute over the name of the Gulf and that both designation[s] are in use. It is indeed not the mission of the gTLD strings to solve nor to exacerbate such a dispute; but they probably should adapt to the *status quo* and the IO deems it unsuitable to take any position on the question. He notes that it is open to the Arabian Gulf community to file an objection as

well as the same community could have applied for a ‘.Arabiangulf’ gTLD.” (IO General Comment on Controversial Applications - .PERSIANGULF, <https://www.independent-objector-newgtlds.org/home/the-independent-objector-s-comments-on-controversial-applications/persianguf-general-comment/>.)

Correspondence From League of Arab States – March 2013:

On 13 March 2013, the League of Arab States (which represents 22 member states) sent a letter to ICANN reiterating that this naming dispute is a “controversial and debatable subject,” that the “applicant did not consult or receive any endorsement from the community relevant to the intended geographical area,” and that the “General Secretariat for the League of Arab States would like to assure its support and endorsement of any objection presented by any Arab Gulf country with respect to the mentioned gTLD application file.” (13 March 2013 letter, <https://www.icann.org/en/system/files/correspondence/at-twajiri-to-crocker-dryden-13mar13-en.pdf>.)

Expert Determination on GCC’s Community Objection:

On that same date (13 March 2013), the GCC filed a Community Objection against the .PERSIANGULF application. In its Objection, the GCC referenced the longstanding naming dispute, indicated that the countries bordering the body of water “cannot reach a consensus on a unique name for the designated body of water,” and contended that ICANN should not “bring this dispute into the cyber world and by doing so give credence to one side over the other.” The GCC noted that the Gulf has borne various names over the centuries, and the GCC provided a map of the 16th Century that denominates the Gulf as the “Arabian Gulf” as well as a contemporary map that leaves the Gulf unnamed in deference to the objections that have been raised. The GCC further indicated that a “substantial portion of the Arabian Peninsula Community is opposing the string ‘.Persiangulf,’” and contended that the existence of such a sensitive gTLD without the endorsement of the Arabian Gulf community will allow the applicant to interfere with the core activities of the community, and that there is a likelihood of material detriment to the targeted community resulting from the applicant’s operation of .PERSIANGULF. According to the GCC, use of that term online “is likely to increase the possibility of social unrest in the Arabian gulf region” and hence the level of dispute around the name of this area. The GCC concluded that, since there is no consensus on the name of the gulf, and because “the majority of the targeted community recognizes the name ‘Arabian Gulf’ as

opposed to ‘Persian Gulf,’ the limited interest of the targeted community in the proposed name will affect is sustainability.” (Expert Determination, <https://newgtlds.icann.org/sites/default/files/drsp/12nov13/determination-1-1-2128-55439-en.pdf>.)

In its response, AGIT indicated that its application has “garnered overwhelming community support” as evidenced by, according to AGIT, “more than 48,000 individual expressions of support via an online petition...for .PARS and .PersianGulf,” and “the support of the Islamic Republic of Iran,” with a population of more than 75 million people as compared to the 39.4 million of the six member States of the GCC. As an annex to its response, AGIT provided a copy of the online petition that AGIT posted, which is an open letter to ICANN indicating: “I hereby would like to express my full support for the applications for .PARS and .PERSIANGULF submitted to ICANN [by AGIT],” with apparent online signatures. (See Attachment E to the Reference Materials.) AGIT also provided a 5 May 2013 letter from the Ministry of Information and Communication Technology of the Islamic Republic of Iran, and a 1 May 2013 letter from the Iranian Cultural Heritage, Handicraft and Tourism Organization (a state department of the Islamic Republic of Iran) indicating their support for the .PERSIANGULF application. (See Attachment F to the Reference Materials.) AGIT also noted the extensive use of the “Persian Gulf” name – indicating that Iranians refer to the Gulf as the “Persian Gulf”; there are hundreds (if not thousands or millions) of maps that refer to the “Persian Gulf”; and calling the body of water between the Arabian Peninsula and Persia as the “Persian Gulf” has been predominant and pervasive for some 2,500 years. AGIT also argues that those “who disavow the [Persian Gulf] name” “are not likely to be interested in .PersianGulf domain names whatsoever, nor to be harmed by their existence.” AGIT also notes that “those states and/or the GCC itself are free to apply to operate the TLD .ArabianGulf if they so choose.” According to AGIT, people have called the Gulf by different names “for many centuries if not millennia,” but there is no evidence “as to how such purported dispute has ever caused or contributed to any social unrest in the region or elsewhere,” and the GCC “has wholly failed to prove any likelihood of any detriment to anyone [if the .PERSIANGULF gTLD is permitted].” (Expert Determination, <https://newgtlds.icann.org/sites/default/files/drsp/12nov13/determination-1-1-2128-55439-en.pdf>.)

The expert seated by the International Centre for Expertise of the International Chamber of Commerce (“Expert”) rendered the Expert Determination on 30 October 2013 dismissing the GCC’s Community Objection. The Expert determined that the community described in the application (which consists of “peoples of various nations connected geographically and historically to the Persian Gulf”) includes the Arab inhabitants of the west side of the Gulf, and that “there is substantial opposition of these Arab inhabitants of the Persian Gulf community and of the GCC which represents them internationally to the registration of the .PERSIANGULF gTLD.” The Expert noted that “there has been vocal, reiterated challenge by Arab States and sources to the Persian Gulf denomination for more than fifty years.” The Expert further determined, however, that the GCC’s argument “does not provide or constitute proof that the Application if granted will create a likelihood of material detriment to the community of the Objector. Nor is it easy to see what material detriment is likely to occur.” The Expert specifically noted that “[t]his is not to suggest that the dispute is not important to the States and the interests concerned. Such denomination disputes can be of high importance, roiling international relations.” But the Expert explained that the “dispute between Arab States and supporters, on the one hand, and the Islamic Republic of Iran and its supporters, on [the] other hand, over the denomination of the Gulf, has subsisted for more than fifty years. It is far from clear that registration of .PERSIANGULF gTLD would resolve, or exacerbate, or significantly affect, that dispute.” The Expert further noted that, “[i]n any event, the GCC and other Arab interests are and would remain free to seek registration of a domain such as .ARABIANGULF gTLD.” (Expert Determination, <https://newgtlds.icann.org/sites/default/files/drsp/12nov13/determination-1-1-2128-55439-en.pdf>.)

GAC Meetings:

During the time period that the GCC’s Community Objection was in process (March-October 2013), the GAC held meetings in Beijing (April 2013) and in Durban (July 2013) during which the .PERSIANGULF application was discussed. The GAC Beijing Communiqué indicated that the “GAC has identified certain gTLD strings where further GAC consideration may be warranted,” and advised the ICANN Board to not proceed beyond Initial Evaluation for .PERSIANGULF (among other strings). (GAC Beijing Communiqué, <https://www.icann.org/en/system/files/correspondence/gac-to-board-11apr13-en.pdf>.)

The GAC further discussed the matter in Durban (July 2013) and issued the Durban Communiqué on 18 July 2013, indicating that the “GAC has finalised its consideration..., and does not object to [the .PERSIANGULF application] proceeding.” In addition, the GAC Durban Communiqué recommended that “ICANN collaborate with the GAC in refining, for future rounds, the Applicant Guidebook with regard to the protection of terms with national, cultural, geographic and religious significance.” (GAC Durban Communiqué, <https://archive.icann.org/en/meetings/durban2013/bitcache/GAC%20Communiqu%C3%A9%20-%20Durban,%20South%20Africa.pdf>.) The GAC Durban Meeting Minutes, which were posted in November 2013, indicated: “The GAC finalized its consideration of .persiangulf after hearing opposing views, the GAC determined that it was clear that there would not be consensus on an objection regarding this string and therefore the GAC does not provide advice against this string proceeding. The GAC noted the opinion of GAC members from UAE, Oman, Bahrain and Qatar that this application should not proceed due to lack of community support and controversy of the name.” (GAC Durban Meeting Minutes, <https://gac.icann.org/contentMigrated/icann47-durban-meeting-minutes>.)

Correspondence – 2014 through 2018:

In 2014, the UAE submitted another letter to ICANN, reiterating its opposition to the .PERSIANGULF application and stating that “[w]hile the GAC did not issue an advice objecting against the Application (due to lack of consensus because one particular country did not agree to the objection), this does not mean those countries which are p[ar]t of the community targeted by the Application are agreeing to the Application to proceed and this certainly does not mean that ICANN should ignore this fact and continue to allow the Application to proceed.” (9 July 2014 UAE letter, <https://www.icann.org/en/system/files/correspondence/ghanim-to-chehade-09jul14-en.pdf>.) Five months later, in December 2014, the GCC initiated an IRP challenging the ICANN Board’s decision to proceed with the application. As described in more detail above, the IRP was in process from December 2014 through December 2016, with the IRP Panel ultimately determining that the GCC was the prevailing party and recommending that “the ICANN Board take no further action on the ‘.persiangulf’ gTLD application, and in specific not sign the registry agreement with Asia Green, or any other entity, in relation to the ‘.persiangulf’ gTLD.” (Final Declaration, pg. 44, X.2, <https://www.icann.org/en/system/files/files/irp-gcc-final-declaration-24oct16-en.pdf>.)

In reaction to the Board’s 16 March 2017 Resolution to further consider the IRP Final Declaration, the GCC sent a ten-page letter to ICANN on 9 November 2017, noting that the IRP Panel’s decision was “unequivocal and unanimous” and requesting that ICANN reconsider its decision that “further consideration and analysis of the Final Declaration is needed.” According to the GCC, “[f]or the ICANN Board to now second guess not one or two but *three* internationally-respected arbitrators, who reviewed voluminous written submissions by the parties totaling hundreds of pages is self-serving and a blatant conflict of interest.” The GCC further argued that “[w]e are now in an unknown, unprecedented and non-transparent holding pattern,” and that the ICANN Board “gives no indication what the process is to obtain such information [for further consideration], how the ICANN Board will receive that information, what such information will convey, and what the ICANN Board will do with such information.” (9 November 2017 GCC letter, <https://www.icann.org/en/system/files/correspondence/latif-to-crocker-09nov17-en.pdf>.)

In June and July 2018, ICANN received very similar letters from the Governments of Kuwait and Oman, noting that the “Arabian Gulf name is the only and officially recognized and used name in most countries in the Middle East and North Africa and most of the population surrounding it for hundreds of years. The name ‘Persian Gulf’ is never used by the communities in 7 out of [8] countries bordering the Arabian Gulf.” The Governments of Kuwait and Oman also noted that the “applicant clearly stated that the target and user of this new gTLD would be the people and community of the Arabian Gulf while none of the targeted stakeholders including organizations, people, academia, civil society, technical stakeholders were involved in this TLD with the exemption of Iran.” “We believe this TLD does not represent the interest of the target audience, hence we do not see a legitimate reason for it to exist”; and “we reiterate our strong disapproval to the TLD and we urge ICANN to terminate the application as well as follow the recommendation of the Independent Review Panel in (GCC vs. ICANN) related to the same TLD.” (20 June 2018 letter from the Government of Kuwait, <https://www.icann.org/en/system/files/correspondence/al-ozainah-to-chalaby-20jun18-en.pdf>; 10 July 2018 letter from the Government of Oman, <https://www.icann.org/en/system/files/correspondence/al-rawahi-to-chalaby-10jul18-en.pdf>.)

ICANN has not received any correspondence from the applicant, AGIT, regarding the .PERSIANGULF gTLD since the IRP Final Declaration was issued in December 2016.

Submitted By: Amy Stathos, Deputy General Counsel
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INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION (ICDR)

Independent Review Panel

IN THE MATTER OF AN INDEPENDENT REVIEW PROCESS
Pursuant to the Bylaws of the Internet Corporation for Assigned Names and Numbers (ICANN), the *International Arbitration Rules of the ICDR*, and the *ICDR Supplementary Procedures for ICANN Independent Review Process*

_____)	
Gulf Cooperation Council (GCC))	
)	
Claimant)	
)	
and)	ICDR Case
)	No. 01-14-0002-1065
Internet Corporation for Assigned Names and Numbers (ICANN))	
)	
Respondent)	
_____)	

**PARTIAL FINAL DECLARATION OF THE INDEPENDENT REVIEW PROCESS
PANEL**

Independent Review Panel

Lucy Reed, Chair
Anibal Sabater
Albert Jan van den Berg

I. INTRODUCTION

1. This case concerns the dispute between the Gulf Cooperation Council (“GCC”), and the Internet Corporation for Assigned Names and Numbers (“ICANN”) over the generic Top-Level-Domain name (“gTLD”) “.persiangulf”.
2. The underlying dispute is a broader one, concerning the name for the body of water separating the Arabian Peninsula from the Islamic Republic of Iran (“Iran”), which is a non-Arab nation historically called Persia. The Arab states, including members of the GCC, use the name “Arabian Gulf”, while Iran uses the name “Persian Gulf”. The sensitivity of this geographical name dispute, which has gone on for over 50 years, is well-known. It is representative of deeper disputes between GCC members and Iran over matters of religion, culture and sovereignty, prompting sanctions such as the banning of maps and censorship of publications that use either “Arabian Gulf” or “Persian Gulf”. (For purposes of neutrality, we will use the simple term “Gulf” in this Declaration.)
3. The particular dispute has its origins in the July 2012 application by a Turkish company founded by Iranian nationals, Asia Green IT System Bilgisayar San. Ve Tic. Ltd Sti (“**Asia Green**”), for registration of the “.persiangulf” gTLD as an international forum for people of Persian descent and heritage. The GCC has contested this application at every step of the ICANN gTLD review process, primarily on grounds that “.persiangulf” targets the Arabian Gulf Arab community, which was not consulted and opposes this use of the disputed geographical name.
4. The GCC initiated this Independent Review Process (“IRP”) in December 2015 to challenge the ICANN Board’s taking any further steps to approve registration of “.persiangulf” gTLD to Asia Green, alleged to violate the ICANN Articles and Bylaws.
5. Based on the IRP Panel’s review and assessment of the Parties’ submissions and evidence, our Partial Declaration is in the GCC’s favor. At the Parties’ joint request, the IRP Panel will allocate costs in a Final Declaration at a later stage.

II. THE PARTIES AND COUNSEL

6. The Claimant GCC is a political and economic alliance established in 1981 among six countries: the United Arab Emirates (“UAE”), Saudi Arabia, Kuwait, Qatar, Bahrain and Oman. The GCC is based in Saudi Arabia. Its address is Contact Information Redacted
7. The GCC is represented by Natasha Kohne and Kamran Salour of Akin Gump Strauss Hauer & Feld LLP, Sawwah Square, Al Sila Tower, 21st Floor, P.O. Box 55069, Abu Dhabi, UAE.
8. The Respondent ICANN is a non-profit public benefit corporation established under the laws of the State of California, USA. ICANN’s mission is “*to coordinate, at the overall level, the global Internet’s system of unique identifiers, and in particular to ensure the stable and secure operation of the Internet’s unique identifier systems*”, including the domain name system.¹ ICANN’s address is 12025 Waterfront Drive, Suite 300, Los Angeles, CA 90094-2536, USA.
9. ICANN is represented by Jeffrey A. LeVee, Eric P. Enson, Charlotte Wasserstein and Rachel Zernik of Jones Day, 555 South Flower Street, 50th Floor, Los Angeles, CA 90071, USA.

III. BACKGROUND FACTS

10. We set out below the basic background facts, which are undisputed except where otherwise noted. More detailed background facts are included in the separate sections below on the jurisdiction and merits issues in dispute.

A. ICANN’s New gTLD Program

11. As set out in Article 3 of its Articles of Incorporation, ICANN is mandated to develop procedures to expand the number of top level domains and increase the number of companies approved to act as registry operators and sell domain name registrations. In

¹ ICANN’s Response to Gulf Cooperation Council’s Request for Emergency Relief (“**Response to Emergency Request**”), ¶ 6.

June 2011, ICANN launched a significant expansion with the “New gTLD Program”. According to ICANN, this Program is its “most ambitious expansion of the Internet’s naming system”. To illustrate, ICANN approved only seven gTLDs in 2000 and another small number in 2004-2005² and then received almost 2000 applications in response to the New gTLD Program.³

12. ICANN developed an Applicant Guidebook through several iterations, with Version 4 of the New gTLD Application Guidebook dated 4 June 2012 (“**Guidebook**”) being relevant here.⁴ The Guidebook, running to almost 350 pages, sets out comprehensive procedures for the gTLD application and review process. It includes instructions for applicants, procedures for ICANN’s evaluation of applications, and procedures for objections to applications. In line with ICANN’s policies of transparency and accountability, applications for new gTLDs are posted on the ICANN website for community review and comment. ICANN may take such community comments into account in deciding whether an application meets the criteria for approval of a new gTLD registry operator.
13. Decisions on applications for new gTLDs are made by the New gTLD Program Committee of the ICANN Board (“**NGPC**”).

B. The “.persiangulf” New gTLD Application

14. On 8 July 2012, Asia Green applied for the “.persiangulf” gTLD. In its application form, Asia Green identified the mission/purpose of the proposed gTLD in relevant part as follows:

There are in excess of a hundred million of Persians worldwide. They are a disparate group, yet they are united through their core beliefs. They are a group whose origins are found several millennia in the past, their ethnicity often inextricably linked with their heritage. Hitherto, however, there has been no way to easily unify them and their common cultural, linguistic and historical heritage. The .PERSIANGULF gTLD will help change this.⁵

² Response to Emergency Request, ¶¶ 12-13.

³ <https://newgtlds.icann.org/en/about/program>.

⁴ Response to Emergency Request, Exh. R-ER-3/R-2 (“**Guidebook**”).

⁵ Request for Independent Review Process (“**Request for IRP**”), ¶¶ 31 and 66.

15. Asia Green has also applied for a number of other gTLDs. Its application for “.pars” (referring to the ancient Persian homeland of Pars), which was based on essentially the same mission/purpose as “.persiangulf” to unite the Persian community, was successful and led to a registry agreement in 2014.⁶ Its applications for “.islam” and “.halal”, however, were not accepted by ICANN.⁷

C. The GCC’s Objections to Asia Green’s “.persiangulf” gTLD Application

16. The GCC objected to Asia Green’s application within the mechanisms provided by ICANN.

1. Concerns Raised with the Governmental Advisory Committee to ICANN

17. ICANN, which is a complex global organization, relies on committees to provide advice from different constituencies. As relevant here, the Governmental Advisory Committee to ICANN (“GAC”) consists of members appointed by and representing governments. The GAC was created to:

*consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN’s policies and various laws and international agreements, or where they may affect public policy issues.*⁸

18. Module 3.1 of the Guidebook, which is entitled “GAC Advice on New gTLDs”, allows GAC members to raise governmental concerns about a gTLD application. Such concerns are considered by the GAC as a whole, which may agree on advice to forward to the ICANN Board. Such GAC advice to the ICANN Board is one of two methods of governmental recourse against an application for a gTLD. (The second method, an “Early Warning Notice”, is discussed below.)
19. As set out in Module 3.1 of the Guidebook, the advice from the GAC to the ICANN Board may take one of the following three forms:
 - a. A “Consensus GAC Advice”, in which the GAC, on consensus, provides public policy advice to the ICANN Board that an application **should not** proceed, creating a strong

⁶ Request for IRP, ¶ 65.

⁷ Ibid., ¶ 61.

⁸ Guidebook, Module 3.1, p. 1.

- presumption of non-approval of the application by the ICANN Board; there is no equivalent form of consensus GAC advice that an application **should** proceed;
- b. The expression of **concerns** in the GAC about an application, after which the ICANN Board is expected to enter into a dialogue with the GAC to understand those concerns, and to give reasons for its ultimate decision; or
 - c. Advice that the application should not proceed unless remediated, creating a strong presumption that the ICANN Board should not allow the application to proceed unless the applicant implements a remediation method available in the Guidebook.
20. On 14 October 2012, the UAE wrote to the GAC and ICANN expressing its disapproval and non-endorsement of Asia Green’s “.persiangulf” application.⁹ Similar letters from Oman, Qatar and Bahrain followed.¹⁰ As members of the GCC and GAC, these governments objected to registration of “.persiangulf” as a new gTLD on grounds that the proposed domain refers to a geographical place subject to a long historical naming dispute and targets countries bordering the Gulf that were not consulted and did not support the domain, confirming that there was not community consensus in favor of the new gTLD. (The subsequent GAC consideration of these concerns is described below.)

2. Early Warning Process

21. During the public comment period for gTLD applications, the Guidebook (Module 1.1.2.4) also allows the GAC to issue an “Early Warning Notice” to the ICANN Board flagging that one or more governments consider the application to be sensitive or problematic. The Board in turn notifies the applicant for the gTLD. As the Early Warning is merely a notice, and not a formal objection, it alone cannot lead to ICANN’s rejection of the application.
22. On 20 November 2012, the governments of Bahrain, Oman, Qatar and the UAE raised their concerns about Asia Green’s “.persiangulf” application through the GAC Early Warning process. The reasons mirrored those of their GAC objections: “*The applied for*

⁹ Request for IRP, Annex 6.

¹⁰ Ibid., Annexes 7-9.

*new gTLD is problematic and refers to a geographical place with disputed name”; and “Lack of community involvement and support”.*¹¹

3. Independent Objector Review

23. The Guidebook (Module 3, Articles 3.2.1–3.2.5) also provides an “Independent Objector” process, when there has been negative public comment before any formal objection. ICANN appoints an Independent Objector whose role, as the name indicates, is to exercise independent judgement in the public interest to determine whether to file and pursue a “Limited Public Interest Objection” or a “Community Objection” to the application.
24. In December 2012, the Independent Objector for the “.persiangulf” gTLD application, Professor Alain Pellet, issued his comments aimed at “*informing the public of the reasons why the [Independent Objector] does not consider filing an objection*” in relation to the “.persiangulf” application.¹² Professor Pellet concluded that a Limited Public Interest Objection was not warranted, because there were no binding international legal norms to settle the naming dispute. Likewise, he found a Community Objection to be “*unadvisable*”.¹³ Although Professor Pellet found that there was a clearly delineated Gulf community at least implicitly targeted by Asia Green’s application and that a significant portion of that community opposed delegation of “.persiangulf”, he considered it “*most debateable*” that the gTLD would “*create a likelihood of material detriment to the rights or legitimate interests of a significant portion of the targeted community*” (meaning the Arab portion), which is a necessary criterion in the Guidebook for a Community Objection.¹⁴ He stated in this regard that:

*it is a matter of fact that there is a long-term dispute over the name of the Gulf and that both designation[s] [i.e. Persian Gulf and Arabian Gulf] are in use. It is indeed not the mission of the gTLD strings to solve nor to exacerbate such a dispute; but they probably should adapt to the status quo and the [Independent Objector] deems it unsuitable to take any position on the question. He notes that it is open to the Arabian Gulf community to file an objection as well as the same community could have applied for a “.Arabiangulf” gTLD.*¹⁵

¹¹ Ibid., Annex 10.

¹² Independent Objector’s Comments on Controversial Applications, Response to Emergency Request, Exh. R-ER-5.

¹³ Ibid., p. 6.

¹⁴ Ibid., p. 5.

¹⁵ Ibid., pp. 5-6.

4. Formal Community Objection by the GCC

25. Module 3 of the Guidebook also provides for formal objection by third parties to challenge a gTLD application. There are four types of formal objections, of which a “Community Objection” is one.
26. A Community Objection is made on the basis that “[t]here is *substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted*” (Module 3.2). Pursuant to Paragraph 3.2.3 of the Guidebook, the International Centre of Expertise of the International Chamber of Commerce (“ICC”) administers disputes brought by Community Objection. One expert hears a Community Objection (Paragraph 3.4.4).
27. On 13 March 2013, the GCC filed a Community Objection to the “.persiangulf” application. The ICC appointed Judge Stephen M. Schwebel as the Expert Panelist to hear the Objection (Case No. EXP/423/ICANN/40). (Judge Schwebel’s determination, which he issued on 30 October 2013, is discussed below.)

D. GAC Advice to the ICANN Board

28. Concurrent with the various opposition avenues described above, the GAC was considering the GCC’s concerns in the course of its regular meetings.
29. In its 11 April 2013 meeting in Beijing, China, the GAC issued advice to the ICANN Board concerning a number of gTLD applications, using the typical format of a post-meeting Communiqué. Certain of the advice in the Beijing Communiqué was Consensus GAC Advice against gTLD applications, creating a presumption that the ICANN Board should **not** approve the relevant applications. In the case of certain geographically-based strings, including “.persiangulf”, the Beijing Communiqué reflected that the GAC required time for further consideration. On that basis, the GAC advised the ICANN Board not to proceed beyond initial evaluation of Asia Green’s application.¹⁶

¹⁶ Request for IRP, Annex 23, p. 3.

30. The NGPC of the ICANN Board accepted this advice. The NGPC documented its decision in a Resolution with an annexed “Scorecard” setting out its response to each item in the GAC’s Beijing Communiqué.¹⁷
31. In its 13-18 July 2013 meeting in Durban, South Africa, the GAC gave further consideration to the Asia Green application for “.persiangulf”: Mr Abdulrahman Al Marzouqi, who represented the UAE and the GCC at the Beijing and Durban GAC meetings, testified that no consensus was reached to oppose or support the application. In his words:

5. I also attended the GAC Meetings in Durban, South Africa in July 2013. During the meetings in Durban, I again voiced the GCC’s opposition to the .PERSIANGULF gTLD application, again emphasizing the lack of community support and strong community opposition from the Arab community because “Persian Gulf” is a disputed name. A substantial amount of GAC members in attendance shared these concerns.

6. Despite this substantial opposition, GAC could not reach a consensus. Iran is the only nation in the Gulf that favors the “Persian Gulf” name, and Iran’s GAC representative obviously does not share the other GAC members’ concerns about the .PERSIANGULF gTLD application. Not wanting a single GAC member to block consensus, the GAC Meeting Chairperson... pulled me to the side to express her frustration that GAC could not reach a consensus.¹⁸

32. The Minutes of the Durban meeting (“**Durban Minutes**”), on which the GCC relies in these IRP proceedings, reported:

*The GAC finalized its consideration of .persiangulf after hearing opposing views, the GAC determined that it was **clear that there would not be consensus of an objection regarding this string** and therefore the GAC does not provide advice against this string proceeding. The GAC noted the opinion of GAC members from UAE, Oman, Bahrain, and Qatar that this application should not proceed due to lack of community support and controversy of the name.¹⁹ (Emphasis added.)*

33. The 18 July 2013 Durban Communiqué, on which ICANN relies as the document formally providing GAC advice to the ICANN Board, reported:

¹⁷ Response to Emergency Request, Exhs. R-ER-6 and R-ER-7.

¹⁸ Claimant’s Request for Emergency Arbitrator and Interim Measures of Protection, Witness Statement of Abdulrahman Al Marzouqi (22 December 2014) (“**Al Marzouqi Statement**”), paras. 5-6.

¹⁹ Request for IRP, Annex 34.

The GAC has finalised its consideration of the following strings, and does not object to them proceeding:

...

ii. *.persiangulf* (application number 1-2128-55439).²⁰ (Emphasis added.)

34. On 10 September 2013, relying on the Durban Communiqué, the NGPC of the ICANN Board passed a resolution to continue to process the “.persiangulf” gTLD application, with a notation that there was a Community Objection:

*ICANN will continue to process the application in accordance with the established procedures in the [Guidebook]. The NGPC notes that community objections have been filed with the International Centre for Expertise of the ICC against .PERSIANGULF.*²¹ (Emphasis added.)

35. The NGPC resolution and related Scorecard were posted on the ICANN website on 12 September 2013. The Board Minutes and related materials were posted more than two weeks later, on 30 September 2013.
36. It is the ICANN Board’s decision on 10 September 2013 to continue to process Asia Green’s “.persiangulf” gTLD application that the Claimant GCC challenges in these IRP proceedings.

E. Expert Determination of the Community Objection

37. On 30 October 2013, one month after ICANN’s posting of the Durban Minutes, Judge Schwebel issued his Expert Determination dismissing the GCC’s Community Objection.²²
38. Judge Schwebel first found that the GCC had standing to object to the “.persiangulf” application, as an institution created by treaty and having an ongoing relationship with a clearly delineated community, namely the Arab inhabitants of the six GCC states on the Gulf. He then proceeded to find in the GCC’s favor on the first three of the four elements required by the Guidebook for a successful Community Objection (which, it bears noting, are not the same as the elements applicable to these IRP proceedings). Judge Schwebel found that: (a) the community invoked is a clearly delineated community; (b) the relevant

²⁰ Ibid., Annex 24.

²¹ Response to Emergency Request, Exhs. R-ER-9 and R-ER-10.

²² Case No. EXP/423/ICANN/40, Expert Determination of Judge Stephen M. Schwebel, Request for IRP, Annex 2.

community was substantially opposed to the “.persiangulf” application, and (c) the relevant community was closely associated with and implicitly targeted by the gTLD string.

39. Judge Schwebel, however, then found against the GCC on the fourth element, on grounds that the GCC had failed to prove that the targeted community would “*suffer the likelihood of material detriment to their rights or legitimate interests*”. In his assessment, even though geographical name disputes such as the Arabian Gulf-Persian Gulf dispute can have significant impacts on international relations, “*it was far from clear that the registration would resolve or exacerbate or significantly affect the dispute*”.²³ Like the Independent Objector before him, Judge Schwebel noted that the GCC could apply for its own “.arabiangulf” string.
40. This Independent Review Process followed.

IV. THE INDEPENDENT REVIEW PROCESS: THE ARCHITECTURE

41. Article IV (Accountability and Review), Section 3 (Independent Review of Board Actions), of the ICANN Bylaws sets out the procedure for independent review of actions taken by the ICANN Board.
42. Paragraph 2 of Article IV, Section 3, provides:

Any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action. In order to be materially affected, the person must suffer injury or harm that is directly and causally connected to the Board’s alleged violation of the Bylaws of the Articles of Incorporation, and not as a result of third parties acting in line with the Board’s action.

43. Paragraph 7 of Article IV, Section 3, provides that “[a]ll IRP proceedings shall be administered by an international dispute resolution provider appointed from time to time by ICANN”. As stated in the Supplementary Procedures for ICANN Independent Review Process (“**Supplementary Procedures**”), the ICANN Board has designated and approved

²³ Ibid., p. 11.

the International Centre for Dispute Resolution (“ICDR”) as the Independent Review Panel Provider.²⁴

44. The Supplementary Procedures apply to these proceedings, in addition to the ICDR International Arbitration Rules (“ICDR Rules”). Pursuant to Article 2 of the Supplementary Procedures, in the event of any inconsistency between the Supplementary Procedures and the ICDR Rules, the former prevail.
45. The Parties dispute whether the ICANN Bylaws are also applicable to this procedure, in particular in relation to the determination of costs. (This is discussed in Section IX below.)
46. The ICANN Bylaws provide a three-question standard of review for the Independent Review Process. As set out in Paragraph 4 of Article IV, Section 3:

Requests for such independent review shall be referred to an Independent Review Process Panel (“IRP Panel”), which shall be charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws. The IRP Panel must apply a defined standard of review to the IRP request, focusing on:

- a. did the Board act without conflict of interest in taking its decision?*
- b. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and*
- c. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?*

47. Article 8 of the Supplementary Procedures replicates this standard of review in similar terms.

V. THE INDEPENDENT REVIEW PROCESS: PROCEDURAL HISTORY

48. On 5 December 2014, the GCC filed its Request for Independent Review Process with the ICDR (“**Request for IRP**”). The Claimant attached a number of Annexes, and the Expert Report of Mr. Steven Tepp.

²⁴ The standing panel of reviewers contemplated in Article, IV, Section 3, Paragraph 6, of the ICANN Bylaws has not been established. Claimant’s Supplementary Request for Independent Review Process (“**Supplementary IRP Request**”), Annex S-8.

49. The Request for IRP invokes ICANN's accountability mechanisms for the independent review of ICANN Board action, as set out in Article IV, Section 3, of the ICANN Bylaws.
50. Also on 5 December 2014, the Claimant filed a Request for Emergency Arbitrator and Interim Measures of Protection ("**Emergency Request**"). In the Emergency Request, the GCC sought:
 - a. Timely appointment of an Emergency Arbitrator to hear its request for emergency relief to preserve its right to a meaningful independent review; and
 - b. An order enjoining ICANN from executing the ".persiangulf" registry agreement with Asia Green while the Request for IRP was pending.
51. On 9 December 2014, ICANN consented to the appointment of an Emergency Panelist. Mr. John A.M. Judge was appointed on the same day to fulfil that role.
52. On 17 December 2014, the Respondent submitted its Response to Gulf Cooperation Council's Request for Emergency Relief, asking that the Emergency Request be denied.
53. On 22 December 2014, the Claimant filed its Reply in Support of its Request for Emergency Arbitrator and Interim Measures of Protection. This submission included the Witness Statement of Mr. Al Marzouqi ("**Al Marzouqi Statement**").
54. On 23 December 2014, the Emergency Panelist conducted a hearing by telephone conference call.
55. On 20 January 2015, ICANN submitted its Response to Claimant's Request for Independent Review Process.
56. On 12 February 2015, Mr. Judge issued his Interim Declaration on Emergency Request for Interim Measures of Protection ("**Emergency Declaration**"). The Conclusion of the Emergency Declaration provided as follows:

96. Based on the foregoing analysis, this Emergency Panel makes the following order by way of an interim declaration and recommendation to the ICANN Board that:

- a. *ICANN shall refrain from taking any further steps towards the execution of a registry agreement for .PERSIANGULF, with Asia Green or any other entity, until the IRP is completed, or until such other order of the IRP panel when constituted;*
- b. *This order is without prejudice to the IRP panel reconsidering, modifying or vacating this order and interim declaration upon a further request;*
- c. *This order is without prejudice to any later request to the IRP panel to make an order for the provision of appropriate security by the Claimant; and*
- d. *The costs of this Request for Interim Measures shall be reserved to the IRP panel.*²⁵

57. Following the Emergency Declaration, the present IRP Panel was constituted. The chair was appointed on 4 December 2015.
58. On 6 January 2016, the IRP Panel held a preparatory conference call with the Parties. The Panel issued Procedural Order No. 1 on 8 January 2016 (corrected 13 January 2016), establishing the submissions and setting the timetable for the proceedings. The merits hearing by telephone conference call was scheduled for 17 May 2016.
59. Pursuant to Procedural Order No. 1, the GCC filed its Supplementary Request for Independent Review Process ("**Supplementary IRP Request**") on 12 February 2016. This submission included the Supplementary Witness Statement of Mr. Al Marzouqi ("**Supplementary Marzouqi Statement**"), which described the GCC's unsuccessful attempts to conduct a conciliation process with both ICANN and Asia Green after the GCC filed its Request for IRP.
60. On 14 March 2016, ICANN filed its Response to Claimant's Supplementary IRP Request ("**Response to Supplementary IRP Request**"). As was the case in the emergency proceedings, ICANN did not file any witness statements.
61. On 29 March 2016, the GCC submitted its Reply in Support of its Supplementary Request for IRP, with no additional witness statements. ICANN's Response followed on 12 April 2016, ("**Rejoinder to IRP Request**"), again with no witness statements.

²⁵ Interim Declaration on Emergency Request for Interim Measures of Protection ("**Emergency Declaration**"), ¶ 96.

62. On 7 May 2016, the Claimant requested that the hearing be postponed until July 2016. ICANN did not oppose. The IRP Panel rescheduled the hearing for 7 July 2016.
63. The hearing took place by telephone conference call on 7 July 2016, lasting approximately two hours. The IRP Panel heard submissions from counsel for both Parties. As agreed by the Parties, there was no fact or expert witness testimony.
64. Having determined that there was no need for further submissions, the Panel declared the hearing officially closed on 19 October 2016, except as to costs.

VI. THE RELIEF SOUGHT

65. The Claimant GCC seeks a Declaration:
 - a. stating that the ICANN Board violated ICANN's Articles, Bylaws and the New gTLD Application Guidebook of 4 June 2012;
 - b. recommending to the Board that ICANN take no further action on the ".persiangulf" gTLD, including by enjoining ICANN from signing the registry agreement with Asia Green, or any other entity;
 - c. awarding the GCC its costs in this proceeding; and
 - d. awarding such other relief as the Panel may find appropriate or that the GCC may request.²⁶
66. The Respondent ICANN seeks a Declaration:
 - a. denying the GCC's IRP Request;
 - b. awarding ICANN its reasonable fees and costs incurred, including legal fees, if it is the prevailing party.²⁷

²⁶ Supplementary IRP Request, ¶ 63.

²⁷ Response to Supplementary IRP Request, ¶¶ 30 and 32.

VII. JURISDICTION: TIMELINESS OF THE REQUEST FOR IRP

A. The Issue and Legal Framework

67. A preliminary jurisdictional issue for decision is whether the GCC's Request for IRP is time-barred. ICANN argues that the Request is time-barred; the GCC disagrees.
68. As a starting point, the 30-day deadline for challenging an ICANN Board action appears in Article IV, Section 3, Paragraph 3 of the ICANN Bylaws ("**IRP Deadline**"), which provides in relevant part:

A request for independent review must be filed within thirty days of the posting of the minutes of the Board meeting (and the accompanying Board Briefing Materials, if available) that the requesting party contends demonstrates that ICANN violated its Bylaws or Articles of Incorporation.

69. Article IV, Section 3, of the ICANN Bylaws, together with the ICANN document entitled "Cooperative Engagement Process – Requests for Independent Review" dated 11 April 2013 ("**CEP-IRP Document**"),²⁸ codify two exceptions to the IRP Deadline.
- a. The IRP Deadline is tolled if the parties are engaged in a Cooperative Engagement Process ("**CEP**"), referred to in Paragraph 14 of Article IV, Section 3, of the ICANN Bylaws:

Prior to initiating a request for independent review, the complainant is urged to enter into a period of cooperative engagement with ICANN for the purpose of resolving or narrowing the issues that are contemplated to be brought to the IRP. The cooperative engagement process is published on ICANN.org and is incorporated into this Section 3 of the Bylaws.

Pursuant to the CEP-IRP Document (pp. 1-2):

If ICANN and the requestor have not agreed to a resolution of issues upon the conclusion of the cooperative engagement process, or if issues remain for a request for independent review, the requestor's time to file a request for independent review designated in the Bylaws shall be extended for each day of the cooperative engagement process, but in no event, absent mutual written agreement by the parties, shall the extension be for more than fourteen (14) days.

²⁸ Response to Claimant's Request for Independent Review Process ("**Response to IRP Request**"), Exh. R-5; Supplementary IRP Request, Exh. S-10.

b. Pursuant to the CEP-IRP Document (para. 6), ICANN and an IRP requestor may agree, in writing, to extend the IRP Deadline.

70. To recall, certain relevant facts are undisputed. Following the Durban GAC meeting and Communiqué, ICANN posted the Durban Minutes and related materials on 30 September 2013. The GCC filed its Request for IRP on 5 December 2014. Obviously, 5 December 2014 is more than 30 days after the 30 September 2013 posting of the Durban Minutes and related materials.
71. It is also undisputed that the Parties neither initiated a formal CEP nor agreed in writing to extend the IRP Deadline.
72. Accordingly, the issue before the IRP Panel is whether the 30-day IRP Deadline was tolled or otherwise extended despite the absence of a CEP or written extension of the IRP Deadline.

B. The Respondent's Position

73. ICANN takes the firm legal position, as advocated in both its written submissions and during the 7 July 2016 hearing, that the IRP Deadline is mandatory and cannot be tolled or extended for non-codified reasons. To allow equitable tolling in general would be to create unacceptable uncertainty for gTLD applicants and IRP applicants. To allow tolling in the instant circumstances for the GCC, which waited over a year to file its IRP Request, would be to provide impermissible special treatment.
74. As for the specific circumstances alleged by the GCC (described below), ICANN denies that any dealings and communications between its officials and GCC representatives effectively substituted for the CEP process or excused the GCC's failure to initiate the CEP process. To recall, as in the Emergency Request proceedings, ICANN presented no witness statements from named or unnamed representatives or any other factual evidence.

C. The Claimant's Position

75. The GCC presents an equitable reliance defense to its delayed initiation of the IRP process. The GCC argues, as a general matter, that ICANN should acknowledge non-written tolling

circumstances and, in the specific circumstances here, that the IRP Deadline must be deemed tolled by reason of the explicit and/or implicit representations made by ICANN officials to Mr. Al Marzouqi between October 2013 and November 2014.

76. The GCC asserts that *“following the Board’s September 2013 Board Action, ICANN represented repeatedly – through its words and actions – to the GCC that the deadline to file the IRP had not yet passed”*.²⁹
77. The GCC relies primarily on the Al Marzouqi Statement, and a 9 July 2014 letter from Mr. Mohammed Al Ghanim, Director General of the UAE Telecommunications Regulatory Authority, to ICANN CEO Mr. Fadi Chehade, to support this assertion. According to Mr. Al Marzouqi:
 - a. He and other GAC members expected that ICANN would treat the “.persiangulf” gTLD application in the same way it had treated the “.islam” and “.halal” applications, because all three applications *“lack community support, and the .PERSIANGULF gTLD application, unlike the .ISLAM and .HALAL gTLD applications, also is strongly opposed by the Arab community because ‘Persian Gulf’ is a disputed name”*.³⁰
 - b. After the posting of the ICANN Board decision to proceed with the “.persiangulf” application on 30 September 2013, he *“reached out to [his] ICANN counterparts to initiate an attempt at resolution”* and they *“instructed [him] to wait until the Independent Expert issued a declaration on the GCC’s Community Objection”*, which he did.³¹
 - c. After Judge Schwebel dismissed the Community Objection on 30 October 2013, Mr. Al Marzouqi again reached out and his *“ICANN counterparts advised they would get back to [him]”*.³²

²⁹ Supplementary IRP Request, ¶ 35.

³⁰ Al Marzouqi Statement, ¶ 7.

³¹ Ibid., ¶¶ 8-10.

³² Ibid., ¶ 11.

- d. “After several months of dialogue with [his] ICANN counterparts proved unsuccessful”, he arranged for “high-level” meetings “in hopes of facilitating a resolution”, which arrangements took substantial time due to schedules.³³
- e. In June 2014, Mr. Al Marzouqi and other GCC representatives met with the ICANN CEO, Mr. Chehade, during the GCC Telecom Council Ministers Meeting in Kuwait City.³⁴ According to Mr. Al Marzouqi, GCC representatives reiterated their objections to the “.persiangulf” application in that meeting.
- f. Mr. Al Marzouqi’s testimony about the meeting is corroborated by a 9 July 2014 letter from Mr. Al Ghanim to Mr. Chehade.³⁵ Mr. Al Ghanim reiterated the GCC’s concerns about lack of community involvement and support for the gTLD, which is “*problematic and refers to a geographical place with disputed name*”, and added:

While the GAC did not issue an advice objecting against the Application (due to lack of consensus because one particular country did not agree to the objection), this does not mean those countries which are part [sic] of the community targeted by the Application are agreeing to the Application to proceed and this certainly does not mean that ICANN should ignore this fact and continue to allow the Application to proceed.

.... The security, functionality and stability of Internet rely greatly on a successful operation of the DNS system. It is worrying to see how a TLD being opposed by majority of the community targeted would be able to operate and sustain. We believe the motive behind this Application has nothing to do with Internet community interest, nor commercial interest. We request ICANN to analyze the Application from financial and sustainability angle given that the community continues to oppose the Application.³⁶

- g. Thereafter, Mr. Al Marzouqi’s “ICANN counterparts again advised [him] that they had taken the GCC’s position under advisement and would get back to the GCC with an answer”.³⁷ That answer, testified Mr Al Marzouqi, came in September 2014, when Mr. Al Marzouqi’s “ICANN counterparts ... suggested to

³³ Ibid., ¶¶ 12-13.

³⁴ Ibid., ¶ 14.

³⁵ Ibid., attached Letter from Mr. Mohammed Al Ghanim to Mr. Fadi Chehade, 9 July 2014 (“Al Ghanim Letter”).

³⁶ Al Ghanim Letter, p. 2.

³⁷ Al Marzouqi Statement, ¶ 15.

[him] *that the GCC's only recourse toward resolution may be to file a request for independent review of ICANN's Board action*" (emphasis in original).³⁸

- h. Mr. Al Marzouqi spoke again with his "*ICANN counterparts*" in October 2014 at ICANN meetings in Los Angeles. As "*ICANN's handling of geographic gTLD applications was a topic of discussion at those meetings*", he "*remained hopeful that the GCC and ICANN could finally resolve the dispute*".³⁹
- i. In November 2014, there having been no resolution at the October meetings, Mr. Al Marzouqi advised the GCC to proceed with the IRP process.⁴⁰ He learned only in December 2014 that ICANN intended to sign the registry agreement for ".persiangulf", after which he advised the GCC to file the Emergency Request "*to ensure that the independent review process would not be rendered meaningless*".⁴¹
- j. According to Mr. Al Marzouqi: "*At no time from September 2013 to November 2014 did ICANN state, let alone suggest, that if the GCC engaged in resolution efforts it would be time-barred from seeking an independent review of the September 2013 Board action*".⁴²

78. Mr. Marzouqi, in his Supplementary Witness Statement, describes further attempts at conciliation with both ICANN and Asia Green after the GCC filed its IRP Request.⁴³ These attempts proved unsuccessful.

79. The GCC also relies, in support of its equitable reliance defense, on an email dated 19 December 2014 from Mr. Eric Enson, outside counsel to ICANN, to Mr. Kamran Salour, outside counsel to the GCC ("**ICANN Counsel Email**").⁴⁴ The relevant language is as follows:

³⁸ Ibid., ¶16.

³⁹ Ibid., ¶ 17.

⁴⁰ Ibid., ¶ 18.

⁴¹ Ibid., ¶ 22.

⁴² Ibid., ¶ 19.

⁴³ Supplementary Marzouqi Statement, Exh. S-9, ¶¶ 2-16.

⁴⁴ Supplementary Request for IRP, Exh. S-11.

Fourth, during the call yesterday, you mentioned the possibility of entering a Cooperative Engagement Process (“CEP”), as set forth in ICANN’s Bylaws. A CEP is supposed to take place before the filing of an IRP in the hope of avoiding, or at least minimizing, the costs associated with an IRP. That, obviously, did not happen in this matter. In addition, a CEP is supposed to be a dialogue between the parties, rather than counsel for the parties. ICANN is always willing to discuss amicable resolutions of issues, but I think we need additional information from the GCC before agreeing to engage in a CEP, at this point. First, ICANN would like to know whether the GCC believes that there is a realistic possibility that the GCC would dismiss its IRP based on CEP discussions. The reason this is important to ICANN is because ICANN representatives informed GCC representative[s], on several occasions, that the CEP was available to the GCC and should be invoked before the filing of an IRP.

80. The GCC considers this email to evidence ICANN’s earlier tolling of the 30-day IRP Deadline, because ICANN expressed willingness to enter into a CEP despite the GCC’s initiation of the IRP process on 5 December 2014.⁴⁵

D. The IRP Panel’s Analysis and Decision

81. Turning first to the Parties’ general arguments on whether and how the IRP Deadline can be tolled or extended other than by the two codified exceptions, we do not consider it our role as an IRP Panel to issue general directives. It suffices to record that, under an equitable reliance theory, a requesting party should be allowed to request an IRP after expiry of the 30-day IRP Deadline if that party can show reliance on a representation or representations by ICANN inviting or allowing extension of the IRP Deadline. Otherwise, ICANN would be allowed “to blow hot and cold” and ultimately undermine its own mandate. Such contradictory actions would be inconsistent with, for example, the core value set out in Article 1, Section 2, of the ICANN Bylaws, of ICANN’s “[m]aking decisions by applying documented policies neutrally and objectively, with integrity and fairness”.
82. Beyond that general proposition, our Declaration must be focused on the facts and circumstances of the case before us. The issue is whether ICANN did make such a representation or representations here, either explicitly or implicitly by conduct.

⁴⁵ Claimant’s Reply in Support of its Supplementary Request for IRP, ¶ 26.

83. We have carefully examined the GCC’s evidence of contacts and communications between GCC and ICANN representatives between September 2013 and November 2014. Although the Marzouqi Statement was conclusory and short on detail, for example, in not providing names for his “*ICANN counterparts*” who participated in discussions after September 2013, he did provide a credible account of a series of communications with ICANN, commensurate with the credible level of serious GCC concerns about registry of “.persiangulf” as a new gTLD.
84. We have not been helped by any contradictory or confirming witness statements, or other evidence, from ICANN, about that alleged series of contacts and communications. It is striking that ICANN does not dispute the fact that the meeting with its most senior representative, CEO Chehade, occurred in June 2014. ICANN does dispute other points of Mr. Al Marzouqi’s testimony, for example, his description of the instruction by unnamed ICANN officials that the GCC wait until after the Expert Panelist’s decision on the Community Objection to commence an IRP process, and his testimony that unnamed ICANN officials suggested an IRP process in September 2014 and participated actively in negotiations thereafter. However, ICANN provided no witness statements from ICANN representatives who did participate in the June 2014 meeting, no copy of any written response from ICANN to the Al Ghanim letter about the content of the discussions in that meeting, or any other factual evidence whatsoever countering Mr. Al Marzouqi’s account.
85. Having weighed such evidence as there is in the record, we find as follows, on the balance of probabilities:
- a. In October 2013, ICANN requested the GCC, through Mr. Al Marzouqi, not to commence dispute resolution proceedings – which by definition encompass an IRP process – until the Expert Panelist had resolved the GCC’s Community Objection to the “.persiangulf” gTLD application. This request was in effect a representation that the IRP Deadline was tolled until Judge Schwebel issued his expert decision, regardless of when that might be.
 - b. The GCC relied on that representation from ICANN, to the effect that the 30-day IRP Deadline was not yet running, in not filing an IRP request within 30 days

after the posting of the GAC's Durban Minutes and related materials on 30 September 2013.

- c. After Expert Panelist Schwebel dismissed the GCC's Community Objection on 30 October 2013, which happened to be the expiry of the IRP Deadline, ICANN continued to welcome – if not actively encourage – a series of communications and meetings to discuss the GCC's objections to registration of “.persiangulf”. Having previously tolled the IRP Deadline, if ICANN at that point believed that the 30-day deadline was running or had expired, it is reasonable to assume that ICANN would have told the GCC. It is thus reasonable – indeed, necessary – to conclude that, while those communications and meetings were taking place, the IRP Deadline remained tolled.
- d. By far the most compelling evidence is that the ICANN CEO himself, Mr. Chehade, met with Mr. Al Marzouqi and other GCC representatives in June 2014 to discuss the GCC's objections to the “.persiangulf” gTLD application, a meeting testified to by Mr. Al Marzouqi and corroborated by the 9 July 2014 Al Ghanim Letter. Regardless of whether ICANN officials thereafter expressly advised the GCC that ICANN had taken the GCC's objections under advisement, as Mr. Al Marzouqi testified, CEO Chehade's personal involvement made it reasonable for the GCC to consider that their opposition to “.persiangulf” remained under active consideration by the ICANN Board through July 2014.
- e. Not long thereafter, in September 2014, an ICANN representative or representatives suggested to Mr. Al Marzouqi that an IRP request might be the GCC's only recourse toward resolution. Considering that the 30-day IRP Deadline had passed over a year before, and assuming good faith on the part of ICANN throughout, it is reasonable that the GCC considered the IRP Deadline to remain tolled at this time.
- f. The GCC pursued a further settlement attempt with ICANN at meetings in Los Angeles in October 2014, which reflects that the GCC continued to rely on ICANN's holding the IRP Deadline open in hopes of settlement. Those hopes

dissipated by November 2014 when the GCC received nothing positive from the Los Angeles meetings.

- g. At this point, absent any further representations from ICANN about further negotiations, the limitations period reasonably ceased to be tolled and the IRP Deadline started to run.
 - h. On 5 December 2014, within the 30-day IRP Deadline, the GCC filed its Request for IRP.
86. Exchanges thereafter – in specific, the ICANN Counsel Email confirming that ICANN had entertained a CEP process – support the conclusion that ICANN itself considered the deadline for the submission of an IRP to have been tolled. Those exchanges show that ICANN could and did continue discussions with the GCC aimed at resolving the “.persiangulf” gTLD dispute by way of a formal or informal CEP process even after the 30-day IRP Deadline had passed and before the GCC filed a Request for IRP. As confirmed in the ICANN Counsel Email, the CEP is a dispute resolution mechanism that typically precedes, and is aimed at avoiding, an IRP filing. We need not interpret Mr. Enson’s email as confirmation that a CEP took place before the IRP was filed, to find that ICANN reasonably appeared to the GCC to remain open to a CEP, with certain conditions, well after 30 October 2013.
87. While there was no formal CEP, we conclude from the evidentiary record overall that ICANN explicitly and implicitly cooperated in a shadow conciliation process with the GCC. It was reasonable for the GCC to continue to participate in that process, without concern that ICANN would retroactively impose a strict 30 October 2013 time-bar for an IRP request should the shadow conciliation process fail.
88. In coming to this conclusion, we have not been swayed by the GCC’s umbrella argument that ICANN should have formally notified the GCC, at very least in the December 2014 ICANN Counsel Email, that the IRP Deadline was mandatory and had expired by 30 October 2014. Nor have we been swayed by ICANN’s mirror argument that the GCC should have formally reserved and documented its position that the IRP Deadline was tolled by ICANN’s conduct. It is because neither Party took such formal action that this

dispute comes before this Panel, and we are tasked with evaluating the legal import of the actions the Parties did take.

89. Nor have we been swayed by the political context. While the well-known sensitivities around the disputed names “Persian Gulf” and “Arabian Gulf” cannot **excuse** ICANN’s ignoring its own IRP Deadline for over a year, which implicitly encouraged the GCC to postpone filing its IRP Request, those sensitivities perhaps **explain** ICANN’s reluctance to apply the IRP Deadline strictly in this case. It would seem that both Parties hoped that such a political dispute would somehow resolve itself.
90. Although neither Party asked the IRP Panel to take any formal action in relation to the status of the Emergency Declaration, it should be clear from our conclusion that we agree with the assessment of Mr. Judge that “*the evidence of the ongoing contact between representatives of ICANN and the GCC from October 2013 to November 2014 supports a reasonable possibility that the time period for the filing of the IRP has been extended by the conduct of ICANN representatives and that the delay, as explained, is reasonable*”.⁴⁶ The Emergency Panelist cautioned that “*the evidentiary record is far from complete and additional evidence can be expected on this issue on the IRP itself*”,⁴⁷ but, as it transpired, ICANN did not provide any such additional evidence concerning the conduct of its officials.
91. To conclude, the Panel finds that: (a) at no point did the GCC cease its objections to ICANN’s registration of the “.persiangulf” gTLD; (b) through its conduct, ICANN made representations that the IRP Deadline, measured against the 30 September 2013 Board action, was tolled; (c) the GCC relied on those representations, in hopes of a resolution, in postponing a formal IRP process; and (d) the GCC timely submitted its IRP Request on 5 December 2014.

⁴⁶ Emergency Declaration, ¶ 83.

⁴⁷ Ibid., ¶¶ 83 and 86.

VIII. THE MERITS

A. The Standard of Review

92. As a preliminary matter, the Panel considers the standard of review to be clear. Pursuant to Article IV, Section 3, Paragraph 4, of the ICANN Bylaws (echoed in Article 8 of the Supplementary Procedures), we are:

charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws. . . . [and] must apply a defined standard of review to the IRP request, focusing on:

- a. did the Board act without conflict of interest in taking its decision?*
- b. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and*
- c. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?*

(Emphasis added.)

93. The IRP Panel agrees with the GCC that this is a *de novo* standard of review, without a component of deference to the ICANN Board with regard to the consistency of the contested action with the Articles and Bylaws.⁴⁸ This is consistent with the very name of the IRP process – an **independent** review of the contested Board action. Other IRP Panels have recognized and applied this *de novo* standard of review.⁴⁹
94. We also agree with ICANN that an IRP Panel cannot abuse this independence to substitute its own view of the underlying merits of the contested action for the view of the Board, which has substantive discretion.⁵⁰ This proposition is reflected in the language of Article IV, Section 3, Paragraph 4, of the Bylaws: an IRP Panel is not entrusted with second-

⁴⁸ Supplementary IRP Request, ¶¶ 9-11.

⁴⁹ Relying upon Annex S-3, 19 February 2010, Final Declaration in *ICM Registry LLC v. ICANN*; Annex S-4, 3 March 2015, Final Declaration in *Booking.com v. ICANN*; Annex S-5, 9 July 2015 Final Declaration in *DotConnectAfrica Trust v. ICANN*.

⁵⁰ Response to Claimant's Supplementary IRP Request ("Response to Supplementary IRP Request"), ¶ 5; Annex S-2, 9 October 2015, Final Declaration in *Vistaprint v. ICANN*, ¶ 124; Exh. R-24, Final Declaration in *Merck v. ICANN*, ¶ 21; Annex S-4, Final Declaration in *Booking.com v. ICANN*, ¶ 108.

guessing the Board, but rather “*with declaring whether the Board has acted consistently with the provisions of [the ICANN] Articles of Incorporation and Bylaws*”.

95. To recall, the contested ICANN Board action here is the Board’s decision on 10 September 2013 to proceed with the “.persiangulf” gTLD application. It is irrelevant whether the IRP Panel considers this decision to be right or wrong on the merits, much less to be politically wise or unwise. Our role is to examine the **process** of the Board’s decision-making, in specific to answer the questions in Article IV, Section 3, Paragraph 4, of the Bylaws: (a) did the Board act without conflict of interest? (b) did the Board exercise due diligence and care in having a reasonable amount of facts? and (c) did the Board members exercise independent judgment, believed to be in the best interests of ICANN?

96. If the answer to any of those questions is “no”, the GCC will prevail in this Request.

B. The Claimant’s Standing to Pursue the IRP

97. A second preliminary question goes, as we find below, to the GCC’s standing to pursue this IRP proceeding.

98. The Parties devoted substantial attention in their written and oral submissions to the question of the type and level of harm that the GCC must establish it has suffered or will suffer as a result of the contested ICANN Board action. This question arises from the IRP-related test in Article IV, Section 3, Paragraph 2, of the ICANN Bylaws:

*Any person **materially affected** by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws **may submit a request for independent review** of that decision or action. In order to be **materially affected**, the person must suffer **injury or harm that is directly and causally connected to the Board's alleged violation of the Bylaws or the Articles of Incorporation**, and not as a result of third parties acting in line with the Board's action. (Emphasis added.)*

99. The Parties agree that the term “*materially affected*” must be distinguished from the term “*material detriment*”, which is relevant in assessing the merits of a Community Objection to a gTLD application. One of the four elements to be proven for a successful Community Objection is that the application “*creates a likelihood of **material detriment** to the rights or legitimate interests of a significant portion of the community to which the string may be*

explicitly or implicitly targeted” (emphasis added). Factors evidencing material detriment go to actual operation of the gTLD by the applicant, including the likelihood that operation will cause reputational, security, and/or economic harm to the community represented.

100. ICANN, however, effectively equates the two terms “*materially affected*” and “*material detriment*” by using them interchangeably. The basic inquiry for both tests, according to ICANN, is whether an IRP requestor will be materially injured or harmed by the actual operation of the relevant string.⁵¹ In ICANN’s view, the GCC, however, has failed to identify any legally recognizable harm it will suffer if “.persiangulf is registered; the contention that a “.persiangulf” gTLD will create the false impression that the Gulf Arab nations accept the disputed name “Persian Gulf” is not a cognisable harm.⁵² To support its position, ICANN puts substantial weight on the findings of the Independent Objector and the Expert Panelist that the GCC fell short of proving that it would suffer harm reaching the level of “*material detriment*”.⁵³

101. In comparison, the GCC in its Supplementary IRP Request argues that the only relevant inquiry is whether it suffered injury or harm connected to ICANN’s alleged action inconsistent with the ICANN Articles or Bylaws.⁵⁴ The IRP Panel, according to the GCC, is to examine only whether that action – here, the Board’s 10 September 2013 decision to allow processing of the “.persiangulf” application – did cause harm “*materially affect[ing]*” the GCC and its members.⁵⁵ The GCC identifies that harm to be the denial of its due process rights to an ICANN decision on the contested “.persiangulf” gTLD application in which its objections were fully considered by the Board, and apparent discrimination against its Arab members in favor of Iran.⁵⁶

102. The IRP Panel agrees with ICANN that the question of whether the GCC was “*materially affected*” for purposes of Article IV, Section 3, Paragraph 2, of the ICANN Bylaws is one

⁵¹ Rejoinder to ICANN’s Response to Gulf Cooperation Council’s Reply in Support of Supplementary Request for Independent Panel Review (“**Rejoinder to IRP Request**”, ¶ 15.

⁵² Ibid., ¶¶ 13-15; Response to Supplementary IRP Request, ¶ 25.

⁵³ Rejoinder to IRP, ¶ 14.

⁵⁴ Supplementary IRP Request, ¶ 41. The GCC took a position closer to ICANN’s in this respect in its original Request for IRP; see, e.g., ¶¶ 70-74.

⁵⁵ Supplementary IRP Request, ¶ 49.

⁵⁶ Ibid., ¶ 42.

of standing.⁵⁷ This is the logical meaning of the language in Paragraph 2 that a “*person materially affected*” by an ICANN Board action perceived to be inconsistent with the Bylaws or Articles “*may submit a request for independent review*”; this cannot and does not presuppose a successful request for IRP. As a standing question, this question precedes the core IRP question of whether the ICANN Board acted inconsistently with its Articles or Bylaws.⁵⁸

103. However, we cannot agree with ICANN’s effective conflation of the two tests of “*materially affected*” and “*material detriment*”. Only the former test appears in, and is relevant to, the IRP-related standing test in Article VI, Section 3, Paragraph 2, of the ICANN Bylaws. To apply the “*material detriment*” test, which is a critical component of the Community Objection evaluation process under the Guidebook, would be to put the IRP Panel into a role it does not have – to examine and offer its views on the merits of the “.persiangulf” gTLD application under the relevant ICANN criteria. The determinations of the Independent Objector and the Expert Panelist, which were made in the Community Objection context and hence necessarily focused on the likelihood of “*material detriment*” to the interests of the Gulf community, are therefore irrelevant.⁵⁹
104. In this connection, we do not need to address the submissions of the Parties as to whether the GCC could have minimized or avoided injury or harm by applying for an “.arabiangulf” gTLD, and whether such an application is or is not foreclosed in the future. This may have been a factor for the Independent Objector and the Expert Panelist to consider in the Community Objection context, but it is not a proper issue of standing in an IRP case.
105. We recognize that the “*materially affected*” test in Article IV, Section 3, Paragraph 2, of the ICANN Bylaws is defined in relation to “*injury or harm that is directly or causally connected to the Board’s alleged violation of the Bylaws or the Articles*”. As Paragraph 2 goes to standing, however, it cannot reasonably be interpreted as requiring an IRP panel to find proof of concrete and measurable injury or harm at the time an IRP request is filed. It

⁵⁷ Rejoinder to IRP Request, ¶ 16.

⁵⁸ *Ibid.*, ¶ 16.

⁵⁹ Supplementary IRP Request, ¶¶ 43-49; The Gulf Cooperation Council’s Reply in Support of its Supplementary Request for Independent Review Process (“**Reply to IRP Request**”), ¶ 21.

must suffice for the IRP requestor, to meet the standing test, to allege reasonably credible injury or harm connected to the contested ICANN Board action. We are satisfied that the GCC has done so here by describing the harm caused to its Gulf members' due process rights, by definition, if the processing of the ".persiangulf" gTLD application were to continue on the basis of a Board decision made without regard to the GCC's objections. We now turn to the core merits question of whether the GCC has proven such inconsistent action by ICANN.

C. The Claimant's Position

106. The GCC's main submission is that ICANN failed to follow the GAC's advice from the Durban meeting, as well as the Guidebook procedures, in deciding in September 2013 to allow further processing of the ".persiangulf" gTLD.
107. The GCC relies on Module 3.1 of the Guidebook, which sets out three possible forms for GAC advice to the ICANN Board. These are set out at paragraph 19 above. Given that the GAC did not issue Consensus GAC Advice that the ".persiangulf" gTLD application should **not** proceed or advice that the application should not proceed unless remediated, by elimination the only available form of advice was an "*expression of concerns in the GAC*" about Asia Green's application, meant to prompt a dialogue between the GAC and the Board.⁶⁰ The GAC did identify such concerns, in the Durban Minutes, which explicitly: (i) referred to the opinions of GAC members from the UAE, Oman, Bahrain and Qatar that the application should not proceed; (ii) noted that the GAC had heard "*opposing views*" on the application; and (iii) concluded that "*it was clear that there would not be consensus on an objection*".⁶¹ In the GCC's view, these vigorous comments were a fully recognizable expression of its members' concerns.
108. The GCC disagrees with ICANN that only the Durban Communiqué constituted recognizable GAC advice to the ICANN Board. The GCC relies on Principle 51 of GAC's Operating Principles, which does not limit the GAC's advice to a communiqué.⁶² Further, ICANN's failure to review the Durban Minutes before passing its resolution on the

⁶⁰ Supplementary IRP Request, ¶ 20.

⁶¹ Ibid., ¶ 18; Reply to IRP Request, ¶ 6.

⁶² Reply to IRP, ¶ 8.

“.persiangulf” application was, in itself, a failure to exercise due diligence in making the decision, in violation of Article IV, Section 3, Paragraph 4(b), of the ICANN Bylaws.⁶³

109. In light of the foregoing, the ICANN Board was obligated to enter into a dialogue with the GAC to understand its members’ concerns, and to give reasons for its ultimate decision to allow Asia Green’s application to move forward – which ICANN failed to do.
110. The GCC argues in the alternative that, even if ICANN was somehow correct in following the GAC’s non-compliant advice to allow the “.persiangulf” application to proceed, ICANN violated several other Articles and Bylaws. Among others, the GCC identifies:

a. Bylaws, Article I, Section 2:

In performing its mission, the following core values should guide the decisions and actions of ICANN:

....

4. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.

....

8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.

....

11. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments’ or public authorities’ recommendations.

b. Bylaws, Article II, Section 3:

ICANN shall not apply its standards, policies, procedures or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.

c. Bylaws, Article III, Section 1:

⁶³ Reply to IRP Request, ¶ 10.

ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness. ,

d. Articles of Incorporation, Article 4:

The Corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets.

111. The GCC puts special emphasis on Paragraph 2.1(b) of the GAC Principles Regarding New gTLDs, which directs that “*New gTLDs should respect: ... the sensitivities regarding terms with national, cultural, geographic and religious significance*”.
112. Against this backdrop of ICANN constituent documents, the GCC argues that the ICANN Board failed to collect and independently assess all relevant facts before resolving to allow the “.persiangulf” gTLD application to proceed. The Board failed to review the GAC’s Durban Minutes, which flagged that there were serious objections to the application and hence no consensus in favor of its proceeding. Nor did the Board explain, or even give any indication of, the reasons for its decision to allow the vigorously contested application to proceed. The bare Board resolution of 10 September 2013 gives no hint that the Board fulfilled its obligation to assess and balance the competing core values of ICANN. Neither that resolution nor any other document contains any reference to the ICANN core values guiding the Board in its 10 September 2013 decision on the “.persiangulf” application or any statement as to how the Board balanced core values that it found to be competing.
113. The Board also discriminated against the GCC by giving credence only to the Iranian position at the GAC and by ignoring the GCC’s Community Objection and strong government opposition. If registered with Asia Green, the “.persiangulf” string will be discriminatory because “it will falsely create the perception that the GCC accepts the disputed ‘Persian Gulf’ name”.⁶⁴ This is particularly egregious because the Persian

⁶⁴ Request for IRP, ¶ 58.

community already has the benefit of the “.pars” string, already registered with Asia Green for purposes overlapping with the “.persiangulf” application.

114. Further, according to the GCC, the Board handled Asia Green’s “.persiangulf” application inconsistently with Asia Green’s “.halal” and “.islam” applications. In those cases, although the Independent Expert dismissed the Community Objections because he did not find substantial community opposition, the Board intervened to stop the processing of both strings. Here, where the Community Objection and the Durban Minutes documented substantial community opposition, the Board nonetheless decided to allow continued processing of the “.persiangulf” application.
115. Overall, says the GCC, the Board’s NGPC acted unfairly in a non-transparent and discriminatory manner, without sensitivity to the national, cultural and geographic issues in the Gulf.⁶⁵ In reviewing the Board’s decision to allow Asia Green’s “.persiangulf” application to go forward, the Panel should follow the path of the IRP Panel in the *DotConnectAfrica Trust v ICANN* case. There, the IRP Panel held that the Board had breached its transparency obligations by simply adopting the GAC’s consensus advice not to proceed with the application for the “.africa” gTLD, stating that it “*would have expected the ICANN Board to, at a minimum, investigate the matter further before rejecting [DotConnectAfrica] Trust’s application*”.⁶⁶

D. The Respondent’s Position

116. ICANN’s defense to the GCC’s argument that the Board failed to follow the GAC’s advice is straightforward: the ICANN Board followed the GAC’s advice to the letter. According to ICANN, the GAC did **not** advise of any member concerns regarding the “.persiangulf” gTLD application, and so the proper course was for the Board’s NGPC to allow Asia Green’s application to progress. The Durban Communiqué expressly stated that the GAC had “*finalised its consideration ... and does not object to [the “.persiangulf” application] proceeding*”, without advising of any concerns whatsoever. ICANN emphasizes that the Board did not make a decision to approve the “.persiangulf application” based on the

⁶⁵ Supplementary IRP Request, ¶ 23-26; Reply to IRP Request, ¶¶ 16-18.

⁶⁶ *Ibid.*, Exh. S-5; Final Declaration, *DotConnectAfrica Trust v ICANN*, 9 July 2015, ¶ 113.

GAC's advice, but simply resolved to allow the ICANN staff to continue to process the application.⁶⁷

117. ICANN relies on GAC Operating Principles 51 to argue that the Durban Minutes, to the extent those Minutes say anything more than the Durban Communiqué, are not an official statement of GAC advice to the ICANN Board.⁶⁸ Nor were the Durban Minutes approved or posted until November 2013, and so they were not even before the Board for consideration at its meeting on 10 September 2013 to review and pass resolutions on the Durban Communiqué and Scorecard items. Further, in ICANN's view, the Durban Minutes are consistent with the Dublin Communiqué in reporting that there was no advice against the “.persiangulf” application proceeding. Comments made by individual GAC members at the Durban meeting, recorded in the Minutes, do not constitute GAC advice triggering Board duties under Module 3 of the *Guidebook*.⁶⁹
118. As for the GCC's alternative argument based on ICANN's failure to meet its mission and core value standards, ICANN denies both the theory and the facts. In ICANN's view, the Board independently evaluated the “.persiangulf” gTLD application, in an open and transparent fashion, as evidenced by: the posting of the Durban Communiqué and subsequent public comment period; the Board meetings to determine actions based on the GAC's advice in the Durban Communiqué, with a public record of the discussion on each item in the Durban Scorecard responding to the GAC's advice; and a unanimous vote adopting resolutions based on the Scorecard, again publicly posted. Nor can it be inferred that the Board failed to consider ICANN's core values simply because the Board did not explicitly state how it did so; it would be impossible for the Board to spell this out for the hundreds of resolutions it must manage each year.⁷⁰ Further, the Bylaws do not oblige the Board to accept any and all advice from the GAC; Article XI, 2.1.j of the Bylaws only requires the Board to take GAC advice into account and, if the advice is not followed, to provide reasons for not doing so.

⁶⁷ Response to IRP Request, ¶ 21.

⁶⁸ Ibid., ¶ 10, Exh. R-25.

⁶⁹ Reply to IRP Request, ¶ 9.

⁷⁰ Response to IRP Request, ¶¶ 13-20.

119. ICANN argues that the IRP Panel’s Declaration in the *DotConnectAfrica* case is inapposite, because the GAC provided Consensus Advice against the string proceeding. Similarly, as for the alleged inconsistent treatment of Asia Green’s applications for “.halal” and “.islam”, ICANN points out that in those cases, unlike the instant case, the GAC did in fact express concerns to the Board base on community concerns about the obvious religious sensitivities.
120. In sum, the ICANN Board’s NGPC considered and followed the GAC’s advice exactly as it was supposed to, fully consistently with the ICANN Articles and Bylaws.
121. Should the Tribunal find in the GCC’s favor, ICANN contests the GCC’s request for a declaration ordering ICANN to refrain from signing the registry agreement with Asia Green or any other entity. ICANN argues that, pursuant to Article IV, Section 3, Paragraph 3.11, of the Bylaws, an IRP Panel is limited to stating its opinion by “*declar[ing] whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws*” and recommending that the Board stay any action or decision or take any interim action until such time as the Board reviews and acts upon the opinion of the IRP Panel.

E. The IRP Panel’s Analysis and Decision

122. We turn first to the GCC’s main submission that the ICANN Board failed to follow the GAC’s advice from the Durban meeting, as well as the Guidebook, in deciding on 10 September 2013 to allow the “.persiangulf” gTLD to proceed in the application process.
123. This turns on whether the GAC did in fact properly provide post-Durban advice to the Board. We find this to be a difficult question, which overlaps with the GCC’s alternative submission concerning ICANN’s overall compliance with its mission and core values under the Bylaws and Articles.
124. To recall, Module 3.1 of the Guidebook envisions three forms of GAC advice to the Board: (a) Consensus GAC Advice that an application should **not** proceed, creating a strong presumption of non-approval; (b) the expression of **concerns** within the GAC, after which the ICANN Board is expected to enter into a dialogue with the GAC to understand those

concerns and then give reasons for its decision; or (c) advice that the application should not proceed unless **remediated**. It is undisputed, and we agree, that the GAC did not issue Consensus GAC Advice against the “.persiangulf” application or suggest remediation, leaving only the second form of advice – the expression of **concerns**, meant to prompt interaction with the Board.

125. If, as ICANN argues, only the Durban Communiqué could provide GAC advice to the Board, then the GAC clearly did **not** express concerns about the “.persiangulf” gTLD application. That Communiqué stated no more than this: “*The GAC has finalised its consideration of [the application] and does not object to [it] proceeding*”. This underlies ICANN’s main defense that the ICANN Board followed the GAC’s advice to the letter, by resolving to allow Asia Green’s application to proceed.
126. We find ICANN’s defense to be unduly formalistic and simplistic.
127. As we see it, the GAC sent a missive to the ICANN Board that fell outside all three permissible forms for its advice. The GAC’s statement in the Durban Communiqué that the GAC “*does not object*” to the application reads like consensus GAC advice that the application **should** proceed, or at very least non-consensus advice that the application should proceed. Neither form of advice is consistent with Module 3.1 of the Guidelines. Yet the ICANN Board proceeded to resolve to allow the application to proceed, as a routine matter, based on the Durban Communiqué.
128. Some of the fault for the outcome falls on the GAC, for not following its own principles. In particular, GAC Operating Principle 47 provides that the GAC is to work on the basis of consensus, and “[w]here consensus is not possible, the Chair shall convey the full range of views expressed by members to the ICANN Board”.⁷¹ The GAC chair clearly did not do so. Mr. Al Marzouqi testified to the views he expressed at the Durban meeting and that consensus proved impossible, which testimony stands unrebutted by ICANN here (quoted in paragraph 31 above):

⁷¹ ICANN Response to IRP Request, Exh. R-25.

5. *I also attended the GAC Meetings in Durban, South Africa in July 2013. During the meetings in Durban, I again voiced the GCC's opposition to the .PERSIANGULF gTLD application, again emphasizing the lack of community support and strong community opposition from the Arab community because "Persian Gulf" is a disputed name. A substantial number of GAC members in attendance shared these concerns.*

6. *Despite this substantial opposition, GAC could not reach a consensus. Iran is the only nation in the Gulf that favors the "Persian Gulf" name, and Iran's GAC representative obviously does not share the other GAC members' concerns about the .PERSIANGULF gTLD application. Not wanting a single GAC member to block consensus, the GAC Meeting Chairperson pulled me to the side to express her frustration that GAC could not reach a consensus.*

129. If the GAC had properly relayed these serious concerns as formal advice to the ICANN Board under the second advice option in Module 3.1 of the Guidebook, there would necessarily have been further inquiry by and dialogue with the Board. The directive of Module 3.1, which is a **procedural** protection for opponents to gTLD applications, bears emphasis:

The GAC advises ICANN that there are concerns about a particular application "dot.example." The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.

130. It is difficult to accept that ICANN's core values of transparency and fairness are met, where one GAC member can not only block consensus but also the expression of serious concerns of other members in advice to the Board, and thereby cut off further Board inquiry and dialogue.
131. In any event, the IRP Panel is not convinced that just because the GAC failed to express the GCC's concerns (made in their role as GAC members) in the Durban Communiqué that the Board did not need to consider these concerns. The record reveals not only substantial sensitivity with respect to Asia Green's ".persiangulf" application, but also general discord around religious or culturally tinged geographic gTLD names. In addition to the Durban Minutes, the pending Community Objection, and public awareness of the sensitivities of the "Persian Gulf"- "Arabian Gulf" naming dispute, the Durban Communiqué itself – on which ICANN relies so heavily here – contained an express recommendation that "ICANN collaborate with the GAC in refining, for future rounds, the Applicant Guidebook with

regard to the protection of terms with national, cultural, geographic and religious significance".⁷² These materials and this general knowledge could and should have come into play, if not as a matter of following GAC advice then as part of the Board's responsibility to fulfil ICANN's mission and core values.

132. Although it is not necessary to the outcome of this IRP, the Panel cannot accept ICANN's argument that the GAC may provide official advice to the Board only through a Communiqué. It is Principle 46 of the GAC's Operating Principles that provides that "[a]dvice from the GAC to the ICANN Board shall be communicated through the Chair", while Principle 51 speaks only of the Chair's authority to "issue a communiqué to the Media" following a meeting.
133. Even if, as a matter of practice, ICANN is correct that the Durban Minutes were not a form of official communication from the GAC, the Minutes do express serious GAC member concerns and confirm that there was, in fact, no consensus in Durban in favor of the ".persiangulf" gTLD application proceeding. As quoted in paragraph 32 above, those Minutes recorded as follows:

The GAC finalized its consideration of .persiangulf after hearing opposing views, the GAC determined that it was clear that there would not be consensus of an objection regarding this string and therefore the GAC does not provide advice against this string proceeding. The GAC noted the opinion of GAC members from UAE, Oman, Bahrain, and Qatar that this application should not proceed due to lack of community support and controversy of the name. (Emphasis added.)

Given this language, we cannot accept ICANN's argument that the Durban Minutes are consistent with the Durban Communiqué, which succinctly stated that the GCC "*does not object to [the application] proceeding*", thereby creating the impression that GAC members took the position – whether by consensus or not – that the application **should** proceed.

134. It is difficult to accept that the Board was not obliged to consider the concerns expressed in the Durban Minutes if it had access to the Minutes. If it was not given the Minutes, it is equally difficult to accept that the Board – as part of basic due diligence – would not have

⁷² Request for IRP, Annex 24, Durban Communiqué, para. 7.

asked for draft Minutes concerning GAC discussions of such a geo-politically charged application.

135. This failure of due diligence is compounded by the fact that, as noted by the NGPC itself in the Minutes of the critical 10 September 2013 meeting, the GCC's Community Objection was pending. The relevant Board resolution bears quoting again:

ICANN will continue to process the application in accordance with the established procedures in the [Guidebook]. The NGPC notes that community objections have been filed with the International Centre for Expertise of the ICC against .PERSIANGULF. (Emphasis added.)

136. Yet there is no evidence or indication in the record that the NGPC bothered to consider the content of the Community Objection, before allowing the processing of the obviously controversial string application to proceed. Certainly, that the Expert Panelist – some three weeks later – dismissed the Community Objection cannot support the procedural propriety of the Board's decision on 10 September 2013 to allow the “.persiangulf” application to proceed.

137. In sum, ICANN may be correct that the Board followed all the routine steps of posting information about the application, meeting to review the application, and acting strictly on the basis of the Durban Communiqué and Scorecard items. The Board did post the Durban Communiqué on 1 August 2013 for public comment – but it contained only the one-line conclusion that the GAC had “finalised its consideration of the [“.persiangulf”] string, and does not object to its proceeding”. The Board did meet on 13 August 2013 – but the only discussion was whether to respond to the Durban Communiqué advice by Scorecard. The Board did meet on 10 September 2013 to discuss each of the Durban Scorecard items, and did vote unanimously in favor of continuing to process the “.persiangulf” application – but the relevant entry on the Scorecard merely repeated the one-line Durban Communiqué reporting that the GAC “does not object” to the “.persiangulf” application proceeding. The Minutes of the Board meetings were publicly posted.

138. In the IRP Panel's assessment, these were empty steps. ICANN's insistence in its Response to the Supplementary IRP Request (at paragraph 2) and Rejoinder to IRP Request (at paragraph 10) is equally empty. At the end of the day, there is simply no

evidence – or even the slightest indication – that the Board collected facts and engaged with the GCC’s serious concerns before resolving to allow the “.persiangulf” application to proceed. ICANN’s willingness to meet GCC representatives after the 10 September 2013 decision to allow the application to proceed was belated and could not cure or validate its failure to conduct due diligence and engage with the GCC before that uninformed decision.

139. If the Board had undertaken a modicum of due diligence and independent investigation, it would readily have learned about the GCC’s serious concerns as raised in the GAC meetings in Durban and in Beijing, and how and why the GAC failed to reach consensus in Durban against the “.persiangulf” application. The GCC may be right or wrong in submitting that it was Iran’s solitary support for the application in Durban that motivated the message in the Durban Communiqué. The correctness of the GCC’s position on this point is irrelevant in this IRP. The relevant issue is whether the Board’s decision to allow the “.persiangulf” application to proceed was consistent with the Bylaws and Articles.

140. While not binding upon this Panel, the IRP precedent that we find most helpful is the decision concerning the application by DotConnectAfrica Trust for the “.africa” string, in which the IRP Panel found that the actions and inactions of the ICANN Board were inconsistent with its Articles and Bylaws. In particular, the IRP Panel held that the ICANN Board had breached its transparency obligations by rotely adopting the GAC’s Consensus Advice not to proceed with that application. The Panel stated that it “*would have expected the ICANN Board to, at a minimum, investigate the matter further before rejecting [DotConnectAfrica] Trust’s application*”.⁷³ Contrary to ICANN’s attempt to distinguish the DotConnectAfrica case, we find that ICANN’s transparency obligations arose here despite the absence of Consensus GAC Advice. Indeed, transparency and the related need for further due diligence were more compelling in this case, given the pending Community Objection concerning a sensitive application.

141. Overall, based on the submissions and evidence in the record, we are constrained to find that the Board passed a bare-bones resolution, based on a bare-bones GAC Communiqué

⁷³ Note 66, *supra*.

and Scorecard, to allow Asia Green's ".persiangulf" application to proceed, to virtually certain registration and operation. We can only regard the Board's routine treatment of the non-routine ".persiangulf" gTLD application to have been non-transparent, unfair and essentially oblivious to the well-known geo-political sensitivities associated with the name "Persian Gulf". This treatment consequently fell far short of the mission and core values enshrined in ICANN's Articles of Incorporation and Bylaws, specifically Article 1, Section 2, Paragraphs 4, 8 and 11, of the Bylaws; Article II, Section 3, of the Bylaws; Article III, Section 1, of the Bylaws; and Article 4 of the Articles of Incorporation.

142. In this connection, we are sympathetic to ICANN's argument that the Board cannot be expected to spell out considerations going to mission and core values in every resolution passed on every gTLD application. However, our finding is not based on inferences from the lack of discussion about mission and core values in the Board's 10 September 2013 decision to allow the ".persiangulf" application to proceed. As noted, there was **no** discussion of **any** factors whatsoever in that decision. This cannot be reconciled with the requirement in Article 1, Section 2, of the Bylaws that ICANN "*exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values*".
143. In related vein, we are not here second-guessing the Board's assessment of a difficult application against the backdrop of its mission and core values. That is because, if nothing else, we have no evidence or indication of what, if anything, the Board **did** assess in taking its decision. Our role is to review the **decision-making process** of the Board, which here was virtually non-existent. By definition, core ICANN values of transparency and fairness were ignored.
144. Having made findings on the Board's duties to make decisions fairly and transparently, we do not need to make an additional finding on the GCC's allegation that the Board discriminated against the GCC, or failed to provide the GCC with consistent treatment, in failing to intervene to stop the ".persiangulf" application as it did with Asia Green's application for the ".halal" and ".islam" gTLDs, to which the GCC had also objected. We do note that it would seem mechanistic indeed for ICANN to justify the different treatment

of “.halal” and “.islam” on the basis that the GAC expressed member concerns about those strings based on community objections and religious sensitivity, when the GAC failed to relay similar member concerns about “.persiangulf”. This is despite the glaring fact that the Independent Expert reviewing the GCC’s Community Objections against all three strings dismissed them all on the same grounds.

145. In conclusion, turning to the IRP standard of review in Article IV, Section 3, Paragraph 4(b), of the ICANN Bylaws, we conclude that the ICANN Board failed to “*exercise due diligence and care in having a reasonable amount of facts in front of them*” before deciding, on 10 September 2013, to allow the “.persiangulf” application to proceed. We find, on the balance of probabilities on the basis of the Parties’ submissions and evidence, that this decision effectively was an unreasoned vote on an unreasoned Scoreboard entry reciting the one-line Durban Communiqué statement that the GAC “*does not object*” to the application proceeding. Under the circumstances, and by definition, the Board members could not have “*exercise[d] independent judgment in taking the decision, believed to be in the best interests of the company*”, as they did not have the benefit of proper due diligence and all the necessary facts. This reflects Board action inconsistent with the Articles and Bylaws, contrary to Article IV, Section 3, Paragraph 4(c), of the ICANN Bylaws.
146. As a final matter, we do not accept ICANN’s position that we lack authority to include affirmative declaratory relief. Like the IRP Panel in the *DotConnectAfrica Trust* case, we consider that Article IV, Section 3, Paragraph 11(d), of the ICANN Bylaws does give us “*the power to recommend a course of action for the Board to follow as a consequence of any declaration that the Board acted or failed to act*” inconsistently with its Articles of Incorporation and Bylaws.⁷⁴ That Bylaw bears repeating:

*The IRP Panel shall have the authority to recommend that the Board stay any action or decision or that the Board take any interim action, until such time as the Board reviews and acts upon the **opinion** of the IRP. (Emphasis added.)*

147. Recalling that, under Article IV, Section 3, Paragraph 2, of the Bylaws, the IRP process is designed to provide a remedy for any person “*materially affected*” by suffering injury or harm causally connected to the relevant Board violation, we agree with the

⁷⁴ Ibid, ¶ 126.

DotConnectAfrica Trust IRP Panel that the “*language and spirit*” of Paragraph 11(d) empowers us to recommend redress for such injury or harm.⁷⁵ The words “*shall*” and “*opinion*” reflect that, similar to any decision maker, the Panel may and should recommend affirmative steps to be taken by the Board to correct the consequences of actions it took inconsistent with the Bylaws and Articles of Incorporation. Here, given the harm caused to the GCC’s due process rights by the Board’s decision – taken without even basic due diligence despite known controversy – to allow Asia Green’s “.persiangulf” gTLD application to go forward, adequate redress for the GCC requires us to recommend not a stay of Asia Green’s application but the termination of any consideration of “.persiangulf” as a gTLD. The basic flaws underlying the Board’s decision cannot be undone with future dialogue. In recognition of ICANN’s core values of transparency and consistency, it would seem unfair, and could open the door to abuse, for ICANN to keep Asia Green’s application open despite the history. If the issues surrounding “.persiangulf” were not validly considered with the first application, the IRP Panel considers that any subsequent application process would subject all stakeholders to undue effort, time and expense.

IX. FIXING OF COSTS

148. The Parties disagree on whether the procedural rules governing this IRP include the ICANN Bylaws. This is potentially relevant because of differences in language between the costs sections of the Bylaws and the Supplementary Procedures, connected to the good faith pursuit of the cooperative engagement and conciliation processes.

149. Article 9 of the ICANN Supplementary Procedures provides:

The IRP shall fix costs in its DECLARATION. The party not prevailing in an IRP shall ordinarily be responsible for bearing all costs of the proceedings, but under extraordinary circumstances the IRP PANEL may allocate up to half of the costs to the prevailing party, taking into account the circumstances of the case, including the reasonableness of the parties’ positions and their contribution to the public interest.

⁷⁵ Ibid, ¶ 128.

150. Article IV, Section 3, of the ICANN Bylaws provides:

16. Cooperative engagement and conciliation are both voluntary. However, if the party requesting the independent review does not participate in good faith in the cooperative engagement and the conciliation processes, if applicable, and ICANN is the prevailing party in the request for independent review, the IRP Panel must award to ICANN all reasonable fees and costs incurred by ICANN in the proceeding, including legal fees.

18.... The party not prevailing shall ordinarily be responsible for bearing all costs of the IRP Provider, but in an extraordinary case the IRP Panel may in its declaration allocate up to half the costs of the IRP Provider to the prevailing party based upon the circumstances, including a consideration of the reasonableness of the parties' positions and their contribution to the public interest. Each party to the IRP proceedings shall bear its own expenses.

151. The Parties agreed to postpone final submissions on costs, including on the question of whether Paragraphs 16 and 18 of Article IV, Section 3, of the ICANN Bylaws apply in this IRP.

152. As the IRP Panel has determined that the GCC is the prevailing party, no question arises as to the application of Paragraph 16 of Article IV, Section 3, of the ICANN Bylaws.

153. We will await further submissions from the Parties before allocating all or a percentage of the costs of the proceedings to the GCC.

X. DECLARATION

For the foregoing reasons, the Independent Review Process Panel hereby Declares:

1. The action of the ICANN Board with respect to the application of Asia Green relating to the “.persiangulf” gTLD was inconsistent with the Articles of Incorporation and Bylaws of ICANN. These are, in specific: Article 1, Section 2, Paragraphs 4, 8 and 11, of the Bylaws; Article II, Section 3, of the Bylaws; Article III, Section 1, of the Bylaws; and Article 4 of the Articles of Incorporation.
2. Pursuant to Article IV, Section 3, Paragraph 11(d), of the ICANN Bylaws, the IRP Panel recommends that the ICANN Board take no further action on the “.persiangulf” gTLD application, and in specific not sign the registry agreement with Asia Green, or any other entity, in relation to the “.persiangulf” gTLD.

3. The GCC is the prevailing Party in this IRP.
4. The Parties are to file submissions on costs by 18 November 2016. Following those submissions, all or a percentage of costs will be allocated against ICANN in favor of the GCC.

This Partial Declaration may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute the Partial Declaration of this IRP Panel

<u>19 OCTOBER 2016</u>	<u>Lucy Reed</u>
Date	Lucy Reed, Panelist - Chair
<u>19 October 2016</u>	<u>[Signature]</u>
Date	Anibal Sabater, Panelist
<u>19 OCTOBER 2016</u>	<u>[Signature]</u>
Date	Albert Jan van den Berg, Panelist

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION (ICDR)

Independent Review Panel

IN THE MATTER OF AN INDEPENDENT REVIEW PROCESS
Pursuant to the Bylaws of the Internet Corporation for Assigned Names and
Numbers (ICANN), the *International Arbitration Rules of the ICDR*, and the
Supplementary Procedures for ICANN Independent Review Process

Gulf Cooperation Council (GCC)))
Claimant))
and)	ICDR Case
Internet Corporation for Assigned Names)	No. 01-14-0002-1065
and Numbers (ICANN))	
Respondent)	

**FINAL DECLARATION OF THE INDEPENDENT REVIEW PROCESS PANEL AS TO
COSTS**

Independent Review Panel

Lucy Reed, Chair
Anibal Sabater
Albert Jan van den Berg

I. INTRODUCTION

1. The Independent Review Panel, in our Partial Final Declaration of 19 October 2016 (“**Partial Declaration**”), declared the Claimant Gulf Cooperation Council (“**GCC**”) to be the prevailing Party. We found that the action of the Respondent Internet Corporation for Assigned Names and Numbers (“**ICANN**”) with respect to the application by Asia Green for the generic Top-Level-Domain name (“**gTLD**”) “.persiangulf” was inconsistent with several Articles of Incorporation and Bylaws of ICANN. We further recommended, pursuant to Article IV, Section 3, Paragraph 11(d), of the ICANN Bylaws, that the ICANN Board take no further action on the “.persiangulf” gTLD application, and in specific not sign the registry agreement with Asia Green, or any other entity, in relation to the “.persiangulf” gTLD. At the Parties’ request, we postponed final submissions and the decision as to costs.
2. This Final Declaration awards all costs to the GCC as the prevailing Party, for the reasons set forth below.

II. THE APPLICABLE STANDARD

3. Starting first with the applicable standard, it is undisputed that all costs of the Independent Review Process (“**IRP**”), which include the fees and expenses of the Panelists and the ICDR as the IRP Provider, are to be awarded to a prevailing claimant except in extraordinary circumstances, taking into account the reasonableness of the parties’ positions and their contribution to the public interest. This standard appears in both Article 11 of the ICANN Supplementary Procedures and Article IV, Section 3, paragraph 18 of the ICANN Bylaws.¹

Article 11 of the ICANN Supplementary Procedures provides:

¹ In extraordinary circumstances, Article 11 of the ICANN Supplementary Procedures envisions allocation of up to half of the total costs to the prevailing party while Article IV, Section 3, paragraph 18 of the ICANN Bylaws may limit that allocation to the IRP Provider administrative costs. Neither Party has argued for such a limitation here.

The IRP PANEL shall fix costs in its DECLARATION. The party not prevailing in an IRP shall ordinarily be responsible for bearing all costs of the proceedings, but under extraordinary circumstances the IRP PANEL may allocate up to half of the costs to the prevailing party, taking into account the circumstances of the case, including the reasonableness of the parties' positions and their contribution to the public interest.

In the event the Requestor has not availed itself, in good faith, of the cooperative engagement or conciliation process, and the requestor is not successful in the Independent Review, the IRP PANEL must award ICANN all reasonable fees and costs incurred by ICANN in the IRP, including legal fees.

Article IV, Section 3, of the ICANN Bylaws provides, in relevant part:

18.... The party not prevailing shall ordinarily be responsible for bearing all costs of the IRP Provider, but in an extraordinary case the IRP Panel may in its declaration allocate up to half of the the costs of the IRP Provider to the prevailing party based upon the circumstances, including a consideration of the reasonableness of the parties' positions and their contribution to the public interest. Each party to the IRP proceedings shall bear its own expenses.

4. The issue for decision, therefore, is whether the circumstances here are extraordinary and hence warrant allocating up to half of the total IRP process costs to the GCC despite its status as prevailing Party.

III. THE PARTIES' POSITIONS

A. The Claimants' Position

5. The GCC submits that no extraordinary circumstances exist. In short, the GCC argues that ICANN's position "*was anything but reasonable*" throughout its treatment of the ".persiangulf" application, citing the Panel's conclusion that ICANN's actions were "*unduly formalistic and simplistic*" (Partial Declaration, para. 126). Nor, argues the GCC, did ICANN's position contribute to the public interest, because the ICANN Board "*picked a side on a decades-long divisive Gulf naming dispute and its treatment of the .PERSIANGULF gTLD application was, as this Panel declared, 'essentially oblivious to the well-known geo-political sensitivities associated with that dispute'*" (Partial Declaration, para. 141).

B. The Respondent's Position

6. ICANN submits that the GCC should bear its own costs because this IRP was extraordinary, for three main reasons. First, both sides presented “*reasonable and thorough positions on novel issues of geopolitical sensitivity*”. Second, the Parties’ briefing of these issues served the public interest. Third, the GCC failed to engage in ICANN’s Cooperative Engagement Process before initiating the IRP, and so failed to narrow the issues and reduce the costs.

IV. THE PANEL’S ANALYSIS AND DECISION

7. Having considered the Parties’ submissions against the background of the overall record and the Partial Declaration, the Panel cannot find any extraordinary circumstance warranting deviation from the undisputed standard that all IRP process costs go to the GCC as the prevailing Party. As this conclusion is based on the unique circumstances of this case, we did not find the IRP precedents cited by the Parties – also based on unique circumstances – helpful. Our analysis can be brief.
8. First, we weigh the reasonableness criterion in the GCC’s favour. While ICANN is correct that both sides put forth thorough reasons for their positions, we state and explain in our Partial Declaration why the ICANN Board did not act reasonably in allowing the “.persiangulf” application to proceed without at least entering into a dialogue with the Government Advisory Council to discuss member concerns. We found “*simply no evidence – or even the slightest indication – that the Board collected facts and engaged with the GCC’s serious concerns*” (Partial Declaration, para. 138) and, absent any independent investigation, the only possible conclusion was that the ICANN Board’s position was “*simplistic and formalistic*” (Partial Declaration, para. 126) rather than reasonable.
9. Second, we do not consider that the public interest criteria favors either side’s position in relation to costs. The GCC is correct that we found ICANN to be “*essentially oblivious to the well-known geo-political sensitivities associated with the name ‘Persian Gulf’*”

(Partial Declaration, para. 141). However, it is important to recall that our mandate was to review the Board's process and not the merits of the “.persiangulf” application. The Parties' agreement that the geopolitical issues associated with “Persian Gulf” are themselves extraordinary does not make the ICANN Board process issues extraordinary. We do not see that the GCC contributed to the broader public interest by prevailing in this process review or that the ICANN Board failed to benefit the public in taking the stance it took. The public interest factor, to us, is neutral.

10. This is not the case with ICANN's third argument, which faults the GCC for not first invoking the Cooperative Engagement Process and thereby narrowing issues and reducing costs. In this situation where ICANN is not the prevailing Party as addressed in the second paragraph of Article 11 of the ICANN Supplementary Procedures, it is unclear whether this argument goes to the reasonableness or public interest factor, but the outcome would be the same. In our jurisdictional analysis in the Partial Declaration, we found that “*ICANN explicitly and implicitly cooperated in a shadow conciliation process*” (Partial Declaration, para. 87), which obviously proved unsuccessful. There is no reason to believe that a formal Cooperative Engagement Process would have been any more successful than this informal conciliation process proved to be, or that it would have reduced the GCC's ultimate costs.
11. In sum, in the absence of any extraordinary circumstances, the GCC is entitled to reimbursement of its full costs in relation to the IRP process. This includes the administrative expenses of the ICDR, the Independent Review Panel panelists' fees and expenses, and the emergency IRP panelist's fees and expenses. ICANN did not contest the GCC's claim for the fees and expenses of the emergency IRP panelist in addition to this Panel's fees and expenses and the ICDR administrative expenses.
12. As per the last sentence of Article IV, Section 3, paragraph 18 of the ICANN Bylaws, each Party shall bear its own expenses, including legal representation fees.

V. DECLARATION AS TO COSTS

For the foregoing reasons, the Independent Review Process Panel hereby Declares:

1. There are no extraordinary circumstances to justify allocating less than full costs to the Claimant GCC as the prevailing Party, under Article 11 of the ICANN Supplementary Procedure and Article IV, Section 3, paragraph 18 of the ICANN Bylaws.
2. The Respondent ICANN is to bear the totality of the GCC's costs in relation to the IRP process, including: (a) the ICDR administrative expenses of \$7,500.00; (b) the Independent Review Panel panelists' fees and expenses of \$ 150,273.30; and (c) the emergency IRP panelist's fees and expenses of \$50,575.00. Accordingly, ICANN shall reimburse the GCC the sum of \$107,924.16 upon demonstration by GCC that these incurred costs have been paid.
3. This Final Declaration may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute the Final Declaration of this IRP Panel.

15 December 2016

Date



Lucy Reed, Panelist – Chair

15 December 2016

Date



Anibal Sabater, Panelist

15 December 2016

Date



Albert Jan van den Berg, Panelist

ICANN62 - Board Accountability Mechanisms Committee

ICANN Board with GAC .PERSIANGULF Representatives

Panama- ICANN 62

28 June 2018

17:00 UTC

CHRIS DISSPAIN: Welcome, everybody. This is Chris Disspain speaking. We're going to go around the room and introduce ourselves. And then I guess there are some people on the phone as well. Apart from ICANN Org. Do we have anyone on the phone apart in ICANN Org?

This meeting is now being recorded.

CHRIS DISSPAIN: Thank you very much.

Amy. That's it. We don't have any government representatives on the phone or any...

Okay.

(Off microphone.)

CHRIS DISSPAIN: My apologies. I just had a message I needed to deal with.

Okay. So perhaps we could go around the room, and maybe we could start with you, Manal, if that's all right with you, and we could just introduce ourselves for those that don't know everybody.

Thank you.

MANAL ISMAIL: Sure. Thank you. Chris.

Manal Ismail, chair of the Governmental Advisory Committee of ICANN.

MAARTEN BOTTERMAN: Maarten Botterman, Board.

SARAH DEUTSCH: Sarah Deutsch, Board.

LEON SANCHEZ: Leon Sanchez, Board.

CHRIS DISSPAIN: Chris Disspain, Board.

AKRAM ATALLAH: Akram Atallah, Global Domains Division within ICANN staff.

MIKE SILBER: Mike Silber with the ICANN Board.

MOHAMMED ALNOAIMI: Mohammed Alnoaimi, TRA Bahrain, Telecommunication Regulatory Authority.

NASSER ALKHALIFA: Nasser Alkhalifa, Telecom Regulatory Authority, Bahrain.

ABDULRAHMAN AL MARZOOQI: Hi, everyone. Abdulrahman Al Marzooqi. I'm a representative of the UAE, and I'm also here representing the GCC, the Gulf Cooperation Council as well as Kuwait.

Thank you.

ICANN62 - Board Accountability Mechanisms Committee

ICANN Board with GAC .PERSIANGULF Representatives

Panama- ICANN 62

28 June 2018

17:00 UTC

CHRIS DISSPAIN: Wonderful. Thank you.

Now, just to give you some background explanation. First of all, there are a couple of board members who may well be here shortly. They're coming from another meeting.

The board members that are here are the members of the Board Accountability Mechanisms Committee which was peeled off from the Board Governance Committee and is the committee that deals with reconsideration requests and all of that stuff.

Maarten is the chair of the Board-GAC -- co-chair, I apologize.

Excuse me.

Co-chair of the Board-GAC working group along with Manal, who you obviously know. And we may get a couple other board members, as I said.

Now I'm going to try and get this right, but if I don't, I know that Amy, who is on the phone, will leap in and tell me I've got something wrong, so I will try and get it right. But basically, we have an IRP decision which has -- requires us to effectively make a decision which we hadn't previously done. And what we've decided to do is to go back to the position to treat the GAC advice that we got at the time as if it had said, as it did in the case of .ISLAM and .HALAL, there are a number of governments who are seriously concerned, blah, blah. And that was a particular phrase that was used in the Applicant Guidebook, and that particular phrase triggered a series of events. And this event is a meeting, which doesn't have to be face to face but it's convenient that we're all here, at which we would discuss, the committee, the Board committee would hear, discuss the concerns of the members of the GAC who had serious concerns.

So that, I think, is a basic summary of background of where we are. And in simple terms, the way that I'd like to do it, if it's okay with you, is basically you can say whatever you want to say, and we will listen. And if we have any questions, we will ask them. And this is obviously being recorded and noted and everything. We've got written, is available in the transcript. And Becky Burr has joined us almost from the BAMC.

So, are you going to go first, Abdulrahman? Okay.

ABDULRAHMAN AL MARZOOQI: Thank you very much.

So, thank you very much for giving us this opportunity. Obviously we want to express our concerns with the application .PERSIANGULF. We've done that in different mechanisms that were available to the government and the community. So, when the application was posted publicly, we've expressed our concern through the early-warning mechanism and through --

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Mute on.

-- through the GAC discussions.

And then seeing that application is being -- is proceeding without being -- without -- obviously without us seeing that ICANN is taking an action through these various mechanisms, which led to the IRP. And the IRP basically was from the GCC, which represents the six countries of the Gulf against ICANN asking ICANN to take into consideration these concerns, and basically asking ICANN to terminate the application.

Now, maybe I'll start with a couple of points that we saw as a big concern regarding the application. First of all, the application is for the Arabian Gulf or applicant is applying for the Persian Gulf. It's another name for the same territory or the same region. Obviously, the body of water between Iranian plateau and Arabian Peninsula. All the Arab countries call that body throughout the history as Arabian Gulf. So, if you go to the Arab region and you say something like Persian Gulf, nobody would recognize it. They wouldn't understand what you are talking about. And that's why we see that a big concern. It misrepresents what we believe as our region.

The applicant obviously did not mean something else. It's very obvious in the application itself that he meant the Arabian Gulf. And in the application, it also provides some objectives on why this -- what is the purpose of that application, and basically says, you know, to represent the people and the culture of the Persian Gulf or the Arabian Gulf, so which is us.

Obviously, there are nine countries which surround this region. All the GCC countries plus Iraq and Iran. The applicant did not -- So the applicant is targeting us as a community, the people, the culture of the Arabian Gulf, but basically is not taking into consideration the sensitivity of this issue on the naming, and basically there's no consultation, there's no involvement, there's no inclusiveness of the application.

So basically, it's a community that we feel that we're -- we're not being involved in, and basically it doesn't take into consideration the sensitivity.

That's, in brief, the issue that I wanted to express in this meeting.

CHRIS DISSPAIN: Thank you very much.

Nasser, do you want to say anything?

NASSER ALKHALIFA: I'm looking at the topic that is being discussed here. The .PERSIANGULF is, as my friend Abdulrahman said, is not recognized in the region.

The more you use a name like that, the more you kind of spur something that is more of an emotional level for the rest of the region.

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Looking at the Gulf itself, the number of countries there recognize it as one name. The others, there's only one country that recognizes it as the Persian Gulf.

What -- Our position here is if we, as countries, have this be considered as the naming, it would spur more of an emotional setback to the rest of the region that others would recognize that as being a body of water that is related to one country, and it's not.

The vote of countries that we're talking about is all the Arabian countries sitting and overlooking that body of water. Therefore, we do not recognize that name being correct as a region, and we -- I mean as the Arab countries, and we do not consider that being anything but finding another name to what we consider.

Anything outside the territory out of a country should not be given that name to be considered.

CHRIS DISSPAIN: Thank you very much, Nasser.

Mohamed, do you want to say a few words? Or you're okay. Okay.

So, I'm going to ask if there are any comments or questions from anybody else. Please understand that as part of the committee's work we will look at the original documentation, we will look at the early-warning thing that was done, we'll check through everything, and we'll do our -- you know, we'll do our due diligence before we come to a decision. And this is a part of us doing that, so I know you have said everything in writing, and it's good that you're here and able to say some things face to face as well.

I'm happy for anyone else to ask any questions or make any comments at this stage, if they'd like to.

I should also say that ICANN chair Cherine Chalaby has also just joined us.

I'm guessing that no one has anything that they want to specifically ask, judging by the lack of anyone asking anything.

Michael.

MIKE SILBER: Thank you. It's Mike Silber.

I recognize this is a difficult issue because it was not something that was very specifically and directly contemplated in the Applicant Guidebook, and it wasn't very directly addressed. We dealt with some other names in a far, more explicit fashion.

My question is a forward-looking one. Assuming we can find an appropriate resolution, is the GCC and are the individual members participating in the processes around the protection of regional names in future new gTLD rounds? Because I would hate us to have a situation where we find some sort of

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resolution here only to find that it's not appropriately addressed, and we have further issues in subsequent rounds.

So, I wanted to make sure your voices are being heard in respect of the future applications.

ABDULRAHMAN AL MARZOOQI: So, as you've correctly pointed out, the geographic name issue was addressed partially, I would say, in the Applicant Guidebook. There were references to lists in the guidebook, and basically if someone tries to register these names as new gTLDs, then he would have to show some documentation of support from the relevant or territories or countries.

However, unfortunately, bodies of water were not included in this -- on these lists, so I'm hopeful to see that this is being addressed in the subsequent applications windows because we've seen that, you know, so far, any geographical names, it triggers sensitivities from the governments or the countries or the relevant communities, and it's important seeing, you know, looking at ICANN as a multi-stakeholder organization, fully inclusive. You know, we want this principle also to live in also the applications, applications being inclusive of all relevant communities or countries or people. And we've stressed that as well in the .ISLAM and the .HALAL case as well. As probably you are aware, that application also lacked full inclusiveness of the rest of the community, and it only represent interest of one community, minority group in the Islamic community. And I think we've seen that as an issue for many, many applications.

So, I'm hopeful that in the subsequent processes, this is taken into consideration to reduce -- you know, to make it very clear, both sides, the applicant as well as the rest of the communities who might be affected by these applications.

Thank you.

CHRIS DISSPAIN: Thank you. This is -- This is Chris.

So, the slight difference between Halal -- .HALAL, .ISLAM and this one, is that in the case of .HALAL and .ISLAM, there's no alternative term that you're saying is a better term; right? Or more accurate is perhaps a better way of me saying that. A more accurate term.

So, how would you treat an application if the application had been for .ARABIANGULF? In other words, you understand, is your concern simply that it's Persian Gulf or is your concern that it's anything?

ABDULRAHMAN AL MARZOOQI: I think -- so the issue is for us -- the basic issue is the name. We don't recognize the name. It is very, very sensitive to us. So, we don't want the name basically. But at the same time. If, let's say -- let's assume that even if we accept the name, it is, let's say, Persian Gulf and we do use the name Persian Gulf, just assume that, still we would also have concern that it does not

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represent the rest of the community. It's one country -- the applicant is representing one country, and it doesn't include the rest of the countries, which means it would be a similar case of .ISLAM.

CHRIS DISSPAIN: Right. I get that. So that's what I was trying to get to. It's partly the fact that you have an issue with the name, but it's also a significant factor in your objection that the applicant is not representative of the community that this name applies to, even if it was the right name. Yes?

ABDULRAHMAN AL MARZOOQI: And I want to add that if the name was correct, let's say -- let's assume that we do want Persian Gulf, then if the applicant was able to include all of the rest of the community or the countries in the application by, let's say, for example, having involvement in the policy making and, you know -- include all of them, then we would say there is a window of a solution.

But in our case, we don't envisage any solution other than, you know, the applicant being -- the application being terminated.

CHRIS DISSPAIN: And this is Chris again.

And have you -- have you had any communication at all with the applicant?

ABDULRAHMAN AL MARZOOQI: We did when we raised the early warning. The applicant approached us not just for the Persian Gulf but also because it's the same applicant for .ISLAM and .HALAL. He approached us, the CEO of the company. And he gave an awkward, I would say, proposal. He basically said -- and this is something that was not really confirmed, but it was discussed. He basically said what if we withdraw .PERSIANGULF but give us support for .ISLAM and .HALAL. So that's something that they proposed.

And our response was obviously we are only one country for .ISLAM and .HALAL so it's not only our decision. So regardless of whether we accept that or support that, you know, it's, it's only one country out of 50 other Islamic countries or a large portion of the community

CHRIS DISSPAIN: Thanks. Abdulrahman.

Sarah.

SARAH DEUTSCH: So, I had a question. At least in U.S. law and trademark law, there's a concept called geographically misdescriptive. So, if you apply for a trademark that says you are from a certain place but you're not and it causes confusion to the public, it's not registerable as a trademark. So, I wondered, has anyone tried to apply for trademarks for Persian Gulf and been denied based on some similar theory?

NASSER ALKHALIFA: Not to our knowledge. I'm sure maybe on a foreign affairs level but not here.

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CHRIS DISSPAIN: Thank you, Nasser.

Okay. So, I think we're probably -- unless there are any other questions, I think we probably usefully can call the meeting to a close and say thank you so much for taking -- oh, I had one other thing. Sorry, my apologies.

For the sake of the record so that we're clear, could you -- could you list the countries that you -- that your letters, objections, have actually been effectively from just? So, we've got -- in one place we've got a list of the names, that would be very helpful. Thank you.

I think Nasser is looking that up right now, so nobody gets missed.

NASSER ALKHALIFA: Sorry the question is the countries --

CHRIS DISSPAIN: Countries that you're representing -- I know which countries you personally represent. But which countries are part of the group, the GCC, that is objecting to the name?

NASSER ALKHALIFA: It's Bahrain, Saudi Arabia, Kuwait, UAE, Oman, and Qatar because Oman -- I mean, we are representing Bahrain but he's representing the rest of the GCC Council.

CHRIS DISSPAIN: Thank you, that was just to have that into the record.

Go ahead, Michael.

MIKE SILBER: Can I ask a question? It's more to ICANN staff than to our guests. And that is do we have the record of the GAC meetings at which these discussions took place? Do we have access to those transcripts, the record?

AKRAM ATALLAH: I'm sure if there were transcripts, we have them.

MIKE SILBER: I think that also would be useful for us to just double-check and make sure we have got a record of discussion because there was obviously some discussion which I think would be useful for us to understand it. I'm not sure if it's been fully explored.

CHRIS DISSPAIN: Fair enough.

Anything else from anyone? Okay.

Rob.

ROB HOGGARTH: I'm sorry. Hi, Rob Hoggarth from ICANN staff. Just to alert you all that another representative from Oman has been trying to join. But unfortunately, due to technical difficulties, which folks may have seen in the chat, he's been unable to join. I just wanted to note that for the record.

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CHRIS DISSPAIN: Is the gentleman from Oman going to say anything different to what you've said?

ABDULRAHMAN AL MARZOOQI: Just to be clear, Oman have raised similar issues in writing. So, I'm guessing that they would basically express the same --

CHRIS DISSPAIN: So, Rob, I think what would be really useful is if we could get a transcript or the audio of this out. And then if they want to come back with anything specific, they are very welcome to do so having heard the audio. If they think there's a point that hasn't been covered or whatever -- it's Zainab, isn't it?

(off microphone.)

CHRIS DISSPAIN: So, excellent. Well, that's marvelous news.

Good, okay.

Cherine.

CHERINE CHALABY: I wonder if you'd describe what would be the process from here on so that everybody at least has some clarity.

CHRIS DISSPAIN: Yes, thank you, I will.

So, we go from here, and this will now come back onto the agenda of the Board Accountability Mechanisms Committee.

And what we would like to do is if we are able to -- and I can't give you any guarantees. But what we would like to do if we are able to is to deal with all three of these applications. So, I think that would be helpful.

And we will -- I can't give you a firm time but -- I would be surprised if we haven't got to it -- to get it to the Board in time for the Board workshop in September.

Now, we may be able to do it before then, but it obviously -- it has to go to the Board once we've made our recommendations. So, I would -- our goal would be to get it to the Board by September. And then after that, the Board will then make its decision. Is that understood? Okay.

Anyone else? Okay. I think we're done. And if we could get that recording out, that would be fantastic, Rob and Julia. Thank you. Thank you very much, indeed, for your time. We really appreciate it. Thank you.



Date: 14 October 2012
Ref.: TRA/DG/EDPP/6234

Dr. Stephen Crocker
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Heather Dryden
Chair, Governmental Advisory Committee

**New gTLD Application ".PERSIANGULF" by Asia Green IT System
Bilgisayar San. ve Tic. Ltd. Sti.**

Dear Dr. Crocker and Ms. Heather,

This has reference to the new gTLD application ".persiangulf" ("application") by Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti ("applicant"). The TRA on behalf of the Government of UAE would like to thank the ICANN and Government Advisory Committee for providing the continuous support and opportunity for governments to express their opinion in matters concerning public policy issues in the Internet and Domain Name fields.

The Government of UAE would like to express its serious concerns toward ".persiangulf" new gTLD application made by Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti. specifically in two areas as highlighted below:

(1) The applied for new gTLD is problematic and refers to a geographical place with disputed name.

The applied for new gTLD string "the Persian Gulf" refers to the body of water separating the Arabian Peninsula from the Iranian plateau (The Arabian Gulf).

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Throughout the history, this body of water has been known by different names including among others Arabian Gulf, Basreh Gulf, Ghatif Gulf, Bahrain Gulf. The most dominant names that are currently used for this body of water are Arabian Gulf and Persian Gulf.

The naming of the Arabian Gulf has been controversial and debatable subject in various national and international venues and levels. Many countries, intergovernmental organizations, publications, literatures, media, maps and organizations recognize the name Arabian Gulf. The Arab countries bordering the Arabian Gulf including the UAE only recognize the name "Arabian Gulf".

There have been several attempts also by different organization to resolve this issue by either referring to both names of the gulf, or some by referring to a new neutral name like "the Gulf" or by removing the reference to the gulf altogether. For example in 2004 the National Geographic Society in its Atlas mentioned both Persian Gulf and Arabian Gulf. Google used to have both names in their product "Google Maps" however in 2012, Google have removed reference to both names.

This letter does not intend to bring up the debates and arguments around naming the gulf here. However it is important to note that there is no general consensus on a single unified name for the Arabian Gulf. It is also important to note that the United Nations Expert Group on Geographical Names issued a resolution no III/20 "Names of features beyond a single sovereignty" which basically recommends having single name of a territory beyond single sovereignty. Here is an excerpt from the resolution:

"The Conference, Considering the need for international standardization of names of geographical features that are under the sovereignty of more than one country or are divided among two or more countries,

1. *Recommends that countries sharing a given geographical feature under different names should endeavour, as far as possible, to reach agreement on fixing a single name for the feature concerned;*

2. *Further recommends that when countries sharing a given geographical feature do not succeed in agreeing on a common name, it should be a general rule of international cartography that the name used by each of the countries concerned will be accepted. A policy of accepting only one or some of such names while excluding the rest would be inconsistent in principle as well as inexpedient in practice..."*

Noting point 2 in resolution III/20, it would be unfair and unacceptable to approve the application of .persiangulf considering there is no equivalent application for

the name .arabiangulf while the name "Arabian Gulf" is widely used and accepted.

Therefore the string ".persiangulf" **should not be allowed to be registered** as a gTLD unless there is consensus on a single name recognized by all countries bordering the Arabian Gulf.

(2) Lack of community involvement and support

Furthermore, the applicant mentions the following in response to Q18(a):

"The Persian Gulf is located in the southwest of the Asian Continent at 23 to 30 degrees northern latitude and 48 to 56 degrees longitude it is still well-known across the world, as is its location.

...

A robust gTLD has the power to bring together people across national borders in a free-flowing exchange of information and commerce

...

The proposed TLD is, quite obviously, the name of the Persian Gulf, a region in which many people live, and from which many benefit by way of resources... The .PERSIANGULF gTLD is the perfect way to easily and simply tie together these peoples of various nations, connected geographically and historically to the Persian Gulf.

"

This clearly shows that the applicant is targeting a confined community which is people and organizations bordering the gulf which basically covers the 8 countries namely Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates.

To the best of our knowledge the applicant did not consult with the majority of the targeted community in regards to launch of the proposed TLD, its strategy and policies.

The applicant did not receive any endorsement or support from the community or any of its organizations, or any governmental or non-governmental organization within this community.

Given that there is no consensus on the name of the gulf and considering that majority of the targeted community recognize the name "Arabian Gulf" as oppose to the name "Persian Gulf" it would limit the interest of the targeted community to the proposed name space. This will also impact the sustainability and growth of the name space.

For the above reasons, the TRA on behalf of the government of UAE would like to **raise its disapproval and non-endorsement** to this application and request the ICANN and the new gTLD program evaluators to not approve this application.

The TRA on behalf of government of UAE would like to also **issue an Early Warning** based on the above concerns to the applicant and demand that the applicant withdraw its application for ".persiangulf" as a remediation step.

Finally the TRA requests the GAC to study and raise this issue in order to be included in the "GAC Advice" to the ICANN Board concerning new gTLD program.

Sincerely,

Mohammed Al Ghanim
Director General





22 October 2012
TOD/ICS/1012/051

Dr. Stephen Crocker
Chairman of the Board of Director
Internet Corporation for Assigned Names and Numbers (ICANN)
12025 Waterfront Drive, Suite 300
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Heather Dryden
Chair, Governmental Advisory Committee

Dear Dr. Crocker and Ms. Heather,

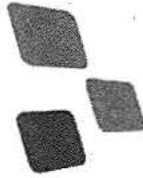
Subject: new gTLD application “.PERSIANGULF” by Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti.

The TRA on behalf of The Government of Bahrain would like to express its gratitude and thankfulness to ICANN for its continuous and valuable support. Additionally, TRA appreciates the opportunities provided by ICANN and The Government Advisory Committee for permitting the governments to express their opinions and concerns with all matters linked to the Internet and Domain Name fields.

This letter has reference to the new gTLD application “.persiangulf” (“application”) by Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti (“applicant”). The government of Bahrain would like to express its serious concerns toward “.persiangulf” new gTLD application made by Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti. specifically in two areas as highlighted below:

(1) The applied for new gTLD is problematic and refers to a geographical place with disputed name.

The applied for new gTLD string “the Persian Gulf” refers to the body of water separating the Arabian Peninsula from the Iranian plateau (The Arabian Gulf). Throughout the history, this body of water has been known by different names including among others Arabian Gulf, Basreh Gulf, Ghatif Gulf, Bahrain Gulf. The most dominant names that are currently used for this body of water are Arabian Gulf and Persian Gulf.



The naming of the Arabian Gulf has been controversial and debatable subject in various national and international venues and levels. Many countries, intergovernmental organizations, publications, literatures, media, maps and organizations recognize the name Arabian Gulf. The Arab countries bordering the Arabian Gulf including Bahrain only recognize the name "Arabian Gulf".

There have been several attempts also by different organization to resolve this issue by either referring to both names of the gulf, or some by referring to a new neutral name like "the Gulf" or by removing the reference to the gulf altogether. For example in 2004 the National Geographic Society in its Atlas mentioned both Persian Gulf and Arabian Gulf. Google used to have both names in their product "Google Maps" however in 2012, Google have removed reference to both names.

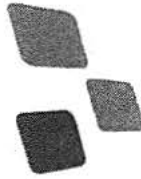
This letter does not intend to bring up the debates and arguments around naming the gulf here. However it is important to note that there is no general consensus on a single unified name for the Arabian Gulf. It is also important to note that the United Nations Expert Group on Geographical Names issued a **resolution no III/20 "Names of features beyond a single sovereignty"** which basically recommends having single name of a territory beyond single sovereignty. Here is an excerpt from the resolution:

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Noting point 2 in resolution III/20, it would be unfair and unacceptable to approve the application of .persiangulf considering there is no equivalent application for the name .arabiangulf while the name "Arabian Gulf" is widely used and accepted.

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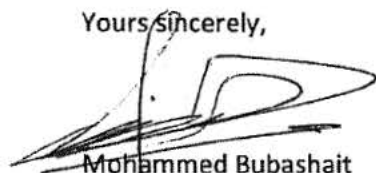
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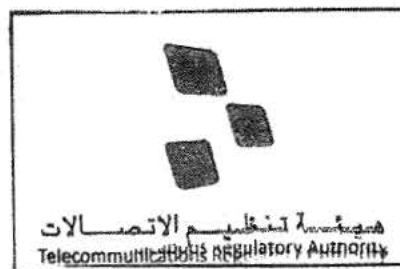
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Finally, the TRA requests the GAC to study and raise this issue in order to be included in the "GAC Advice" to the ICANN Board concerning new gTLD program.

Yours sincerely,



Mohammed Bubashait
General Director



cc:

- Dr. Mohammed Al-Amer, Chairman of TRA Bahrain
- Eng. Mahmood Sayyar, Director General of the GCC Telecommunications Bureau.



Date: 23 October 2012

Ref : ICT/266/2012

To : Heather Dryden
Chair, Governmental Advisory Committee

Cc : Dr. Stephen Crocker
Chairman of the Board of Director
Internet Corporation for Assigned Names and Numbers (ICANN)
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
USA

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Green IT System Bilgisayar San. ve Tic. Ltd. Sti.**

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This letter does not intend to bring up the debates and arguments around naming the gulf here. However it is important to note that there is no general consensus on a single unified name for the Arabian Gulf. It is also important to note that the United Nations Expert Group on Geographical Names issued a resolution no III/20 "**Names of features beyond a single sovereignty**" which basically recommends having single name of a territory beyond single sovereignty. Here is an excerpt from the resolution:

"The Conference, Considering the need for international standardization of names of geographical features that are under the sovereignty of more than one country or are divided among two or more countries,

1. Recommends that countries sharing a given geographical feature under different names should endeavour, as far as possible, to reach agreement on fixing a single name for the feature concerned;

2. Further recommends that when countries sharing a given geographical feature do not succeed in agreeing on a common name, it should be a general rule of international cartography that the name used by each of the countries concerned will be accepted. A policy of accepting only one or some of such names while excluding the rest would be inconsistent in principle as well as inexpedient in practice..."

Noting point 2 in resolution III/20, it would be unfair and unacceptable to approve the application of .persiangulf considering there is no equivalent application for the name .arabiangulf while the name "Arabian Gulf" is widely used and accepted.

Therefore the string “.persiangulf” **should not be allowed to be registered** as a gTLD unless there is consensus on a single name recognized by all countries bordering the Arabian Gulf.

2. Lack of community involvement and support

Furthermore, the applicant mentions the following in response to Q18(a):

“The Persian Gulf is located in the southwest of the Asian Continent at 23 to 30 degrees northern latitude and 48 to 56 degrees longitude it is still well-known across the world, as is its location.

...

A robust gTLD has the power to bring together people across national borders in a free-flowing exchange of information and commerce

...

The proposed TLD is, quite obviously, the name of the Persian Gulf, a region in which many people live, and from which many benefit by way of resources... The .PERSIANGULF gTLD is the perfect way to easily and simply tie together these peoples of various nations, connected geographically and historically to the Persian Gulf.

”

This clearly shows that the applicant is targeting a confined community which is people and organizations bordering the gulf which basically covers the 8 countries namely Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates.

To the best of our knowledge the applicant did not consult with the majority of the targeted community in regards to launch of the proposed TLD, its strategy and policies.

The applicant did not receive any endorsement or support from the community or any of its organizations, or any governmental or non-governmental organization within this community.

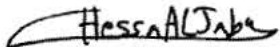
Given that there is no consensus on the name of the gulf and considering that majority of the targeted community recognize the name “Arabian Gulf” as oppose to the name “Persian Gulf” it would limit the interest of the targeted community to the proposed name space. This will also impact the sustainability and growth of the name space.

For the above reasons, ictQATAR on behalf of the government of Qatar would like to **raise its disapproval and non-endorsement** to this application and request the ICANN and the new gTLD program evaluators to not approve this application.

ictQATAR on behalf of government of Qatar would like to also **issue an Early Warning** based on the above concerns to the applicant and demand that the applicant withdraw its application for “.persiangulf” as a remediation step.

Finally ictQATAR requests the GAC to study and raise this issue in order to be included in the “**GAC Advice**” to the ICANN Board concerning new gTLD program.

Yours Sincerely,


Dr. Hessa Al-Jaber
Secretary General

مكتب الرئيس التنفيذي
Chief Executive Office



Date: /10/2012
Ref.: TRA/TP/ /2012

Dr. Stephen Crocker
Chairman of the Board of Director
Internet Corporation for Assigned Names and Numbers (ICANN)

Heather Dryden
Chair, Governmental Advisory Committee

Subject: new gTLD application “.PERSIANGULF” by Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti.

This is in reference to the new gTLD application “.persiangulf” (“application”) by Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti (“applicant”). The TRA on behalf of the Government of Oman would like to thank the ICANN and Government Advisory Committee for providing the continuous support and opportunity for governments to express their opinion in matters concerning public policy issues in the Internet and Domain Name fields.

The Government of Oman would like to express its serious concerns toward “.persiangulf” new gTLD application made by Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti. specifically in two areas as highlighted below:

(1) The applied for new gTLD is problematic and refers to a geographical place with disputed name.

The applied for new gTLD string “the Persian Gulf” refers to the body of water separating the Arabian Peninsula from the Iranian plateau (The Arabian Gulf). Throughout the history, this body of water has been known by different names including among others Arabian Gulf, Basreh Gulf, Ghatif Gulf, Bahrain Gulf. The most dominant names that are currently used for this body of water are Arabian Gulf and Persian Gulf.

The naming of the Arabian Gulf has been controversial and debatable subject in various national and international venues and levels. Many countries, intergovernmental organizations, publications, literatures, media, maps and organizations recognize the name Arabian Gulf. The Arab countries bordering the Arabian Gulf including Oman only recognize the name "Arabian Gulf".

There have been several attempts also by different organization to resolve this issue by either referring to both names of the gulf, or some by referring to a new neutral name like "the Gulf" or by removing the reference to the gulf altogether. For example in 2004 the National Geographic Society in its Atlas mentioned both Persian Gulf and Arabian Gulf. Google used to have both names in their product "Google Maps" however in 2012, Google have removed reference to both names.

This letter does not intend to bring up the debates and arguments around naming the gulf here. However it is important to note that there is no general consensus on a single unified name for the Arabian Gulf. It is also important to note that the United Nations Expert Group on Geographical Names issued a resolution no III/20 "**Names of features beyond a single sovereignty**" which basically recommends having single name of a territory beyond single sovereignty. Here is an excerpt from the resolution:

"The Conference, Considering the need for international standardization of names of geographical features that are under the sovereignty of more than one country or are divided among two or more countries,

- 1. Recommends that countries sharing a given geographical feature under different names should endeavour, as far as possible, to reach agreement on fixing a single name for the feature concerned;*
- 2. Further recommends that when countries sharing a given geographical feature do not succeed in agreeing on a common name, it should be a general rule of international cartography that the name used by each of the countries concerned will be accepted. A policy of accepting only one or some of such names while excluding the rest would be inconsistent in principle as well as inexpedient in practice..."*

Noting point 2 in resolution III/20, it would be unfair and unacceptable to approve the application of .persiangulf considering there is no equivalent

application for the name .arabiangulf while the name "Arabian Gulf" is widely used and accepted.

Therefore the string ".persiangulf" **should not be allowed to be registered** as a gTLD unless there is consensus on a single name recognized by all countries bordering the Arabian Gulf.

(2) Lack of community involvement and support

Furthermore, the applicant mentions the following in response to Q18(a):

"The Persian Gulf is located in the southwest of the Asian Continent at 23 to 30 degrees northern latitude and 48 to 56 degrees longitude it is still well-known across the world, as is its location.

A robust gTLD has the power to bring together people across national borders in a free-flowing exchange of information and commerce

...

The proposed TLD is, quite obviously, the name of the Persian Gulf, a region in which many people live, and from which many benefit by way of resources... The .PERSLANGULF gTLD is the perfect way to easily and simply tie together these peoples of various nations, connected geographically and historically to the Persian Gulf.

"

This clearly shows that the applicant is targeting a confined community which is people and organizations bordering the gulf which basically covers the 8 countries namely Bahrain, Iran, Iraq, Kuwait, United Arab Emirates, Qatar, Saudi Arabia and Oman.

To the best of our knowledge the applicant did not consult with the majority of the targeted community in regards to launch of the proposed TLD, its strategy and policies.

The applicant did not receive any endorsement or support from the community or any of its organizations, or any governmental or non-governmental organization within this community.

Given that there is no consensus on the name of the gulf and considering that majority of the targeted community recognize the name "Arabian Gulf" as oppose to the name "Persian Gulf" it would limit the interest of the targeted community to the proposed name space. This will also impact the sustainability and growth of the name space.

For the above reasons, the TRA on behalf of the government of Oman would like to **raise its disapproval and non-endorsement** to this application and request the ICANN and the new gTLD program evaluators not to approve this application.

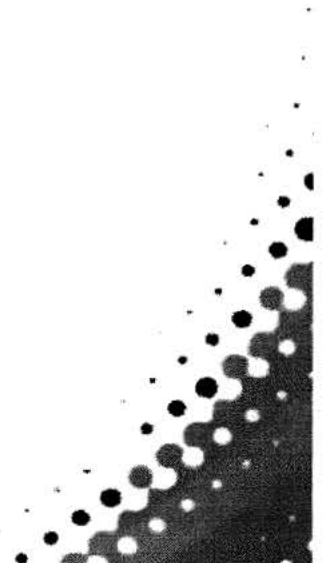
The TRA on behalf of government of Oman would like to also **issue an Early Warning** based on the above concerns to the applicant and demand that the applicant withdraw its application for ".persiangulf" as a remediation step.

Finally the TRA requests the Governmental Advisory Committee of ICANN (GAC) to study and raise this issue in order to be included in the "**GAC Advice**" to the ICANN Board concerning new gTLD program.

Best Regards,



Dr. Hamad Salim Al Rawahi
Chief Executive

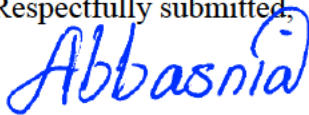


Declaration of Asia Green IT System Bilgisayar San. Ve Tic. Ltd. Sti In Support of Response to Community Objection against .PersianGulf TLD Application

I, Mehdi Abbasnia, the Managing Director of Asia Green IT System Bilgisayar San. Ve Tic. Ltd. Sti hereby swear to have personal knowledge of the following facts, and could testify to them if necessary.

1. Attached are true and correct copies of webpages where signatures and comments were gathered in support of the .PersianGulf TLD Application, including the text of the letter of support in both Persian and English.
2. Approximately 48,000 unique signatures have been gathered during the time period April 20, 2012 to May 3, 2013. True and correct copies of the first and last pages of the online signatures and comments are also attached.
3. Asia Green IT System Bilgisayar San. Ve Tic. Ltd. Sti has maintained electronic evidence of all such signatures, but would only produce them under an appropriate protective order which maintains the confidentiality of the personal information (names and email addresses) provided to us by supporters of our application.

Respectfully submitted,



Mehdi Abbasnia

Managing Director

Dated: May 5th, 2013

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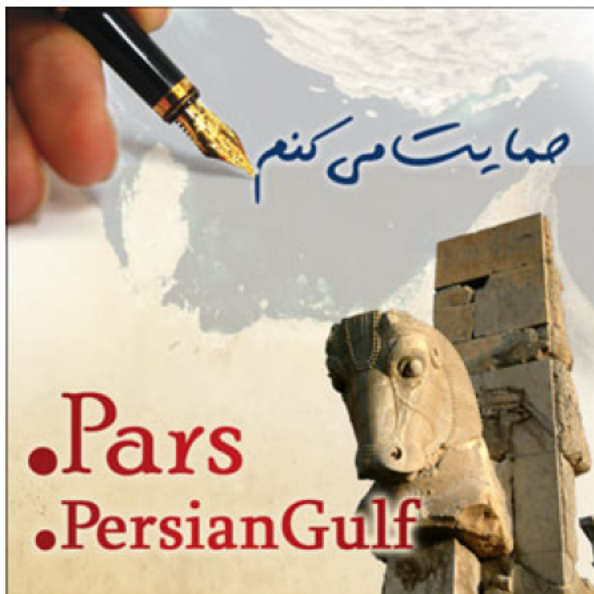
ICANN

Suite 330, 4676 Admiralty Way

Marina del Rey, CA 90292

Attention: New gTLD Evaluation Process

Subject: Letter for support for .PARS and .PERSIANGULF



به نام خدا

مدیریت محترم موسسه آیکن

بدین وسیله، به عنوان یک عضو جامعه پارسی از ثبت پسوندهای اینترنتی .PARS، (دات پارس) و .PERSIANGULF، (دات خلیج فارس) در اینترنت حمایت

48,413

Goal: 50,000 signatures

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Dot Pars (www.dotPars.org)

Facebook pages:

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در حال حاضر در بیش از ۲۲۰۰ صفحه وب فارسی، اخبار مربوط به این فراخوان و یا لینک حمایت از آن درج شده است.

ضمن تشکر از تمامی هموطنانی که در این امر احساس مسئولیت نموده و ما را یاری کردند، از عدم امکان ثبت لینک دوستان عذرخواهی می‌نمایم. انشالله در فرصت مناسب اطلاع رسانی دقیق‌تر در خصوص همکاری دوستان در وب سایت اصلی انجام خواهد گرفت

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وبسایت‌ها و وبلاگ‌هایی که با درج خبر یا لینک از ما حمایت کردند:

[وینا](#)

[سایت جامع گردشگری ایران](#)

[کمیته حمایت از خلیج همیشه فارس](#)

می کنم.

با توجه به اینکه این پسوندهای اینترنتی بیانگر تمدن و تاریخ پر افتخار ساکنان سرزمین پارس (پارسیان) است، من نیز از به کارگیری نامهای دامنه تحت این پسوندها به منظور ارائه اطلاعات خود یا کسب و کار خود استقبال کرده و ورود آن به دنیای اینترنت را گامی در جهت نزدیکی هرچه بیشتر ایرانیان و پارسیان می دانم.

لذا بدین وسیله از درخواست ثبت این پسوندهای اینترنتی که توسط شرکت Asia Green IT System ارائه شده است، حمایت می نمایم.

با سپاس

Dear ICANN

I hereby would like to express my full support for the applications for **.PARS and .PersianGulf** submitted to ICANN by Asia Green IT System Bilgisayar San. Ve Tic. Ltd. Sti in the New gTLD Program.

As a member of the Persian Community, I express my interest in using .PARS and .PERSIANGULF domain names to communicate with others on internet, promote myself/ my ideas/ my business through internet and I believe that the .PARS and .PERSIANGULF gTLDs are explanatory of the history and glory of the people who lived in the ancient land of Pars, and are the perfect way to easily and simply tie together online the people of various nations connected ethnically and linguistically dating to the **Persian community** gathering together from 850 BCE in the **historical geographic location of Pars**.

Thank you for the opportunity to support these applications.

Yours sincerely

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2 **Name:** Danial Monsefi on Apr 20, 2012

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3 **Name:** Anoush Ohadi on Apr 20, 2012

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4 **Name:** Ahad Mehrabian on Apr 20, 2012

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5 **Name:** Ar.paykan on Apr 20, 2012

Comments / نظر تکمیلی: Dear ICANN I hereby would like to express my full support for the applications for .PARS and .PersianGulf submitted to ICANN by Asia Green IT System Bilgisayar San. Ve Tic. Ltd. Sti in the New gTLD Program. As a member of the Persian Community, I express my interest in using .PARS and .PERSIANGULF domain names to communicate with others on internet, promote myself/ my ideas/ my business through internet and I believe that the .PARS and .PERSIANGULF gTLDs are explanatory of the history and glory of the people who lived in the ancient land of Pars, and are the perfect way to easily and simply tie together online the peoples of various nations connected ethnically and linguistically dating to the Persian community gathering together from 850 BCE in the historical geographic location of Pars. Thank you for the opportunity to support these applications. Yours sincerely

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6 **Name:** Behzad on Apr 20, 2012

Comments / نظر تکمیلی:

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7 **Name:** Hamed Karimi on Apr 20, 2012

Comments / نظر تکمیلی: سلام به همه دوستان عزیزم من میخواهم بگویم که من و دوستانم از شما حمایت میکنیم و میخواهیم که شما هم حمایت کنید از ما و از این دو نام دامنه که برای ما و برای همه ما بسیار مهم است و میخواهیم که شما هم حمایت کنید از ما و از این دو نام دامنه که برای ما و برای همه ما بسیار مهم است و میخواهیم که شما هم حمایت کنید از ما و از این دو نام دامنه که برای ما و برای همه ما بسیار مهم است

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8 **Name:** Anonymous on Apr 20, 2012

Comments / نظر تکمیلی:

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9 **Name:** Elham on Apr 20, 2012

Comments / نظر تکمیلی:

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- 10 **Name:** Iman on Apr 20, 2012
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Comments / نظر تکمیلی: Tanks
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- 14 **Name:** Alireza on Apr 20, 2012
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- 15 **Name:** Ehsan Pakgohar on Apr 20, 2012
Comments / نظر تکمیلی: I love it
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- 16 **Name:** Sabbagh on Apr 21, 2012
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- 17 **Name:** Elham Sh on Apr 21, 2012
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- 18 **Name:** Omid Safari on Apr 21, 2012
Comments / نظر تکمیلی: Û...Û+ ØÛ...Ø§ÛŒØª Û...ÛŒ Û@Û+Û... I'll Support.
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- 19 **Name:** Rohollah Boroumandfar on Apr 21, 2012
Comments / نظر تکمیلی: i love pars
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- 20 **Name:** Behnam Zarean on Apr 21, 2012
Comments / نظر تکمیلی: tnks 4
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- 21 **Name:** Anita on Apr 21, 2012
Comments / نظر تکمیلی:
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- 22 **Name:** Mohamadreza Askari on Apr 21, 2012
Comments / نظر تکمیلی:
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- 23 **Name:** Niloofar on Apr 21, 2012
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- 24 **Name:** Hamidreza Zolfaghari on Apr 21, 2012
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- 25 **Name:** Pedi on Apr 21, 2012
Comments / نظر تکمیلی:
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- 26 **Name:** Mfari on Apr 21, 2012
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- 27 **Name:** Mansoure Shahbababyk on Apr 21, 2012
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- 28 **Name:** Mohsen on Apr 21, 2012
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- 29 **Name:** Amirali on Apr 21, 2012
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- 30 **Name:** Maryam Bahrami on Apr 21, 2012
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- 31 **Name:** Babak Rashtian on Apr 21, 2012
Comments / نظر تکمیلی:
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- 32 **Name:** Masi on Apr 21, 2012
Comments / نظر تکمیلی:
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- 33 
Name: Pourya Sehatnejad on Apr 21, 2012
Comments / نظر تکمیلی:
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- 34 **Name:** Anonymous on Apr 21, 2012
Comments / نظر تکمیلی:
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- 35 **Name:** Soheil Kazemian on Apr 21, 2012
Comments / نظر تکمیلی:
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- 36 **Name:** Anita on Apr 21, 2012
Comments / نظر تکمیلی:
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- 37 **Name:** Negar on Apr 21, 2012
Comments / نظر تکمیلی: Dear ICANN I hereby would like to express my full support for the applications for .PARS and .PersianGulf submitted to ICANN by Asia Green IT System Bilgisayar San. Ve Tic. Ltd. Sti in the New gTLD Program. As a member of the Persian Community, I express my interest in using .PARS and .PERSIANGULF domain names to communicate with others on internet, promote myself/ my ideas/ my business through internet and I believe that the .PARS and .PERSIANGULF gTLDs are explanatory of the history and glory of the people who lived in the ancient land of Pars, and are the perfect way to easily and simply tie together online the people of various nations connected ethnically and linguistically dating to the Persian community gathering together from 850 BCE in the historical geographic location of Pars. Thank you for the opportunity to support these applications. Yours sincerely
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- 38 **Name:** Shahram Khalil on Apr 21, 2012
Comments / نظر تکمیلی:
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- 39 **Name:** Soroush on Apr 21, 2012
Comments / نظر تکمیلی:
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- 40 **Name:** Mohammad on Apr 21, 2012
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- 41 **Name:** Pis Pis on Apr 21, 2012
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- 50 **Name:** Farnoush on Apr 21, 2012
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- 48402 Name:** Alireza Pirhashemi on May 3, 2013
Comments / نظر تکمیلی: we live in persian gulf island beaches and we would like to have our domains.
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- 48403 Name:** Meysam Shahi on May 3, 2013
Comments / نظر تکمیلی: Only Persian Gulf....
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- 48404 Name:** Nima Enayat on May 3, 2013
Comments / نظر تکمیلی:
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- 48405 Name:** Meysam Osati` on May 4, 2013
Comments / نظر تکمیلی: حمایت میکنیم
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- 48406 Name:** Abbas Abbasi on May 4, 2013
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Flag
- 48407 Name:** Zahra on May 8, 2013
Comments / نظر تکمیلی: janam faday iran
Flag
- 48408 Name:** هادی شاکری on May 8, 2013
Comments / نظر تکمیلی: اینجانب نیز به عنوان یک ایرانی از ثبت پسوندهای اینترنتی حمایت مینمایم
Flag
- 48409 Name:** Aqgzlwxgdjn on May 9, 2013
Comments / نظر تکمیلی: Eo2d6H ujwlhlfwhp, unbtyuwmgix, tieodxvebluk,
http://twugsoxtqnal.com/
Flag
- 48410 Name:** عامر ریسی on May 10, 2013
Comments / نظر تکمیلی:
Flag
- 48411 Name:** Mansoorp on May 10, 2013
Comments / نظر تکمیلی: نام خلیج فارس به قدمت نژاد پارس است
Flag

48412 Name: Mohsen Parse on May 12, 2013

Comments / نظر تکمیلی: آگه ميشه لطف كنيد امكانات وب تون رو ببرين بلا تشكر /
Flag

48413 Name: Razieh Mehdizade on May 13, 2013

Comments / نظر تکمیلی: just "Persian" Golf
Flag

48414 Name: Anonymous on May 13, 2013

Comments / نظر تکمیلی:
Flag

48415 Name: Mahdu on May 14, 2013

Comments / نظر تکمیلی:
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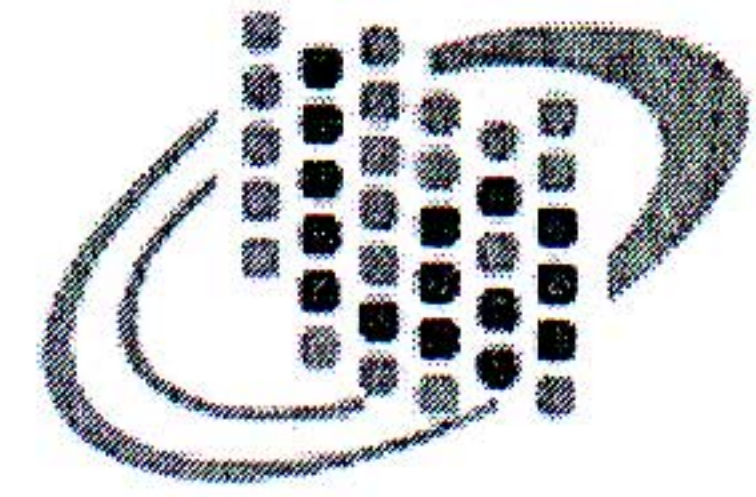
48416 Name: Anonymous on May 15, 2013

Comments / نظر تکمیلی:
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تاریخ: ۹۲،۲،۲۴
شماره: ۴۶۱۰
پوست:

بسمه تعالی



وزارت ارتباطات و فناوری اطلاعات
سازمان فناوری اطلاعات ایران

To: ICANN

Suite 330, 4676 Admiralty Way

Marina del Rey, CA 90292

Attention: New gTLD Evaluation Process

Subject: Letter for support for .PERSIANGULF

Dated: May 5th, 2013

Dear Sirs

This letter is to confirm that **The Ministry of Information and Communication Technology of the Islamic Republic of Iran** supports the application for **.PERSIANGULF** submitted to ICANN in the New gTLD Program.

As the **Representative of the Government of Islamic Republic of Iran in the Government Advisory Committee of ICANN (GAC)**, I confirm that I have the authority to be writing to you on this matter.

Thank you for the opportunity to support this application.

Yours sincerely


Saeed Mahdioun



To: ICANN

Suite 330, 4676 Admiralty Way

Marina del Rey, CA 90292

Attention: New gTLD Evaluation Process

Subject: Letter for support for .PERSIANGULF

Dated: May 1st, 2013

Dear Sirs

This letter is to confirm that **The Iranian Cultural Heritage, Handicraft and Tourism Organization (ICHTO)**, a state department of the Islamic Republic of Iran, fully supports the application for **.PERSIANGULF** submitted to ICANN in the New gTLD Program.

As the **Chief Information Officer and Head of IT Department** of ICHTO, I confirm that I have the authority of The Iranian Cultural Heritage, Handicraft and Tourism Organization to be writing to you on this matter.

The **.PERSIANGULF** gTLD is the perfect way to easily and simply tie together online the peoples of various nations connected culturally and historically to the Persian Gulf area across the history.

Thank you for the opportunity to support this application.

Yours sincerely

Seyed Abbas Hosseini

Chief Information Officer and Head of IT Department

The Iranian Cultural Heritage, Handicraft and Tourism Organization (ICHTO)

REFERENCE MATERIALS – BOARD SUBMISSION NO. 2018.10.03.1b

TITLE: **Further Consideration of the *Asia Green IT System v. ICANN Independent Review Process Final Declaration***

The following attachments are relevant to the Board's consideration of the Panel's Final Declaration in the Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti. (AGIT) vs. ICANN Independent Review Process (IRP) regarding the .HALAL and .ISLAM applications:

- Attachment A is the Panel's [Final Declaration](#) issued on 30 November 2017.
- Attachment B is the transcript of the 18 July 2013 dialogue between members of the Board and concerned members of the Governmental Advisory Committee regarding the .HALAL and .ISLAM applications.

BACKGROUND SUMMARY

Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti. (AGIT) initiated Independent Review Process (IRP) proceedings challenging the decision of the ICANN Board (acting through the New gTLD Program Committee (NGPC)) to accept the Governmental Advisory Committee (GAC) non-consensus advice against AGIT's applications for .HALAL and .ISLAM (Resolution 2013.06.04.NG01, <https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-06-04-en>), and to place AGIT's applications on hold until AGIT resolved the concerns raised by the objecting countries and the Organisation of Islamic Cooperation (OIC) (Resolution 2014.02.05.NG01, <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-02-05-en#1.a>). The GAC non-consensus advice, in the 11 April 2013 Beijing Communiqué, indicated that: "The GAC recognizes that Religious terms are sensitive issues. Some GAC members have raised sensitivities on the applications that relate to Islamic terms, specifically .islam and .halal. The GAC members concerned have noted that the applications for .islam and .halal lack community involvement and support. It is the view of these GAC members that these applications should not proceed." (GAC Beijing Communiqué, <https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf>.)

IRP Panel Final Declaration:

On 30 November 2017, the IRP Panel (Panel) issued its Final Declaration in the AGIT IRP (<https://www.icann.org/en/system/files/files/irp-agit-final-declaration-30nov17-en.pdf>). The Panel's findings are summarized below, and the materials regarding the IRP are available in full at <https://www.icann.org/resources/pages/irp-agit-v-icann-2015-12-23-en>.

The Panel declared AGIT to be the prevailing party, and that ICANN shall reimburse AGIT for its IRP fees and costs. (Final Declaration, paras. 151, 156.) The Panel also declared that the ICANN Board (through the NGPC) acted in a manner inconsistent with ICANN's Articles of Incorporation (Articles) and Bylaws. Specifically, the Panel declared that the "closed nature and limited record of the [GAC] Beijing meeting provides little in the way of 'facts' to the Board. Of the 6 page [Communiqué] produced by the GAC to the Board, only 58 words concerned the .HALAL and .ISLAM applications, utilizing vague and non-descript terms [such as "religious sensitivities"]." "[T]his manner and language is insufficient to comply with the open and transparent requirements mandated by Core Value 7." Therefore, "any reliance on the Beijing Communiqué by the Board in making their decision would necessarily be to do so without a reasonable amount of facts." "[T]o be consistent with Core Value 7 requires ICANN to act in an open and transparent manner." (Final Declaration, paras. 81, 83, 148.) The Panel further declared that the Board "acted inconsistently with Core Value 8" by placing AGIT's applications "on hold" – "to be consistent with Core Value 8 requires [ICANN] to make, rather than defer (for practical purposes, indefinitely), a decision...as to the outcome of [AGIT's] applications." (Final Declaration, para. 149.) In the view of the Panel, "the 'On Hold' status is neither clear nor prescribed" in the Guidebook, Articles or Bylaws. The Panel declared that by placing the applications "on hold," ICANN "created a new policy" "without notice or authority" and "failed to follow the procedure detailed in Article III (S3 (b)), which is required when a new policy is developed." (Final Declaration, paras. 113, 119, 150.)

The Panel recommended that, in order to be consistent with Core Value 8, "the Board needs to promptly make a decision on the application[s] (one way or another) with integrity and fairness." The Panel noted, however, that "nothing as to the substance of the decision should be inferred by the parties from the Panel's opinion in this regard. The decision, whether yes or no, is for [the ICANN Board]." (Final Declaration, para. 149.)

Prior Board Consideration:

The Board considered the Final Declaration its 15 March 2018 meeting. The Board accepted that the IRP Panel declared AGIT as the prevailing party, and that ICANN reimburse AGIT its IRP costs, which was completed in April 2018. The Board further directed the BAMC to re-review the GAC non-consensus advice (received per Section 3.1 subparagraph II of the Applicant Guidebook) as well as the subsequent communications from or with objecting and supporting parties, and to provide a recommendation to the Board as to whether or not the applications for .HALAL and .ISLAM should proceed. (Resolutions 2018.03.15.15 – 2018.03.15.17, <https://www.icann.org/resources/board-material/resolutions-2018-03-15-en#2.c>.)

The Board concluded that re-reviewing the GAC non-consensus advice and the positions advanced by both supporting and opposing parties would afford the Board a fuller understanding of the sensitivities regarding the .HALAL and .ISLAM gTLDs and would assist the Board in making its determination as to whether or not AGIT's applications should proceed.

OVERVIEW OF RELEVANT MATERIALS RELATED TO .HALAL/.ISLAM MATTER

In accordance with the Board's 15 March 2018 Resolution, the BAMC (and the Board) re-reviewed the GAC non-consensus advice regarding .HALAL and .ISLAM, and the communications from or with objecting and supporting parties.

AGIT filed its .HALAL and .ISLAM applications in early 2012; soon thereafter, the ICANN community submitted more than 40 comments regarding each application (the majority of which were individuals in support of the applications), and the governments of the UAE, Saudi Arabia, and India, among others, began voicing their objections against the applications.

AGIT Applications – Proposed Governance Model:

AGIT's applications for .HALAL and .ISLAM included a proposed governance model in an attempt to alleviate concerns regarding the management and operation of the proposed .HALAL and .ISLAM gTLDs. In both instances, AGIT proposes the formation of a Policy Advisory Committee (PAC) populated by members of the concerned communities, providing them a means and an opportunity to provide input on any policy matters that impact the operation of the gTLDs.

- .HALAL: “AGITSys will oversee the formation of a .HALAL Policy Advisory Committee (PAC) populated by members of the .HALAL industry service providers community. AGITSys intends that the PAC be representative of the entire broad spectrum of the halal industry service providers’ community. It therefore intends to engage religious figures, certification institutes and halal product manufacturers, distributors, retailers and service providers. The PAC would serve as a conduit for the community to weigh in on any policy matters that impact the operation of the gTLD. These can range from abuse prevention and mitigation to registration policies and the maintenance and structure of the .HALAL community.” (Portion of response to Application Question 20B, <https://gtldresult.icann.org/applicationstatus/applicationdetails/12>.) “AGITSys will follow ICANN guidelines regarding potential restrictions of second-level domains. The names selected to be registered under .HALAL TLD must not have any conflict with the cultural, traditional and historical values of the Muslim community. This restriction can be controlled by creating the list of prohibited names managed by the .HALAL Policy Advisory Committee described above.” (Portion of response to Application Question 20E, <https://gtldresult.icann.org/applicationstatus/applicationdetails/12>.)
- .ISLAM: “AGITSys will oversee the formation of a .ISLAM Policy Advisory Committee (PAC) populated by members of the Islamic community. AGITSys intends that the PAC be representative of the entire broad spectrum of the Muslim community. It therefore intends to engage religious figures, academics, public figures and a broad range of community leaders and other interested parties as a part of this committee. Anyone with a desire to do so will be able to apply to become a member of the PAC, and AGITSys will not discriminate against any applicants [...]. The PAC would serve as a conduit for the community to weigh in on any policy matters that impact the operation of the gTLD. These can range from abuse prevention and mitigation to registration policies and the maintenance and structure of the .ISLAM community.” (Portion of response to Application Question 20B, <https://gtldresult.icann.org/applicationstatus/applicationdetails/13>.) “AGITSys will follow ICANN guidelines regarding potential restrictions of second-level domains. The names selected to be registered under .ISLAM gTLD must not present any conflict with

the cultural, traditional and historical values of the Muslim community. This restriction will be controlled by creating a ‘black list’ of prohibited names managed by the .ISLAM Policy Advisory Committee described above.” (Portion of response to Application Question 20E, <https://gtldresult.icann.org/applicationstatus/applicationdetails/13.>)

AGIT Applications – Support Letters:

Even though AGIT’s applications are not community applications, Application Question 20F provides applicants with an opportunity to provide endorsement letters, if the applicant chooses to do so (“Attach any written endorsements for the application from established institutions representative of the community identified in 20(a)”). In response, AGIT submitted five letters of support for its .HALAL application from: the Islamic Republic of Iran’s Halal Supreme Council; the Islamic Chamber Research & Information Center; HalalWorld Center; Halal Export Consortium; and the Association of Development, Promotion, Production and Trade of Halal Products. These letters all contained very similar content – confirming support for AGIT’s .HALAL application; indicating that the entity believes that the “gTLD will be used to promote the concept of Halal productions, and development of Halal standards.” In addition, even though the applications are not community applications, the letters also stated that the “application is being submitted as community-based application, and as such it is understood that the Registry Agreement will reflect the community restrictions proposed in the applications. In the event that we believe the registry is not complying with these restrictions, possible avenues of recourse include the Registry Restrictions Dispute Resolution Procedure.” (See <https://gtldresult.icann.org/applicationstatus/applicationdetails/12.>)

Similarly, in response to Application Question 20F for its .ISLAM application, AGIT submitted six letters expressing support for its .ISLAM and .HALAL applications from: a British-Iranian historian and researcher (Majid Tafreshi); the World Assembly for Proximity of Islamic Schools of Thought; the Management Center of Islamic Schools of Thought; the Economic Cooperation Organization (ECO) Cultural Institute; the Iran Tajikistan Friendship Association; and Dr. Mahathir bin Mohamad (supporting only .ISLAM application). Several of the letters indicated that: “The gTLDs will be used to Principles of rounding i.e. the march of rapprochement between Islamic communities on the general principles. Therefore providing the opportunity to expand religious believes [sic] through a guided line could be a satisfactory achievements [sic] for both authorities and non-radical religion followers.” Two of the letters expressed their belief

that these gTLDs “will be used as the internet base for the presence of the Muslim Community and their beliefs” (ECO Cultural Institute) and “will be used to strengthen the religious connections of the Iranian and Tajik Muslim Communities” (Iran Tajikistan Friendship Association). (See <https://gtldresult.icann.org/applicationstatus/applicationdetails/13>.)

In November 2012, AGIT requested the opportunity to supplement its response to its .ISLAM Application Question 20F and submitted an additional 25 letters of support from individuals and organizations in Brazil (3), France (3), Germany (2), Pakistan (9), Turkey (5), Belarus (1), and Denmark (1). Most of the letters appear to be premised on a template letter expressing support for AGIT’s .ISLAM application and, as above, indicating that the gTLD “will be used for Principles of rounding i.e. the march of rapprochement between Islamic sects on general principles” and “will therefore provide the opportunity to expand religious beliefs through a guided line which could result in satisfactory achievement for both authorities and followers of all religions.” The five Turkish letters expressed their support for the applications generally. All of the letters submitted by AGIT in response to Application Question 20F (both initial and supplemental) for its .HALAL and .ISLAM applications are included in AGIT’s IRP Request Annex 16. (IRP Annex 16 - Summary document and 330 letters of support – available at pages 557-997, <https://icann.box.com/shared/static/eh125bzunxp64ym2vwidthwdogjk1gikq.pdf>; also available on the AGIT IRP webpage <https://www.icann.org/resources/pages/irp-agit-v-icann-2015-12-23-en>.)

Public Comments on .HALAL and .ISLAM Applications:

In June through September 2012, the ICANN community submitted more than 40 comments regarding each of the .HALAL and .ISLAM applications. The majority of the comments were submitted by individuals, on their own behalf. (See <https://gtldcomment.icann.org/applicationcomment/viewcomments>.)

Support for the applications: Approximately 28 (of the 41) comments submitted regarding the .HALAL application supported the application; and approximately 33 (of the 48) comments regarding the .ISLAM application supported the application. In each instance, supporters included individuals and the Iranian ICT Guild Organization (IIG). In its comments regarding each application, the IIG noted that: “IIG as the voice of the Iran’s ICT Private Sector and on behalf of its 7000+ members fully supports” AGIT’s .HALAL and .ISLAM applications; and

“believes that [the .HALAL gTLD] will improve the expansion of HALAL culture in the world as one of the main concepts of Islam and at the same time will have a positive impact on the Halal business and market among the Muslim community all around the world”; and “believes that [the .ISLAM gTLD] will expand the culture of peace and friendship among the Muslim community [through] providing the opportunity to express their culture, beliefs and non-radical ideas, and as a result brings the opportunity of equal access to new technologies on internet for them in comparison to developed countries.” (*See* <https://gtldcomment.icann.org/applicationcomment/commentdetails/11523>; and <https://gtldcomment.icann.org/applicationcomment/commentdetails/11493>.) According to IIG’s website, IIG members are “companies, and individuals in Iran engaged in the business of ICT (IT Services, Software Products, Engineering Design, Internet, eCommerce and Gaming, etc.).”

Opposition against the applications: Approximately 12 comments submitted regarding the .HALAL application opposed the application; and approximately 14 comments regarding the .ISLAM application opposed the application. In each instance, objectors included individuals, the Communications and Information Technology Commission (CITC) of the Kingdom of Saudi Arabia, and the Telecommunications Regulatory Authority (TRA) of the UAE. In its comments regarding each application, CITC of Saudi Arabia indicated its belief “that any and all gTLD applications for any name in relation to practices of a religion or a specific community should be presented to the whole of that community for evaluation before an application is denied or granted” and that such view of the community should be taken into account. CITC also noted that “[f]ailure to do so would give the use and control of an important religious practice to one group, unjustly elevating its influence above others.” With regard to .HALAL, CITC concludes “[t]o allow this string to be registered would be offensive to many people and societies as well as potentially divisive” (<https://gtldcomment.icann.org/applicationcomment/commentdetails/5922>). With regard to .ISLAM, CITC concludes that AGIT “must be challenged to prove that it represents the whole or at least a majority of the Muslim community,” and requests that “ICANN not give this sensitive gTLD string to anyone without the full support of/endorsement in writing by all Muslim countries (<https://gtldcomment.icann.org/applicationcomment/commentdetails/5922>). The UAE Telecommunications Regulatory Authority similarly expressed concerns, stating that it “is unacceptable for a private entity to have control over religious terms such as [Halal/Islam]

without significant support and affiliation with the community [it is] targeting,” and noting that the applicant does not have “sufficient community support” and the gTLD should be “supported and supervised by an IGO which represents [a] majority of the community.” (See <https://gtldcomment.icann.org/applicationcomment/commentdetails/11350>; and <https://gtldcomment.icann.org/applicationcomment/commentdetails/11206>.)

GAC Early Warnings:

On 20 November 2012, the UAE and India submitted Early Warning notices through the GAC against both applications, expressing serious concerns regarding a perceived lack of community involvement in, and support for, the AGIT applications. Both governments also noted concerns regarding a lack of mechanisms to prevent abuse of the gTLDs. (Early Warnings, <https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings>.)

The UAE Early Warnings were nearly identical to the comments that the UAE submitted regarding each of the applications. In addition to the portions quoted above, the UAE also noted (in both the comments and the Early Warnings) that:

- “Religious terms and subjects are very sensitive areas.” “[R]eligious terms must be only applied by a government or not-for-profit organization acting on behalf of that community as oppose[d] to a private entity.”
- The Muslim community “covers [a] wide range of population (approximately 1.4 to 1.6 Billion). The application has presented couple of letter of supports from organizations mostly associated with one country, Iran.” “The support letters presented by the applicant constitute a minority (less than 5% of the community).”
- “If there is a lack of support from the majority of the community... then this application will most probably be dominated by [a] subgroup from the religion and will ignore the interests of the remaining majority. This will adversely affect the interest of the community to register in the TLD and therefore limit its growth.”
- “A very important question must be raised as to how the applicant will ensure that the use of the domain name is in line with Islam principles, views and law? These issues will be eliminated if this TLD is supported and supervised by an IGO which represents [a] majority of the community. The application lacks any sort of protection to ensure that the use of the domain names registered under the applied for new gTLD are in line with

Islam principles, pillars, views[, beliefs] and law. There are no clear mechanisms to prevent any abuses related to the above.”

- “[T]he government of UAE would like to **raise its disapproval and non-endorsement** to this application and request the ICANN and the new gTLD program evaluators to not approve this application” (emphasis in original).
- .HALAL Early Warning, <https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings?preview=/27131927/27197890/Halal-AE-60793.pdf>; .ISLAM Early Warning, <https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings?preview=/27131927/27197891/Islam-AE-23450.pdf>.

The India Early Warnings focused on the lack of rules and regulations to govern the use of the gTLDs:

- “Use [of] this extension is likely to impact upon section of the community unless there are stringent checks and balance[s] with a strong anti-abuse policy.” “There is no certainty that the application will conform to the rules and regulations regarding [the Halal] type of food item in India.”
- “Without strong and proper procedures to curb the wrong use of [the .ISLAM] gTLD, there exists a very high potential to stoke tensions and negatively affect the well-being of millions of Muslims and non-Muslims in India.”
- The “designation of food as ‘Halal’ must conform to strict regulations and rules that govern this area in India. The applicant must demonstrate how they will conform to such rules, and must submit an undertaking that only verified registrants with documentation determining that they are certified to carry Halal food will be allowed to register names.”
- “Therefore pre verifications along with required anti abuse policy must be put in place before [the .HALAL] gTLD extension is granted.”
- With regard to the .ISLAM gTLD, India concluded that “based on the provisions of the Indian Trade Mark Act [indicating that a mark shall not be registered if it comprises any matter likely to hurt the religious sensitivities of any section of the citizens of India], we believe that the gTLD string ‘islam’ should be set aside by ICANN.”
- .HALAL Early Warning, <https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings?preview=/27131927/27197890/Halal-AE-60793.pdf>

[197987/Halal-IN-60793.pdf](#) ; .ISLAM Early Warning,
<https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings?preview=/27131927/27197989/Islam-IN-23459.pdf>.

ICANN Independent Objector:

In December 2012, ICANN's Independent Objector (IO) issued an Initial Notice regarding the .ISLAM application. AGIT submitted two responses to the IO's Initial Notice – First Response submitted on 26 December 2012; Second Response submitted on 20 February 2013. (See <https://www.independent-objector-newgtlds.org/home/the-independent-objector-s-comments-on-controversial-applications/islam-general-comment/>.) In its responses, AGIT noted its efforts to reach out and discuss AGIT's plans for governance and operation of the .ISLAM gTLD with Turkey, Pakistan, Libya, Egypt, UAE, Iran, Kazakhstan, Afghanistan, Tajikistan, and Uzbekistan Ministries. AGIT further noted that it “does not want to position itself as the ‘judge’ of ‘choosing suitable candidates for using .Islam gTLD’ without the Muslim community leaders’ involvement. As a private Company with Technical and Managerial capabilities, we would like to be mostly involved in operational side of our .Islam gTLD application.” AGIT further explained that it had prepared “a draft proposal on the Governance of .ISLAM gTLD” and shared that draft with various persons, organizations, and governments (including the UAE, India, and the Organisation of Islamic Cooperation (OIC)), requesting that they provide feedback on the draft. AGIT noted its difficulties in contacting the OIC, given that it is such a large organization. AGIT also noted a “positive” conversation it had with Mr. Abdulrahman Al Marzooqi of the UAE (GAC representative), wherein AGIT “explained our approach on the governance of .ISLAM (the involvement of OIC or other international Islamic organization), [and] Mr. Marzooqi welcomed this approach and accepted our plans as positive initializers which can address their concerns[, but that his] feedback was a conditional one based on our future activities in this regard.”

AGIT also informed the IO that it had obtained “many new supporting letters from organizations and associations which can be considered as representatives of specific groups of Muslims.” AGIT further stated that it “believes that the governments of Islamic countries should not be considered as the **only** representatives of the Muslim community and we should note to other parts of this community as well. As an example, the religious leaders can be even more considerable in this regard because we are talking about a religious TLD which should not be

only looked at through political windows.” (See <https://www.independent-objector-newgtlds.org/home/the-independent-objector-s-comments-on-controversial-applications/islam-general-comment/>.)

In his Final Assessment, the IO determined that neither a limited public interest objection nor a community objection against the .ISLAM application were warranted. With regard to a limited public interest objection: “[T]he IO is of the opinion that an objection to the launch of the new gTLD ‘.Islam’ on the limited public interest ground is not warranted. Quite the contrary, the gTLD could encourage the promotion of the freedom of religion, a fundamental right under public international law, by creating and developing a new space for religious expression that could benefit the Muslim community.” (See <https://www.independent-objector-newgtlds.org/home/the-independent-objector-s-comments-on-controversial-applications/islam-general-comment/>.)

With regard to a community objection, the IO noted the objections raised by the governments of India and the UAE, as well as the Communication and Information Technology Commission (CITC) of Saudi Arabia, and that “comments against the application suggest that a more representative entity should operate such a TLD,” such as the OIC. After reviewing AGIT’s two responses, the IO determined that AGIT had addressed the IO’s initial concerns and that a community objection was not warranted. In particular, the IO noted AGIT’s acknowledgement of the sensitivity of the .ISLAM gTLD and the AGIT’s efforts “to create a Governance Platform with cooperation of OIC to address such concerns.” The IO also relied on AGIT’s “assur[ance] that they ‘will do [their] outmost to include OIC into governance of .islam gTLD. [Their] proposal to OIC is establishing OIC ICT organization as the Sponsor of .Islam gTLD and in charge of the governance entity.’” The IO also noted that he reviewed AGIT’s draft proposal on the governance of the .ISLAM gTLD, which AGIT shared with various government representatives in order to obtain their feedback. According to the IO, “the guarantees presented by the applicant properly address [the IO’s] initial concerns,” and “an objection on community ground is not warranted.”

The IO further noted that “it is the public policy of the IO not to make an objection when an established institution representing and associated with the community having an interest in an objection can lodge such an objection directly.” “In the present case, the IO is of the opinion that

the [OIC] is an established institution representing and associated with a significant part of the targeted community. The [OIC] is already fully aware of the controversial issues and is better placed than the IO to file an objection, if it deems it appropriate. That is also for this reason that the IO, which is primarily acting as a ‘safety net’, does not in principle intend to file an objection on the community ground.” (IO Final Assessment, <https://www.independent-objector-newgtlds.org/home/the-independent-objector-s-comments-on-controversial-applications/islam-general-comment/>.)

It should be noted that the IRP Panel stated that the Board was not required to follow the findings of expert panelists’ decisions (in this instance, the Independent Objector and the Community Objection Expert), and that “the Board is entitled to decide in a manner inconsistent with expert advice.” (Final Declaration, para. 127.)

Expert Determinations on UAE’s Community Objections:

On 13 March 2013, the Telecommunications Regulatory Authority of the UAE filed Community Objections against the .HALAL and .ISLAM applications. An expert seated by the International Centre for Expertise of the International Chamber of Commerce (“Expert”) rendered the Expert Determinations on 24 October 2013 dismissing the UAE’s Community Objections. (See <https://newgtlds.icann.org/sites/default/files/drsp/04nov13/determination-1-1-2131-60793-en.pdf>; and <https://newgtlds.icann.org/sites/default/files/drsp/04nov13/determination-1-1-2130-23450-en.pdf>.)

The Expert determined, in part, that the objection failed because there was not “substantial” opposition from the community to AGIT’s applications – “there is opposition to [AGIT’s] application to some extent, but such opposition is not substantial.” (Expert Determination (.HALAL), para. 115; Expert Determination (.ISLAM), para. 108.) It should be noted that the Expert made this determination based on the information available at that point in time (in October 2013). The Expert specifically acknowledged that “the OIC is a valid speaker for the world’s Muslim population,” but found that “it has not been established whether the OIC favors or disfavors [AGIT’s] application for the String. Consequently, the Expert is of the opinion that the OIC remains neutral as to the registration of the String by the Respondent.” (Expert Determination (.HALAL), paras. 94, 103; Expert Determination (.ISLAM), paras. 86, 96.) The Expert further noted that the UAE “does not have sufficient international weight – without the

support of a substantial number of Muslim countries or the OIC itself – to globally represent the interests of the Islamic community throughout the world.” (Expert Determination (.HALAL), para. 113; Expert Determination (.ISLAM), para. 106.)

As we now know, the OIC is not neutral on this issue. Less than three weeks after the Expert Determinations, the OIC sent a letter to the GAC and ICANN indicating: “I would request you to kindly consider this letter as an official opposition of the Member States of the OIC towards probable authorization by the GAC allowing use of these new gTLDs .Islam and .Halal by any entity not representing the collective voice of Muslim people.” (4 November 2013 OIC letter, <https://www.icann.org/en/system/files/correspondence/crocker-to-dryden-11nov13-en.pdf>.) A month later, the OIC sent another letter to ICANN indicating that the OIC had unanimously approved a resolution against the applications, and “affirm[ing] the official opposition of the OIC Member States towards any probable authorization by the GAC allowing use of these new gTLDs .islam and .halal by any entity not reflecting the collective voice of the Muslim People.” (19 December 2013 OIC letter, <https://www.icann.org/en/system/files/correspondence/ihsanoglu-to-crocker-19dec13-en.pdf>; 11 December 2013 OIC Resolution, <https://www.oic-oci.org/subweb/cfm/40/fm/en/docs/IT-%2040-CFM-FINAL-ENG.pdf>.) This information was not available to the Expert when making his determination.

The Expert also determined that the UAE “failed to prove the likelihood of any material detriment to the rights or legitimate interests of a significant portion of the Islamic community.” (Expert Determination (.HALAL), para. 162; Expert Determination (.ISLAM), para. 155.) The Expert noted the UAE’s argument that “religion is an ‘extremely sensitive subject’” and, since “Islam include different subgroups and sects, it would be very difficult to unite all of them under the same gTLD unless an organization that represents the community (or its majority) runs and supports said domain.” For the UAE, AGIT’s application “fails to evidence any mechanisms that will effectively prevent abuses or misuses of the String, which is further exacerbated by the fact that [AGIT] is not supported by the majority of the Muslim community” and, therefore, “this will all result in damage to the reputation of the Muslim community.” (Expert Determination (.HALAL), para. 132; Expert Determination (.ISLAM), para. 125.) The Expert disagreed, opining that “the registration of the String will contribute to promoting [the] objective [of freedom of thought, conscience and religion], as it will become a vehicle for Muslims to express themselves and expand their faith across the world.” (Expert Determination (.HALAL), paras.

145-146; Expert Determination (.ISLAM), paras. 138-139.) The Expert also relied on AGIT's assurances that it will implement measures "to limit second-level domain registrations to those of Muslim faith or with a positive interest in the Muslim community"; it "will not tolerate radical content or criticism of Islam or the Muslim faith"; and it "will take immediate and severe action" if necessary and will establish "safeguards, keyword alerts, name selection policies, all governed by an Acceptable Use Policy and post registration protections." (Expert Determination (.HALAL), paras. 134, 149-150; Expert Determination (.ISLAM), paras. 127, 142-143.) The Expert also agreed with AGIT that "the String may serve as a platform for the expansion of online Islamic resources" (Expert Determination (.ISLAM), para. 152) and "expansion of Halal products across the borders, which may be translated into increased profits for the participants in the Halal industry" (Expert Determination (.HALAL), para. 159).

It should be noted that the IRP Panel stated that the Board was not required to follow the findings of expert panelists' decisions (in this instance, the Independent Objector and the Community Objection Expert), and that "the Board is entitled to decide in a manner inconsistent with expert advice." (Final Declaration, para. 127.)

GAC Meetings, Dialogue and GAC-Related Materials:

During the time period from April through November 2013, the GAC held meetings in Beijing (April 2013) and Buenos Aires (November 2013), engaged in a Board/GAC dialogue (July 2013), and corresponded with both the OIC and the ICANN Board – regarding the .HALAL and .ISLAM applications.

The GAC Beijing Communiqué (11 April 2013) provided non-consensus GAC advice against the applications, indicating: "The GAC recognizes that Religious terms are sensitive issues. Some GAC members have raised sensitivities on the applications that relate to Islamic terms, specifically .islam and .halal. The GAC members concerned have noted that the applications for .islam and .halal lack community involvement and support. It is the view of these GAC members that these applications should not proceed." (GAC Beijing Communiqué, <https://www.icann.org/en/system/files/correspondence/gac-to-board-11apr13-en.pdf>.)

On 18 July 2013, members of the Board and concerned members of the GAC engaged in a dialogue at ICANN47 in Durban regarding the .HALAL and .ISLAM applications.

Representatives from various countries attended, and those from the UAE, Malaysia, Turkey, and Iran voiced their opinions. (See transcript, Attachment B to the Reference Materials)

- The UAE reiterated its concern, along with the concerns of Saudi Arabia and the OIC, that religious terms such as Halal and Islam are sensitive and need to be carefully considered, noting that the UAE’s “main concern is that the applicant was not representing the Muslim community” and “there was not substantial effort to have [a] dialogue with the Muslim community, in order to... formulate the policy, have a strategy to open this TLD.” According to the UAE, “the community is opposing the introduction of those TLDs, in this manner, and there has to be better coordination with the community, in order to properly introduce the TLD.”
- Malaysia supported the concerns expressed by the UAE and noted the “very sensitive” nature of the gTLDs, indicating that the gTLDs “need to, at least, come from [a] known organization like the OIC that we know they represent Muslim as a whole.” Further, in particular regarding the .HALAL gTLD, Malaysia noted that “they can’t put just the word halal [on] the product; it has to be accredited”; “[i]t has to be an accredited body that actually assigned the halal logo”; “a safeguard has to be in place when we talk about the TLD.”
- Turkey also expressed concerns that “these are... very sensitive strings and needs the community support.” Turkey noted that AGIT is a legitimate Turkish company, but that AGIT “[d]id not achieve... any support from organization for Islamic countries.” Turkey further noted that “we have the concern that it’s just an IT company handling this kind of religious and sensitive issues could be a very difficult and problematic one in the future.” Turkey concluded that “anything [that] covers whole Islam should be referenced from an umbrella organization,” such as the OIC, which “is the best reference point, because it’s the most comprehensive umbrella organization. And if they cooperate, if they get some kind of working relation with them [AGIT], that would be acceptable from our point of view.”
- Iran acknowledged the concerns by the various countries and suggested that “we” work together (perhaps through dialogue or a working group) to “include individuals, entities, governments, personalities [with views and concerns] in an inclusive, multistakeholder approach” to develop “the most appropriate [mechanisms] or modalities” to address the concerns raised by the community.

On 11 November 2013, after the Expert Determination dismissing the UAE's Community Objection was issued, the ICANN Board Chair sent a letter to the GAC Chair indicating: "Now that the objection proceedings have been concluded, the NGPC must decide what action to take on these strings. Before it does so, it will wait for any additional GAC input during the Buenos Aires meeting or resulting GAC Communiqué. The NGPC stands ready to discuss this matter further if additional dialog would be helpful." (11 November 2013 letter, <https://www.icann.org/en/system/files/correspondence/crocker-to-dryden-11nov13-en.pdf>.)

The GAC further discussed the matter in Buenos Aires (November 2013) and issued the Buenos Aires Communiqué on 20 November 2013, indicating that the "GAC took note of letters sent by the OIC and the ICANN Chairman in relation to the strings .islam and .halal. The GAC has previously provided advice in its Beijing Communiqué, when it concluded its discussions on these strings. The GAC Chair will respond to the OIC correspondence accordingly, noting the OIC's plans to hold a meeting in early December. The GAC Chair will also respond to the ICANN Chair's correspondence in similar terms." (GAC Buenos Aires Communiqué, <https://gac.icann.org/contentMigrated/icann48-buenos-aires-communicue>.) The GAC Buenos Aires Meeting Minutes indicated the same and, separately, noted the GAC's welcome of the OIC as a new GAC observer. (GAC Buenos Aires Meeting Minutes, <https://gac.icann.org/minutes/icann48%20gac%20meeting%20minutes.pdf>.)

On 29 November 2013, the GAC Chair sent a response letter to the ICANN Board Chair noting that the Buenos Aires Communiqué "simply clarifies that the GAC concluded its discussions on these applications with the advice provided in the Beijing Communiqué," and indicating that "no further GAC input on this matter can be expected." In the letter, the GAC informed ICANN that the "OIC intends to hold a meeting December 9-11," and that the "OIC might choose to correspond further with the Board directly to convey any relevant outcomes from the meeting." (29 November 2013 letter, <https://www.icann.org/en/system/files/correspondence/dryden-to-crocker-29nov13-en.pdf>.)

Correspondence Between AGIT and ICANN:

On 4 December 2013, AGIT wrote to the ICANN Board Chair, proposing certain governance mechanisms for the .ISLAM and .HALAL strings, noting: "At the core of this governance mechanism is the Policy Advisory Council (PAC) contemplated for each TLD. PACs will be

deployed for both .ISLAM and .HALAL. They will serve as non-profit governing boards made up of leaders from many of the world's various Muslim communities, governments, and organizations. The PACs will oversee policy development for the TLDs, to ensure they are coherent and consistent with Muslim interests. AGIT has invited the leading Muslim organisations, including the Organization for Islamic Cooperation (OIC), to become members of the PACs.” (4 December 2013 letter, <https://www.icann.org/en/system/files/correspondence/abbasnia-to-crocker-04dec13-en.pdf>.)

Notwithstanding AGIT's proposed governance model, the OIC sent a letter to the ICANN Board Chair on 19 December 2013 stating that the foreign ministers of the OIC's 57 Muslim member states had unanimously adopted a resolution officially objecting to the operation of the .ISLAM and .HALAL TLDs “by any entity not reflecting the collective voice of the Muslim People[.]” (19 December 2013 letter, <https://www.icann.org/en/system/files/correspondence/ihsanoglu-to-crocker-19dec13-en.pdf>.) On 30 December 2013, AGIT submitted a letter to the ICANN Board Chair challenging the nature and extent of the OIC's opposition to AGIT's applications, reiterating its commitment to the proposed multistakeholder governance model of .ISLAM and .HALAL described in its 4 December 2013 letter, and requesting to proceed to the contracting phase. (30 December 2013 letter, <https://www.icann.org/en/system/files/correspondence/abbasnia-to-crocker-30dec13-en.pdf>.)

On 5 February 2014, the NGPC adopted a scorecard stating: “The NGPC takes note of the significant concerns expressed during the dialogue, and additional opposition raised, including by the OIC, which represents 1.6 billion members of the Muslim community.” (*See* <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-02-05-en#1.a>.) In addition, the NGPC directed the transmission of a letter from the NGPC, via the ICANN Board Chair, to AGIT acknowledging AGIT's stated commitment to a multistakeholder governance model, but also noting the substantial opposition to AGIT's applications (7 February 2014 letter): “Despite these commitments, a substantial body of opposition urges ICANN not to delegate the strings .HALAL and .ISLAM.... There seems to be a conflict between the commitments made in your letters and the concerns raised in letters to ICANN urging ICANN not to delegate the strings. Given these circumstances, the NGPC will not address the applications further until such time as the noted conflicts have been resolved.” (7 February 2014 letter, <https://www.icann.org/en/system/files/correspondence/crocker-to-abbasnia-07feb14-en.pdf>.)

The 7 February 2014 letter listed the Gulf Cooperation Council, the OIC, the Republic of Lebanon, and the government of Indonesia as four parties that “all voiced opposition to the AGIT applications,” and provided some detail as to the concerns of each.

AGIT initiated the Cooperative Engagement Process on 21 February 2014, in advance of filing an IRP. On 10 August 2015, during the CEP, AGIT sent a letter to ICANN and requested that ICANN post the letter on ICANN’s Correspondence webpage. In light of a then recent decision in the .AFRICA matter, AGIT requested that the Board reconsider its 5 February 2014 Resolution and its “unprecedented” 7 February 2014 letter to AGIT. According to AGIT, the “Board thus far has blindly accepted unsubstantiated advice not of the consensus GAC, but of just a few members of the GAC, and has placed the subject applications into undefined, interminable purgatory.” AGIT also requested that ICANN “facilitate the resolution of [the] conflicts [noted in ICANN’s 7 February 2014 letter]” and provide an explanation of the “form and substance of the resolution that ICANN purportedly requires.” (10 August 2015 letter, <https://www.icann.org/en/system/files/correspondence/rodenbaugh-to-jeffrey-10aug15-en.pdf>.)

After the IRP Panel issued its Final Declaration, AGIT sent a letter to ICANN on 21 February 2018 regarding “next steps to proceed with these applications.” AGIT indicated that the Board should either disregard the GAC non-consensus advice and continue processing the .HALAL and .ISLAM applications, or “facilitate direct dialogue and negotiations between AGIT and the governmental objectors, with the view of reaching a mutually acceptable solution to allow for” AGIT’s operation of .HALAL/.ISLAM. AGIT noted that it has put forth a proposed governance model that neither ICANN nor the objecting parties have responded to; and indicated that the “Board could not possibly vote with ‘integrity and fairness’ to reject these applications, without facilitating such a comprehensive dialogue first.” AGIT claimed that, “in fairness, the same facilitation provided to the Amazon corporation and its government objectors must be provided to AGIT... -- with the same goal, to reach a mutually acceptable resolution that allows the applicant’s use of the subject TLDs.” (21 February 2018 letter, <https://www.icann.org/en/system/files/correspondence/rodenbaugh-to-chalaby-21feb18-en.pdf>.)

ICANN responded, indicating that “ICANN encourages applicants to engage with objecting parties and attempt to resolve any disputes” and that “if AGIT would like to submit a summary of its efforts to engage with the objecting parties thus far, as well as AGIT’s proposed approach

to further that engagement, ICANN will certainly consider AGIT’s submission if made before the Board takes up this matter in the near future.” (19 July 2018 letter, <https://www.icann.org/en/system/files/correspondence/enson-to-rodenbaugh-19jul18-en.pdf>.) AGIT’s 1 August 2018 response did not provide a summary of AGIT’s efforts to engage with the objecting parties, and did not provide a proposed approach to further that engagement. Rather, AGIT’s response reiterated what was set forth in its 21 February 2018 letter and renewed its demand that ICANN either proceed to contracting or “step forward and facilitate” a dialogue between AGIT and the objecting parties. (1 August 2018 letter, <https://www.icann.org/en/system/files/correspondence/rodenbaugh-to-enson-01aug18-en.pdf>)

Additional Support Letters Submitted by AGIT:

In conjunction with its response to the IO’s initial assessment (February 2013), its Reconsideration Request 14-7 (February 2014), and its IRP (December 2015), AGIT submitted over 300 additional letters of support for the .HALAL and .ISLAM applications and a summary document prepared by AGIT setting forth the categories of persons and entities that provided the supporting letters. (IRP Annex 16 - Summary document and 330 letters of support – available at pages 557-997, <https://icann.box.com/shared/static/eh125bzunxp64ym2vwidthwdogjk1gikq.pdf>; also available on the AGIT IRP webpage <https://www.icann.org/resources/pages/irp-agit-v-icann-2015-12-23-en>.) According to AGIT, these are endorsement letters garnered by AGIT from “different Islamic organizations and famous people from around the world, and from different branches of Islam (Shia and Sunni as the main branches).” AGIT indicates that it “has tried to make International Islamic organization be involved in the governance of .ISLAM and major Halal certification bodies to be involved in .HALAL policy making.” AGIT grouped the support letters into the following categories: (a) “Prominent Organizations and Leaders representing the Muslim community,” including the Islamic Chamber Research and Information Center (ICRIC)¹, which according to AGIT is “in association with the Islamic Chamber of

¹ It should be noted that the ICC Expert (in making his Determination on the UAE’s Community Objections) reviewed the information provided by AGIT regarding the ICRIC and determined that AGIT “failed to evidence that ICRIC is a subsidiary, an affiliate or is otherwise under the umbrella of the OIC,” which “is also confirmed by the fact that nowhere does the OIC refer to ICRIC as a subsidiary or an affiliate thereof...[n]or does ICRIC hold itself out as a subsidiary or an affiliate of the OIC.” (Expert Determination (.HALAL), para. 102; Expert Determination (.ISLAM), para. 94.)

Commerce and Industry (ICCI) which is under the umbrella of the Organization of the Islamic Cooperation (OIC”); (b) “Islamic Religious Institutes / Associations / Organizations”; (c) “Islamic Media / Newspapers / Publications”; (d) “Famous Muslim Researchers / Academic figures”; and (e) “Cultural Organizations and Institutes in Islamic Countries.”

These letters include the endorsement letters submitted with AGIT’s applications in response to Application Question 20F (described in detail above). Many of the additional letters contain similar content – expressing support for AGIT’s .HALAL and .ISLAM applications and indicating that the gTLD “will be used for Principles of rounding i.e. the march of rapprochement between Islamic sects on general principles” and “will therefore provide the opportunity to expand religious beliefs through a guided line which could result in satisfactory achievement for both authorities and followers of all religions.” In addition, even though AGIT’s applications are not community applications, some of the letters state that the “application is being submitted as community-based application, and as such it is understood that the Registry Agreement will reflect the community restrictions proposed in the applications. In the event that we believe the registry is not complying with these restrictions, possible avenues of recourse include the Registry Restrictions Dispute Resolution Procedure.” Another subset of the letters appears to be premised off a slightly different template letter, indicating that the “gTLDs will bring the opportunity for the Muslims community to present their activities, beliefs and culture to told the world through the internet; and can act as the voice of the Muslim community, to present their message of peace to the world.”

In addition to the endorsement letters submitted by AGIT, ICANN received a letter from the Republic of Mali, Ms. Berthe Hawa Diakite (Ministry of Communications and New Information Technology, Republic of Mali), dated 3 February 2014, supporting the applications and stating: “AGIT designed its applications in line with the multistakeholder governance mechanism. Their purpose is to involve all stakeholders - the governments, the non-governmental organizations, the private sector as well as any other stakeholders involved in the governance of the Internet - in the governance of these extensions. We are confident that AGIT intends to serve all communities, while respecting Muslims’ interests and keeping with their traditions.” (English translation above provided for informational purposes; original letter in French available at <https://www.icann.org/en/system/files/correspondence/hawa-diakite-to-crocker-03feb14-en.pdf>.)

Correspondence From Objecting Parties:

ICANN has received several letters directly from entities expressing concern regarding the .HALAL and .ISLAM applications:

- 25 July 2013 letters from the State of Kuwait and the Gulf Cooperation Council, each stating: “Being part of the Islamic community, we would like to share the concerns raised by UAE government in its early warning. We believe that the application put forward by AGIT is not in the interest of the Islamic community due to the sensitivities inherited in them. We believe that this TLD should be managed and operated by the community itself through a neutral body that truly represents the Islamic community such as Organization of Islamic Cooperation (OIC). Therefore we would like to support to the objection that was put forward by the government of United Arab Emirates.”
(<https://www.icann.org/en/system/files/correspondence/al-qattan-to-icann-icc-25jul13-en.pdf> and <https://www.icann.org/en/system/files/correspondence/al-shibli-to-icann-icc-25jul13-en.pdf>.)
- 9 August 2013 letter from the Islamic Republic of Iran: “We strongly believe that both TLDs should be managed and operated by the Muslim community through a neutral body that represents the different sections and segments of the Muslim community including Governments, NGOs and IGOs, Private Sector, Academia, as different stakeholders of internet in the this community.”
(<https://www.icann.org/en/system/files/correspondence/mahdoiun-to-chalaby-icann-board-09aug13-en.pdf>.)
- 4 September 2013 letter from the Republic of Lebanon: “...the management and operation of these TLDs must be conducted by a neutral non-governmental multi-stakeholder group representing, at least, the larger Muslim community, and representing its different sections and segments including Governments, NGOs and IGOs, Private Sector, Academia, as well as other stakeholders of the internet for the Muslim community.” (<https://www.icann.org/en/system/files/correspondence/hoballah-to-chalaby-et-al-04sep13-en.pdf>.)
- 4 November 2013 letter from the Organisation of Islamic Cooperation (OIC): “[T]he OIC would be happy to engage and fully cooperate with the GAC of ICANN to find an appropriate solution to this crucial issue. In the meantime, I would request you to kindly

consider this letter as an official opposition of the Member States of the OIC towards probable authorization by the GAC allowing use of these new gTLDs .Islam and .Halal by any entity not representing the collective voice of Muslim people.”

(<https://www.icann.org/en/system/files/correspondence/crocker-to-dryden-11nov13-en.pdf>.)

- 20 November 2013 letter from the Islamic Republic of Iran: “We strongly believe that both TLDs should be managed and operated by the Muslim community through a neutral body that represents the different sections and segments of the Muslim community, including Governments, NGOs and IGOs, Private Sector, Academia as different stakeholders of internet in the this community.”

(<https://www.icann.org/en/system/files/correspondence/mahdioun-to-chehade-et-al-20nov13-en.pdf>.)

- 11 December 2013 OIC Resolution against .HALAL/.ISLAM gTLDs: “[T]he OIC General Secretariat to communicate with the concerned party ICANN in order to file an official objection to the use of gTLDs .Islam and .Halal, and preserve the right of member states in this regard.” (<https://www.oic-oci.org/subweb/cfm/40/fm/en/docs/IT-%2040-CFM-FINAL-ENG.pdf>.)

- 19 December 2013 letter from the OIC: “I would like to reiterate and affirm the official opposition of the OIC Member States towards any probable authorization by the GAC allowing use of these new gTLDs .islam and .halal by any entity not reflecting the collective voice of muslim people.”

(<https://www.icann.org/en/system/files/correspondence/ihsanoglu-to-crocker-19dec13-en.pdf>.)

- 24 December 2013 letter from the Republic of Indonesia: With regard to .ISLAM – “Indonesia opposes any domain name that uses a name of any particular religion; and strongly objects the proposal of the domain name of .islam.” With regard to .HALAL – “In principle, Indonesia approves the proposal and use of domain name .halal, provided that it is managed properly and responsibly.”

(<https://www.icann.org/en/system/files/correspondence/iskandar-to-chalaby-24dec13-en.pdf>.)

- 11 July 2017 OIC Resolution against .HALAL/.ISLAM gTLDs: “[OIC] Reconfirms OIC position that the two domains .Islam and .Halal or any other domains, which concern the entire Islamic Ummah, should not be sold without a coordinated consent of all the OIC Member States.” (https://www.oic-oci.org/subweb/cfm/44/en/docs/final/44cfm_res_it_en.pdf.)
- 15 April 2018 letter from the OIC: “As I mentioned in my past communication, the Foreign Ministers of the Organization of Islamic Cooperation (OIC) maintain the position that the new gTLDs with Islamic identity are extremely sensitive in nature as they concern the entire Muslim nation.” “Therefore, I would like to bring to your kind attention that OIC Foreign Ministers unanimously re-adopted a resolution in this regard as a confirmation of its previous resolutions on the same matter [attaching the 11 July 2017 OIC Resolution].” (<https://www.icann.org/en/system/files/correspondence/al-othaimeen-to-chalaby-15apr18-en.pdf>.)

Submitted By: Amy Stathos, Deputy General Counsel
Date Noted: 26 September 2018
Email: amy.stathos@icann.org

1.

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION
INDEPENDENT REVIEW PROCESS
ICDR CASE NO. 01-15-0005-9838

In the Matter of an Independent Review Process

Between:

ASIA GREEN IT SYSTEM
BILGISAYAR SAN. VE TIC. LTD. STI., ("AGIT")
Claimant

Vs.

INTERNET CORPORATION for ASSIGNED
NAMES AND NUMBERS ("ICANN")
Respondent

FINAL DECLARATION

Independent Review Process Panel:

Calvin Hamilton, FCI Arb (Chair)

Honourable William Cahill (Ret.)

Klaus Reichert SC

PROCEDURAL HISTORY

2. The relevant procedural history of this Independent Review Process ("IRP") is set out in the following paragraphs. The Panel has only recorded those matters which it considers, in its appreciation of the file of this IRP, necessary for this Final Declaration.
3. The parties to the IRP are identified in the caption and are represented as follows:

Claimant: Mike Robenbaugh
Robenbaugh Law
548 Market Street (Box No 55819)
San Francisco, CA 94104

Respondent: Eric Enson, Jeffrey A. LeVee, Kelly Ozurovich
Jones Day
555 South Flower Street 50th Floor
Los Angeles, CA 90071

4. The authority for the IRP is found at Article IV, Section 3 of the ICANN Bylaws. The IRP Panel is charged with “declaring whether the Board has acted consistently with the Provision of ICANN’s Articles of Incorporation and Bylaws.”
5. The applicable procedural rules are the International Centre for Dispute Resolution’s (ICDR) International Dispute Resolution Procedures, as amended and in effect as of 1st June 2014, as augmented by ICANN’s Supplementary Procedures, as amended and in effect as of 2011.
6. On 7th February 2014, ICANN’s chairman informed AGIT that, following the New gTLD (“gTLD”) Programme Committee (“NGPC”) decision and subsequent Resolution made on 5th February 2014, “the NGPC will not address the applications further until such time as the noted conflicts have been resolved”.¹ AGIT submit that from this point, their applications were “On Hold”.²
7. On 26th February 2014, AGIT filed a Request for Reconsideration with ICANN’s Board Governance Committee (“BGC”). AGIT’s request was summarily dismissed by the BGC on 13th March 2014, and this decision was accepted by the NGPC.³
8. On 21st February 2014, AGIT requested that ICANN engage in a “Cooperative Engagement Process” in accordance with the Bylaws of ICANN.⁴ The Cooperative Engagement Process was terminated on 13th November 2015 and no resolution was reached.
9. AGIT submitted a Request for Independent Review Process (“IRP Request”) on 16th December 2015, which ICANN responded to on 1st February 2016. AGIT submitted a supplemental brief on 6th January 2017, which ICANN responded to on 3rd February 2017.

¹ See Annex 12 I

² This status was confirmed by Mr Enson in paras 13 – 25, pg 95 – Telephonic Hearing

³ See Annex 14

⁴ S3, Article IV, ICANN Bylaws

10. A preparatory conference call was held on 19th April 2016 during which a procedural calendar was agreed upon (Procedural Order No.1).
11. Pursuant to Procedural Order No. 1, AGIT submitted their ‘Observations on the Scope of Panel Authority’ on 3rd May 2016, which ICANN responded to on 13th May 2016.
12. With respect to document requests, pursuant to Procedural Order No. 1, AGIT were required to submit their request for document production on 3rd May 2016. ICANN were to answer by 13th May and, if appropriate, were to both request documents and object to AGIT’s request. On 23rd May 2016, AGIT were to both reply to ICANN’s objection, and file their own objection against ICANN’s request if appropriate. ICANN were to answer AGIT’s objection by 2nd June 2016. The 2nd June 2016 was set for ICANN’s document production, and 13th June 2016 for AGIT. The issue of document disclosure was eventually resolved by the parties themselves with little involvement by the Panel.
12. A telephonic hearing took place on 4th May 2017. Present for the hearing were the IRP Panel (Calvin Hamilton (Chair), Honourable William Cahill, Klaus Reichert SC), Mike Rodenbaugh for AGIT (“the Claimant”), Eric Enson for ICANN (“the Respondent”). Amy Stathos and Casandra Fure were also present on behalf of the Respondent. The hearing was reported by Jana J. Bommarito.

PANEL AUTHORITY

13. The authority of this Panel is set out in the following paragraphs.
14. Article IV, Section 3.4 ICANN Articles of Incorporation and Bylaws:

Requests for such independent review shall be referred to an Independent Review Process Panel ("IRP Panel"), which shall be charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws. The IRP Panel must apply a defined standard of review to the IRP request, focusing on:

- a) Did the Board act without conflict of interest in taking its decision?;

- b) Did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and
- c) Did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?

15. As articulated by the IRP Panel in *Merck KGaA v ICANN*⁵ and as stipulated by the parties in this IRP:

“The analysis which the Panel is mandated to undertake is one of comparison. More particularly, a contested action of the Board is compared to the Articles of Incorporation and Bylaws in order to ascertain whether there is consistency. The analysis required for comparison requires careful assessment of the action itself rather than its characterisation by either the complainant or ICANN. The Panel, of course, does take careful note of the characterisations that are advanced by the Claimant and ICANN.

As regards the substantive object of the comparison exercise, namely, was there consistency as between the Articles of Incorporation and Bylaws, the parameters of the evaluation for consistency are informed by the final part of Article IV, Section 3.4, which is explicit in focusing on three specific elements. The phrase “defined standard of review” undoubtedly relates to the exercise of comparison for consistency, and informs the meaning of the word “consistent” as used in Article IV, Section 3.4. The mandatory focus on the three elements (a-c) further informs the exercise of comparison.⁶”

FACTS OF THE CASE

16. The salient facts are set out in the following paragraphs.

17. ICANN is a non-profit, multi-stakeholder organisation incorporated in California, United States of America. It was established in 1998, and is charged with registering and administering both top and second level domain names. ICANN operates pursuant to its Articles of Incorporation and Bylaws.

⁵ International Centre for Dispute Resolution, Independent Review Process, Case No. 01-14-0000-9604

⁶ *Merck KGaA v ICANN* International Centre for Dispute Resolution, Independent Review Process, Case No. 01-14-0000-9604IRP Final Declaration Paras 16-18

18. From 2004-2011, the Generic Names Supporting Organisation (“GNSO”) of ICANN developed a programme to introduce new top-level domain names into the domain name system (gTLD). An applicant guidebook (“Guidebook”) was developed by ICANN in consultation with stakeholders, detailing a “transparent and predictable criteria” for applications.⁷

19. The Guidebook includes detailed procedures for applying for and objecting to the issuance of top level domain names. ICANN aimed to create “an application and evaluation process for new gTLDs that is aligned with the policy recommendations and provides a clear roadmap for applicants to reach delegation, including Board approval.”⁸ Applicants must provide detailed responses to 50 questions, which seek to establish the competency of applicant. The objection process includes an Independent Objector (“IO”) and the prospect of an objection by one or more of the Governments that make up ICANN’s Government Advisory Committee (“GAC”). The IO can lodge an objection, which ordinarily results in the appointment of one or more independent experts to consider and determine the merits of the objection.⁹

20. In addition to the IO and GAC formal objections, GAC members are permitted to file an “Early Warning Notice”, detailing concerns about applications.¹⁰ Early Warning Notices simply act to place an applicant on notice. It is not a formal objection, however it “raises the likelihood that the application could be the subject of GAC Advice on New gTLDs or of a formal objection at a later stage in the process.”¹¹ Concerning GAC Advice, in situations where members of the GAC provide “consensus” advice against an application, a strong presumption is created against that application. Should the Board of ICANN decide to act contrary to this advice, they must provide a rationale for doing so.¹² Concerning formal objections, the objection must fall within one of four specified grounds - String Confusion, Legal Rights, Limited Public Interest or Community Objection.¹³ In determining whether an objector has standing to object, they must satisfy one of these four identified Objection Grounds which are dependent of the ground being

⁷ Recommendation One, S.1.1.5, ICANN, gTLD Final Applicant Guidebook.

⁸ Preamble, ‘New gTLD Program Background’ gTLD Applicant Guidebook Version 2012-06-04

⁹ S3.2.5 Applicant Guidebook

¹⁰ S1.1.2.4 Applicant Guidebook

¹¹ Ibid (1.1.2.4)

¹² S1.1.2.7 Applicant Guidebook

¹³ S3.2.1 Grounds for Objection

used.¹⁴ In addition, a Limited Public Interest Objection comment process¹⁵ is available, which allows for the “participation of many stakeholder groups in a public discussion.”¹⁶

21. In early 2012, Asia Green IT System (“AGIT”), a Turkish cooperation, submitted two applications to ICANN under the new gTLD programme to operate the .ISLAM and .HALAL top-level domains. Following their applications, Early Warning Notices were submitted by the United Arab Emirates (UAE) and India¹⁷ in November 2012, to which AGIT filed formal responses.¹⁸ Within their responses, AGIT included a proposed Governance Model and Public Interest Commitments (“PICs”), which it hoped would alleviate the concerns raised in the Early Warning Notices.¹⁹

22. In addition, the IO, Dr Pellet, was instructed to evaluate the applications. The UAE then filed two formal objections under the grounds of a Community Objection against each of the applications. The Applicant Guidebook details those with standing to submit a Community Objections as “(e)stablished institutions associated with clearly delineated communities are eligible to file a community objection. The community named by the objector must be a community strongly associated with the applied-for gTLD string in the application that is the subject of the objection.”²⁰ Following this, Mr Cremades, a Panellist from the International Chamber of Commerce, was instructed to consider the objections.

23. On 11th April 2013, the GAC, in accordance with the Applicant Guidebook,²¹ published a Communique to the ICANN Board following a meeting in Beijing to consider the two applications. The Communique noted:

“The GAC recognizes that Religious terms are sensitive issues. Some GAC members have raised sensitivities on the applications that relate to Islamic terms, specifically .islam and .halal. The GAC members concerned have noted that the applications for .islam and .halal lack community involvement and support. It is the view of these GAC members that these applications should not proceed.”²²

¹⁴ See 3.2.2 Applicant Guidebook,

¹⁵ See telephonic pg 69 lines 20-25

¹⁶ See Guidebook I.1.2.3

¹⁷ India did not post formal objections following their Early Warning Notices.

¹⁸ See Annex 6

¹⁹ Ibid - 6

²⁰ See 3.2.2.4

²¹ S3.1 Applicant Guidebook

²² See full text of Communique at <https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf>

24. Following this, a scorecard system was produced to assist in the evaluation of the applications, and a subsequent meeting took place in Durban in July 2013.
25. On 25th July 2013, both Kuwait and the Gulf Cooperation Council (“GCC”) expressed objections to the applications by AGIT and support of the Community Objection by the UAE.²³
26. On 30th August 2013, AGIT were informed that both the .ISLAM and the .HALAL applications were accepted by ICANN’s expert evaluation Panels,²⁴ and that their applications had passed Initial Evaluation²⁵.
27. On 4th September 2013, Lebanon expressed objections to the applications by AGIT and support of the Community Objection by the UAE.
28. On 24th October 2013, Mr Cremades published a report evaluating the Community Objection filed by the UAE against both applications. In his decision, Mr Cremades found there was neither substantial opposition to the applications, nor would the applications create a “likelihood of any material detriment to the rights or legitimate interests of a significant portion of the relevant community.”²⁶
29. On 4th November 2013, a letter was received by the ICANN Board, and subsequently sent to the GAC, from the Organisation of Islamic Council (“OIC”). The letter contained a formal objection to the use of top-level domain names by “any entity not representing the collective voice of the Muslim people.”²⁷ Following receipt of this letter, dialogue was recommended and a meeting held in Buenos Aires. It is submitted by ICANN that the letter of objection by the OIC was received as part of their “public comment” process,²⁸ which allows for the “participation of many stakeholder groups in a public discussion”²⁹ thereby giving a platform to interested parties outside of the formal objection process. Time constraints are provided for the consideration of comments during the Initial

²³ See telephonic pg 67 Lines 6-1

²⁴ See Annex 2

²⁵ Ibid

²⁶ See Annex 8

²⁷ See pg10 AGIT’s request for an IRP wherein they note: “in November 2013, the Chair of the ICANN Board forwarded to the GAC Chair a letter from the OIC which requested the GAC to “kindly consider this letter as an official opposition of the Member States of the OIC ... [to] use of these [TLDs] by any entity not representing the collective voice of the Muslim people.”

²⁸ See telephonic pg 69 lines 20-25

²⁹ See Guidebook 1.1.2.3 and telephonic g 61 lines 10 - 16

Evaluation review (the formal objection period runs for seven months following the posting of applications³⁰), however the Guidebook allows for comments received after this period to be “stored and available (along with comments received during the period) for other considerations, such as the dispute resolution process, as described below.”³¹

30. On 19 December 2013, the OIC informed ICANN that a unanimous resolution had been adopted by the 57 Member States of the OIC objecting to the operation of .ISLAM and .HALAL by “any entity not reflecting the collective voice of Muslim people”.³² The Panel notes that this resolution is not amongst the materials placed before it.

31. On 24th December 2013, the Government of Indonesia filed its objection with ICANN to both of the applications.

32. On 5th February 2014, the NGPC applied the objections raised to the scorecard, and on 7th February 2014, AGIT were informed “the NGPC will not address the applications further until such time as the noted conflicts have been resolved.”³³ The letter informed AGIT that two IGOs and two Government representatives (the GCC, the OIC, Lebanon and Indonesia) had indicated conflicts with AGIT’s Governance model and the PIC.

33. The task of this Panel is to determine whether ICANN have acted in a manner consistent with ICANN’s Articles of Incorporation, Bylaws and Guidebook.

PROVISIONS OF ICANN’S ARTICLES OF INCORPORATION, BYLAWS AND THE APPLICANT GUIDEBOOK

34. The salient provisions of these governance documents are listed below:

35. Article 4, Articles of Incorporation

The Corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and

³⁰ Guidebook 1.1.2.6

³¹ Ibid

³² See telephonic pg 70 lines 8-13

³³ See Annex 12

consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets. To this effect, the Corporation shall cooperate as appropriate with relevant international organizations.

36. S3 (4) Article IV Bylaws and Rule 8 of ICANN Supplementary (Independent Review of Board Actions)

The IRP Panel must apply a defined standard of review to the IRP request, focusing on:

- a. *Did the Board act without conflict of interest in taking its decision?*
- b. *Did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and*
- c. *Did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?*

37. S2 Article I Bylaws (Core Values)

In performing its mission, the following core values should guide the decisions and actions of ICANN:

- a. *Core Value 3*
- b. *To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.*
- c. *Core Value 7*
- d. *Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.*
- e. *Core Value 8*
- f. *Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.*
- g. *Core Value 9*
- h. *Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.*

38. Article II, Section 2 (3) Bylaws (Non-Discriminatory Treatment)

ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.

39. Article II, Section 2 (1) Bylaws (General Powers)

Except as otherwise provided in the Articles of Incorporation or these Bylaws, the powers of ICANN shall be exercised by, and its property controlled and its business and affairs conducted by or under the direction of, the Board (as defined in Section 7.1). With respect to any matters that would fall within the provisions of Section 3.6(a)-(c), the Board may act only by a majority vote of all Directors.

40. Article III, Section 3 (6) Bylaws (Notice and Comment on Policy Actions)

(a) With respect to any policies that are being considered by the Board for adoption that substantially affect the operation of the Internet or third parties, including the imposition of any fees or charges, ICANN shall:

- i. provide public notice on the Website explaining what policies are being considered for adoption and why, at least twenty-one days (and if practical, earlier) prior to any action by the Board;*
- ii. provide a reasonable opportunity for parties to comment on the adoption of the proposed policies, to see the comments of others, and to reply to those comments (such comment period to be aligned with ICANN's public comment practices), prior to any action by the Board; and*
- iii. in those cases where the policy action affects public policy concerns, to request the opinion of the Governmental Advisory Committee ("GAC" or "Governmental Advisory Committee") and take duly into account any advice timely presented by the Governmental Advisory Committee on its own initiative or at the Board's request.*

(b) Where both practically feasible and consistent with the relevant policy development process, an in-person public forum shall also be held for discussion of any proposed policies as described in Section 3.6(a)(ii), prior to any final Board action.

(c) *After taking action on any policy subject to this Section 3.6, the Board shall publish in the meeting minutes the rationale for any resolution adopted by the Board (including the possible material effects, if any, of its decision on the global public interest, including a discussion of the material impacts to the security, stability and resiliency of the DNS, financial impacts or other issues that were considered by the Board in approving such resolutions), the vote of each Director voting on the resolution, and the separate statement of any Director desiring publication of such a statement.*

41. Article VI, S 4 (6) Bylaws and Article I Supplemental Procedures

There shall be an omnibus standing Panel of between six and nine members with a variety of expertise, including jurisprudence, judicial experience, alternative dispute resolution and knowledge of ICANN's mission and work from which each specific IRP Panel shall be selected. The Panelists shall serve for terms that are staggered to allow for continued review of the size of the Panel and the range of expertise. A Chair of the standing Panel shall be appointed for a term not to exceed three years. Individuals holding an official position or office within the ICANN structure are not eligible to serve on the standing Panel. In the event that an omnibus standing Panel: (i) is not in place when an IRP Panel must be convened for a given proceeding, the IRP proceeding will be considered by a one- or three-member Panel comprised in accordance with the rules of the IRP Provider; or (ii) is in place but does not have the requisite diversity of skill and experience needed for a particular proceeding, the IRP Provider shall identify one or more Panelists, as required, from outside the omnibus standing Panel to augment the Panel members for that proceeding.

42. §1.1.5 Applicant Guidebook

The following scenarios briefly show a variety of ways in which an application may proceed through the evaluation process (...)

a. *Scenario 4 – Pass Initial Evaluation, Win Objection, No Contention – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. During the objection filing period, an objection is filed on one of the four enumerated grounds by an objector with standing (refer to Module 3, Objection Procedures). The objection is heard by a dispute resolution service provider Panel that finds in favor of*

the applicant. The applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD

43. §3.1 Applicant Guidebook

The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures.³⁴

44. §3.1 (II) Applicant Guidebook

GAC Advice may take one of the following forms:

(...)

II. The GAC advises ICANN that there are concerns about a particular application “dot-example.” The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.

45. §3.2 Applicant Guidebook

As described in section 3.1 above, ICANN’s Governmental Advisory Committee has a designated process for providing advice to the ICANN Board of Directors on matters affecting public policy issues, and these objection procedures would not be applicable in such a case. The GAC may provide advice on any topic and is not limited to the grounds for objection enumerated in the public objection and dispute resolution process.

46. §5.1 Applicant Guidebook

ICANN’s Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result of GAC Advice on New gTLDs or of the use of an ICANN accountability mechanism.

³⁴ “May” no requirement to adhere to advice of experts, or indeed to appoint in the first place. Cf pg 21 AGIT Request for IRP

47. GNSO Recommendations:

ICANN GNSO, Final Report — Introduction of New Generic Top-Level Domains:³⁵

Recommendation No. 1: The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. 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.

Recommendation No. 9: There must be a clear and pre-published application process using objective and measurable criteria.

Recommendation No. 12: Dispute resolution and challenge processes must be established prior to the start of the process.

Principle G:

The String Process must not infringe on the applicant's freedom of expression rights that are protected under internationally recognised principles of law.

PARTIES' POSITIONS

48. Having set forth the procedural history, the relevant facts and the applicable provisions of ICANN's governing documents, the Panel now sets forth the issues raised by the parties.

POSITION OF THE CLAIMANT

49. AGIT seeks a declaration that the Board of ICANN acted in a manner inconsistent with certain provisions, discussed below, of ICANN's Articles of Incorporation, Bylaws and/or Guidebook in connection with its granting of an "On Hold" status to AGIT applications for .HALAL and .ISLAM. AGIT makes the following contentions, set out below.

50. ICANN consulted in secret with the GAC and Objectors regarding the delay or denial of AGIT's application, in violation of Core Values 7 and 9. Core Value 7 mandates open and transparent policy development that promote well informed decisions based on expert advice. Core Value 9 mandates ICANN to act promptly while, as part of the decision-making process, obtaining informed input from those entities most affected.

³⁵ See AGIT Request for IRP – pg 18

51. In particular, through meetings in Beijing and Durban, and via correspondence with the OIC:

Beijing meeting:

Only ICANN staff, executives and Board members were allowed in the room – Restricted to “Members Only”³⁶ (although this policy changed shortly afterwards) No minutes, transcripts or rationales from the meeting were released;

Durban meeting:

Closed meeting held with “some GAC representatives”. No transcript has ever been produced outside of the 32 minute recording.³⁷

52. No effort was made to reach out to AGIT to participate in the discussion or provide input. The meeting was only attended by a “few GAC members” without inviting or informing the entire GAC what took place, or informing AGIT, the public or the GNSO of what occurred at the meeting.

53. Despite requests, no Board member met with AGIT CEO/MD while in Durban.

54. ICANN held a number of meetings with the OIC, despite the untimely and undocumented procedure for further objections. AGIT were unable to obtain further information on these meetings.

55. ICANN failed to obtain informed input from either AGIT or the Objectors prior to reaching its 5th February 2014 resolution, in violation of Core Value 9.

56. ICANN violated Core Value 8 by failing to inform AGIT of the conflicts which it must resolve in order to progress from “On Hold” status.

57. ICANN have violated Core Values 3, 7 and 8, along with §3.1 of the Guidebook by deciding in a manner inconsistent with expert advice, and this action is discriminatory.

³⁶ Annex 20

³⁷ See telephonic pg 22 lines 22 – 25

58. ICANN have acted in a discriminatory manner, contrary to Article II, §2 (3) Bylaws (Non-Discriminatory Treatment) by differentiating between the treatment of .KOSHER/.SHIA with .HALAL/.ISLAM.
59. Under Module 3³⁸, the GAC were responsible for rejecting any applications which violated public interest. By the GAC failing to recommend rejection of AGIT's applications to the Board as per the Guidebook §3.1, they provided implicit consent to both applications. This should have been taken into account by the Board.
60. ICANN have violated §1.1.5 of the Guidebook by acting in a manner inconsistent with the scenarios laid down.
61. The non-disclosure by ICANN of requested documents under the Document Disclosure Policy ("DIDP") violates Core Values 7 and 8.
62. ICANN have violated Article 4, §3 (6) by failing to create a Standing Panel as required by their Bylaws.

POSITION OF THE RESPONDENT

63. ICANN disputes each of AGIT's contentions, and asserts that the Board did not violate the Articles of Incorporation, the Bylaws or the Guidebook.
64. ICANN refutes the accusation that secret consultations took place with GAC Objectors, specifically as regards the *Beijing Meeting*: the ICANN Board examined, discussed, evaluated and responded to the GAC's advice from the Beijing meeting. Meetings prior to mid-2013 were held with GAC members only, making the decision to hold the Beijing meeting with members-only routine.
65. Specifically as regards the *Durban Meeting*, neither the Articles of Incorporation, Bylaws nor the Guidebook mandate a full complement of GAC members or Board members to be present during such a meeting.
66. Neither the Articles of Incorporation, Bylaws nor the Guidebook mandate that members of the Board meet with an applicant on the applicant's request.

³⁸ See pg7 AGIT - Supplementary Brief

67. Specifically as regards *OIC correspondence* ICANN staff members' responsibilities include outreach and dialogue with stakeholders in the Middle East, which includes the OIC.
68. There is no evidence that any communications with the OIC influenced the Board's decision to place the applications on hold.
69. The Board not only fulfilled but exceeded its requirements under §3.1 (2) by:
- a. Entering into dialogue with concerned GAC members at the Durban meeting;
 - b. Reviewing correspondence from various Objectors;
 - c. Its use of the 5th February Scorecard; and
 - d. Communicating the rationale behind its decision in a letter to the Claimant, dated 7th February 2014, by informing the Claimant of the conflicts arising, the identities of the objectors, the nature of their objections and what the Claimant must do before the Board would resume consideration of the applications.
70. The Board will resume consideration of the .ISLAM and .HALAL applications once the conflicts noted have been resolved, however ICANN is not required to act as liaison between the Claimant and those who objected to its application.
71. New policy has not been created, rather the Board have followed §5.1 of the Guidebook in exercising their discretion to consider individual applications and whether they are in the best interests of the Internet community.
72. The Board is not mandated under either the Articles of Incorporation, Bylaws or Guidebook to follow expert opinion.
73. No discrimination has occurred with the granting of .KOSHER/.SHIA and .HALAL/.ISLAM. Any difference in treatment of the referenced applications was a result of different circumstances.
74. Scenario 4 contained in §1.1.5 Guidebook is not "any sort of promise by ICANN"³⁹, and instead provides scenarios by which an application may proceed. This provision does not mandate that an application must proceed.⁴⁰

³⁹ Supplementary Response by ICANN pg 22 para 50

75. ICANN staff are tasked with responding to document requests, not the ICANN Board. Board involvement takes place when a reconsideration request, seeking the Board's review of staff action regarding document disclosure, is requested by a Claimant. As a reconsideration request was not filed, no Board action was taken. An IRP is concerned only with Board actions. However, should ICANN's response to the DIDP request be subject to review by the IRP, ICANN submits that staff complied with "standards applicable to DIDP requests."⁴¹
76. The decision not to produce certain documents under the DIDP request but to do so under the IRP conforms to standards and processes in place.

STATEMENT OF REASONS

77. The Panel is of the view that in order to address the party's positions as posed in this IRP, the analysis utilised in the *Merck* declaration is instructive. Applying Article IV, §3.4 Articles of Incorporation and Bylaws, with, where relevant, consideration to the following questions:
- a. Did the Board act without conflict of interest when taking its decision?
 - b. Did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?
 - c. Did the Board members exercise independent judgement in taking the decision, believed to be in the best interests of the company?

BEIJING MEETING:

ACTION: RELIANCE ON LIMITED OUTPUT FROM THE BEIJING MEETING

78. In order for the GAC to properly evaluate gTLD applications, geographic meetings are held in accordance with §3.1 Guidebook.
79. The GAC was formed to consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly in matters where there may be an

2. _____

⁴⁰ See telephonic pg. 97 lines 2-10 "These are simply 2 examples of ways in which applications may proceed. This is not intended it be an exhaustive list of possibilities."

⁴¹ Ibid pg 23 para 54

interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.

80. The framework and structure for how these meetings are convened, minuted and disseminated are a matter of convention, outside of structured rules. Guidance can be taken from convention, noting from an interview held on 10th May 2014 between Heather Dryden, Head of the GAC with Brad White, ICANN Communications, that, although policy has now changed, previous GAC meetings were held through a 'closed format.'⁴² It is instructive that in May 2013, Heather Dryden confirmed that going forward, GAC meetings would be more open.⁴³

81. The sole output from the Beijing meeting was a Communique of 6 pages.⁴⁴ The only wording relating to the Claimants application consisted of 58 words, detailing concerns on 'religious sensitivity' of the gTLDs.⁴⁵ In addition, the Communique stated that the GAC members concerned were of the view that the applications should not proceed.⁴⁶ No more is said. Core Value 7 calls upon ICANN to employ "open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process". It is the opinion of the Panel that a 58 word output in this manner and language is insufficient to comply with the open and transparent requirements mandated by Core Value 7. Anyone not physically present at that meeting would have little idea, if any, beyond the general contours contained the Communique, as to what actually happened during the meeting nor what was said by any of the participants.

Did the Board act without a conflict of interest?

82. This is not applicable. There is no evidence of a conflict of interest.

Did the Board exercise due diligence and care in having a reasonable amount of facts in front to it?

⁴² See Annex 21 – Claimant's Supplemental Brief

⁴³ Ibid

⁴⁴ Excluding Annexes.

Full Communique available here: <https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf>

⁴⁵ As quoted in para 23 above

⁴⁶ The GAC recognizes that Religious terms are sensitive issues. Some GAC members have raised sensitivities on the applications that relate to Islamic terms, specifically .ISLAM and .HALAL. The GAC members concerned have noted that the applications for .islam and .halal lack community involvement and support. It is the view of these GAC members that these applications should not proceed.

83. The closed nature and limited record of the regarding the Beijing meeting provides little in the way of ‘facts’ to the Board. Of the 6 page document produced by the GAC to the Board, only 58 words concerned the .HALAL and .ISLAM applications, utilising vague and non-descript terms. For the reasons set out in paragraph 81 above, any reliance on the Beijing Communique by the Board in making their decision would necessarily be to do so without a reasonable amount of facts.

Did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the internet?

84. This is not applicable. There is no evidence of a lack of independence with regards the Beijing Communique and the manner in which the Board considered this document.

DURBAN MEETING:

ACTIONS: LIMITED OUTPUT FROM THE MEETING; INSUFFICIENT INVOLVEMENT BY GAC MEMBERS; INSUFFICIENT INVOLVEMENT BY ICANN BOARD; INSUFFICIENT INVOLVEMENT BY CLAIMANT

85. The meetings in Durban were held in July 2013, post the noted policy change⁴⁷ of employing a more open structure to GAC meetings. The Claimant has received a 32-minute audio recording of this meeting, however no Communique was issued.

86. The Guidebook, under §3.1, references the process of the GAC providing advice to the ICANN Board where objections exist to the gTLD application. It would appear eight Board members and ten GAC members were present.

87. The Claimant claims the limited number of GAC attendees at the Durban meeting to discuss the objections renders the advice insufficient to constitute “GAC Advice”. §3.1 does not specifically state what constitutes GAC Advice insofar as whether a full complement, majority, minority or affected parties need be present.

88. The Claimant claims that §3.1 should be interpreted using an *Expressio Unius* model in such that as other sections of the Guidebook and Bylaws use a restricted composition of the GAC, then any other reference automatically applies to the full GAC. For example:

⁴⁷ Para 71

§2.2.1.4 of the Guidebook states, with regard early warnings: “... *GAC Early Warning typically results from a notice to the GAC by one or more governments that an application might be problematic, e.g., potentially violate national law or raise sensitivities.*” and

“... *GAC consensus is not required for a GAC Early Warning to be issued.*”

89. The argument that a full complement of GAC members need to be present in order to constitute GAC advice is flawed. There is no reference to quorum requirements in §3.1 and it is practical that only relevant and concerned members be in attendance.
90. Contrastingly, the Claimant did not reference the statement in Guidebook §3.1 which states the “... *GAC as a whole will consider concerns raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors...*” This gives rise to an implication that more than the mere objectors should be present at a GAC advisory meeting.
91. The Claimant uses a number of emails in order to demonstrate disagreement with the manner in which the meeting was carried out. The emails range in date from 1st July 2013 – 12th July 2013, and the Claimant relies specifically on emails sent by Ray Plzak, member of the ICANN Board, between the 1st July 2013 and 10th July 2013, questioning the form in which the meeting was to take place.⁴⁸ These emails indicate that Mr Plzak had a number of questions and queries regarding the format of the meeting. Heather Dryden stated that this was to be “*a meeting available to the subset of Members in the GAC that has a direct interest in these strings.*”⁴⁹ Mr Plzak acknowledges in his 2nd July email “*The fact is that not all GAC members are either interested in all matters or participate in all discussions, or even attend discussions on all matters.*”⁵⁰
92. The Claimant claims that the full Board membership should have been present for the Durban meeting. However, it is the view of this Panel that neither the Bylaws nor the Guidebook mandate full Board attendance.
93. The Claimant claims that a breach of Core Values 7 and 9 occurred through the lack of involvement by the CEO/MD⁵¹ of Claimant during the meeting in Durban. The CEO/MD

⁴⁸ See Annex 22, Claimants Supplementary Annexes

⁴⁹ Annex 22 - Email dated 2nd July 2013

⁵⁰ Ibid

⁵¹ Please note that both titles are present in the 11th July email from Mehdi Abbasnia, and as such, both are used here.

of the Claimant company attempted to meet with ICANN Board members during the Durban meeting (annex 25). The CEO/MD emailed all ICANN Board members on 11th July but was unsuccessful in meeting with any Board members.

Did the Board act without a conflict of interest

94. Claimants claim that the reason for the reduced complement of Board members at the Durban and Beijing meetings was, in the end, to ensure the gTLD string was made available to a 3rd party during the next round of applications.

95. Furthermore, the meetings were deemed to have been organised and structured in a way that was outside of usual GAC and Board meetings. It was accepted that this was not a meeting of the GAC but rather a discussion for the board to understand the concerns of the GAC. The Panel finds on this record the Board did not have a conflict of interest.

Did the Board exercise due diligence and care in having a reasonable amount of facts in front of it

96. The Board is mandated under the Guidebook §3.1 to review advice from the GAC at such meetings in collaboration with additional advice it deems necessary. The Respondent claims that it was unnecessary to include members over and above those with an interest in the gTLD which may have provided more rounded advice.

97. It is the opinion of this Panel that, whilst a meeting with the CEO/MD of the Claimant company may have increased the volume of facts which the Board had in front of it, the lack of available Board members to meet with the Claimant's CEO/MD is not inconsistent with Core Values 7 or 9. The meeting requests were private matters, and therefore at the discretion of each party.

Did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the internet?

98. Judgement involving the make-up of the meetings being only those who have an interest is based on the Guidebook, which states:

II. The GAC advises ICANN that there are concerns about a particular application "dot-example." The ICANN Board is expected to enter into dialogue with the GAC to

understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.

99. The ICANN Board met with the GAC members who had an interest in .HALAL and .ISLAM in order to greater understand the concerns. There is no evidence that the reduced number of GAC members in attendance was not following the exercise of independent judgment.

ACTION: CONTINUED CONSULTATIONS WITH THE ORGANISATION OF ISLAMIC STATES (“OIC”)

100. There would appear to be a lack of openness and transparency with regards discussions with the OIC, in particular with regards alleged meetings which occurred via telephone on or around 29th October 2013⁵² and in November 2013 in Buenos Aires.⁵³ ICANN acknowledged through their Supplementary Response that that they are both unclear as to whether the meeting took place and unclear as to what was discussed beyond membership or failed community objections.⁵⁴ Whilst it is acknowledged that the OIC had lodged objections to the Claimant’s applications through the public comment process, it is the opinion of this Panel that such meetings, held with ICANN staff and not ICANN Board members, are not in breach of Core Value 7. ICANN staff do not hold decision making authority, and it is evidenced through Annex 28 that the OIC were advised of their obligations to follow ICANN procedure.⁵⁵ It is further noted that the members of staff which communicated with the OIC at this time were specifically tasked with outreach to the Middle East,⁵⁶ making such communications and meetings an expected element of such outreach.

Did the Board act without a conflict of interest

101. ICANN, in its Response to the Claimant’s request for an IRP, acknowledge that an outreach programme is operating with the Middle East, and with the OIC representing 57

⁵² See Claimant Supplementary Brief pg 5

⁵³ Ibid

⁵⁴ See para 21 ICANN’s Response to Claimant’s Supplementary Brief: “*Likewise, it is not clear that the meeting discussed in Annex 26 ever took place and, if it did, what was discussed beyond the OIC’s GAC membership or the OIC’s failed community objection against the Applications*”

⁵⁵ No. 129, Email from ICANN Senior Advisor – OIC Rep “asked the funny question whether the two strings could be delegated to the OIC. We told him never outside the process”.

⁵⁶ See ICANN Response to AGIT Request for IRP – pg 4.

Muslim states, consultations with the body throughout Claimant's application process were inevitable. ICANN have informed the Panel through their Supplementary Response that ICANN staff do not have decision making authority with respect to applications, and it is ICANN staff who were conducting the outreach. It is therefore the opinion of this Panel that the Board acted without a conflict of interest.

Did the Board exercise due diligence and care in having a reasonable amount of facts in front of it?

102. The content of the meetings between ICANN staff and the OIC is unclear. However, it is the remit of this IRP to consider Board actions, and it is the opinion of this Panel that the Board have exercised due diligence and care in light of a reasonable amount of facts in front of it.

Did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the internet?

103. This Panel has no evidence of staff members passing on any information from the undocumented meetings discussed above to Board members. In light of the lack of evidence to the contrary, it is the view of this Panel that on this record, independent judgement was made.

ACTION: EXTENT OF INPUT OBTAINED FROM ENTITIES MOST AFFECTED

104. It is the opinion of the Panel that the numerous meetings and subsequent Communiqués demonstrate involvement by entities most affected in the context of the objectors, and therefore ICANN did not breach its obligation under Core Value 9. Core Value 9 mandates "acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected". Input was received by ICANN from objectors on numerous occasions, including and notably during the Durban meeting. Numerous communications have taken place between the GAC and the objectors, through both the Community Objection, subsequent support of the Objection and the public comment process. ICANN stated the following in their 7th February letter to the Claimant:

"... a substantial body of opposition urges ICANN not to delegate the strings .HALAL and .ISLAM. The Gulf Cooperation Council (25 July 2013: applications not supported by the community, applicants did not

consult the community; believe that sensitive TLDs like these should be managed and operated by the community itself through a neutral body such as the OIC); the Republic of Lebanon (4 September 2013: management and operation of these TLDs must be conducted by a neutral, nongovernmental multistakeholder group); the Organisation of Islamic Cooperation (19 December 2013: foreign ministers of 57 Muslim Member States supported a resolution opposing the strings; resolution was unanimously adopted); and the government of Indonesia (24 December 2013: strongly opposes approval of .islam) all voiced opposition to the AGIT applications... ”⁵⁷

Did the Board act without a conflict of interest?

105. This is not applicable. There is no evidence that the Board acted under a conflict of interest.

Did the Board exercise due diligence and care in having a reasonable amount of facts in front to it?

106. Based on the lack of information provided by the Board of the ‘religious sensitivities’ or information on how the Governance model offered by the Claimant could be improved, amended or adapted, it is the view of this Panel that, based on this record, the Board did not exercise the appropriate due diligence and care, due to not having a reasonable amount of facts in front of it. Had the Board been in a position to elaborate on the religious sensitivities and subsequent amendments which could be made to ensure the Governance model of the Claimant would be sufficient, the Claimant would have been in an improved position with regards removing itself from the current “On Hold” position in which it finds itself.

Did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the internet?

107. The lack of detailed content obtained from the meetings held with concerned GAC members, along with insufficient information on the revisions needed by the Claimant for their Governance model, coupled with the significant reliance placed on the views of the objectors leads this Panel to the view that the Board did not exercise independent judgement with regards the objectors. Independent judgement requires a reasonable

⁵⁷ See Para 37, Pg 16 ICANN’s response to AGIT’s Supplemental Brief

amount of facts to be placed before the decision maker. Without such a reasonable amount of facts, independent judgement cannot be achieved.

ACTION: PLACING THE CLAIMANT'S APPLICATIONS "ON HOLD" WITHOUT DOCUMENTED PROCEDURE FOR SUCH AN OCCURRENCE

108. The Claimants maintain that they were not informed as to which conflicts they were to resolve with the objectors, why they must do so, how they might do so, who will judge whether it has done so, by what criteria or following which schedule.⁵⁸ ICANN maintains that their behaviour and information provision went over and above that necessary when informing the Claimant.
109. It is the opinion of this Panel that the Claimant was expressly informed as to what conflicts they were to resolve through the letter dated 7th February 2014. Through this letter, the Claimant was informed which countries had raised objections through documented, dated letters, detailed over 2 paragraphs.⁵⁹ Although somewhat brief, the conflicts were identified. However, the manner in which the Claimants and objectors were to resolve such conflicts, ascertain whether this had been successfully completed, upon which timescale and adjudged by whom was not and is not clear. Whilst it is clear that the Board required conflicts to be resolved, the Claimant was left with little guidance or structure as to how to resolve the conflicts, and no information as to steps needed to proceed should the conflicts be resolved.
110. The Panel accepts the contention made by ICANN that it is not ICANN's responsibility to act as intermediary, however it is the opinion of this Panel that insufficient guidance is currently available as to the means and methods by which an "On Hold" applicant should proceed and the manner in which these efforts will be assessed. Without such guidance, and lacking detailed criteria, the applicant is left, at no doubt significant expense, to make attempts at resolution without any benchmark or guidance with which to work.
111. During the telephonic hearing, ICANN submitted that by placing the .HALAL and .ISLAM applications in an "On Hold" category, the Claimants were given an opportunity to work with the community and group which they sought to represent.⁶⁰ However, ICANN went on to acknowledge that there is no obligation on the Objectors to speak with

⁵⁸ See, for example, pg 10 AGIT Supplementary Response

⁵⁹ See Ibid

⁶⁰ Telephonic - pg 72 – 73 lines 13-25 and 1 - 7

the Claimant, and ICANN does not have the jurisdiction to require such communication takes place.⁶¹ ICANN stated that should this be the case, and the Claimant is unable to make progress with the Objectors, they should inform ICANN in “some official manner” and inform the Board. This statement, made by Mr Enson on behalf of ICANN, is unacceptably vague, and even at this late stage, fails to provide the Claimant with a structured means of addressing a potential lack of cooperation in resolving in the conflicts noted. It is this absence of procedure and documented policy which concerns this Panel with regards the “On Hold” status. In addition, the Claimant has noted that “*there’s been no other applicant put on hold*”⁶² and this statement was not refuted by ICANN.

112. Core Value 8 mandates “making decisions by applying documented policies neutrally and objectively, with integrity and fairness”. There is a distinct lack of documented policy with regards the next steps required by the Claimant, and in particular how and when these steps will be assessed. Rather, it is unclear as to which or how many objectors have authority to even negotiate a resolution to the objections. Even if that were known, the Claimant is left entirely at the mercy of the Objectors, who may not agree to cooperate, may insist that unreasonable conditions be imposed on the Claimant or indeed any number of other potential unknown outcomes. The Guidebook provides for a detailed, clear, comprehensive and structured approach to applications, documenting policies and providing assistance with the application process. This does not mean that every application has an expectation of success, but rather that applicants know the “rules of the game” and exactly what the requirements for success are. However, the situation in which the Claimant finds itself does not feature in the Guidebook. It is the opinion of this Panel that this is a glaring omission, and should be rectified promptly. Without such a documented procedure, it is the view of this Panel that ICANN is acting in a manner which is inconsistent with Core Value 8.

113. The Claimant claims that by placing its application “On Hold”, ICANN has created a new policy, and by doing so without following documented procedure, inconsistency has occurred. The Panel agrees.

114. As discussed above, the Claimant argues that it was not informed as to what conflicts it must resolve with the Objectors, why it must do so, how it might do so, who will judge whether it has done so, and by what criteria or schedule.⁶³

⁶¹ Telephonic – pg 77 lines 16 - 25

⁶² Telephonic – pg 36 lines 19-25

⁶³ See, for example, pg 10 AGIT Supplementary Response

115. There are, therefore, two possible paths to consider with regards the “On Hold” status.
116. First, this is a new concept. A new norm has been created, which ICANN will have the discretion to apply to future applications, which in turn will have new policy creation implications as per the Bylaws.
117. Secondly, this is a one-off. Relevant only to the circumstances surrounding these two applications, in which case, the question of non-discrimination arises.
118. Based on the lack of previous use, and the positive light in which ICANN presented this “On Hold” status during the telephonic hearing (*“Judge Cahill, it’s a good question and I think it demonstrates what ICANN is doing here. And ICANN, rather than just denying the applications based on every Muslim country saying they don’t want this, the ICANN Board gave the Claimant the opportunity to work with the very community (...)”*)⁶⁴, this Panel are minded to consider this a new policy.
119. Placing the applicant on hold is markedly distinct from a ‘yes’ or ‘no’. Where a ‘yes’ is given, the Guidebook offers detailed procedure and policy to follow. When a ‘no’ is given, an application is refused. Both of these options follow clear and concise paths, which are prescribed and available. In contrast, the “On Hold” status is neither clear nor prescribed. One cannot easily predict the way in which such a status will be applied in the same way as they can a ‘yes’ or ‘no’. This is a very specific status, and one which requires greater clarification and explanation. It is for these reasons that the designation of these applications as “On Hold” is considered a new policy, created, without notice or authority, by ICANN.
120. Following the Bylaws, where a new policy is created, a structured procedure must be followed, and ICANN has failed to adhere to this obligation. In addition, with respect to Core Value 7, which calls for the employment of open and transparent policy development mechanisms, it is the opinion of this Panel that such openness and transparency with regards this policy development has not been forthcoming. The first opportunity which the Claimant had to learn of the new policy was when it was imposed upon them through the 7th February letter.

⁶⁴ Telephonic – Pg 72 lines 18 – 24

Did the Board act without a conflict of interest?

121. The Claimant contends that the decision to place the applications “On Hold”, without method or procedure which the Claimant could utilise to move its application forward, was done in order to allow a third party to submit a applications for these two TLDs. However ICANN staff have rebutted this contention, and no applications for .HALAL or .ISLAM have been accepted, some three or more years after the applications were placed on hold. Whilst questions surround the manner in which this policy has been implemented, it is the opinion of this Panel, on this record, that no conflict of interest has occurred.

Did the Board exercise due diligence and care in having a reasonable amount of facts in front of it?

122. The decision to place the applications on hold, without foreseeing the need for a formalised mechanism to be in place under which applications placed in this category are to proceed, would indicate that the Board has not acted with sufficient facts in front of it. The Board could not have had a reasonable amount of facts in front of them pertaining to the operation of the on hold status, as such facts do not exist as yet. Had ICANN created a policy under which decisions such as this would operate and formulated a suitable framework, then the Panel could appreciate how the Board may have been acting with a reasonable amount of facts in order to make the decision to place the applications on hold. However, without such a procedure or mechanism in place to accompany the new policy, it is the view of this Panel that the Board has not exercised due diligence with regards this decision as the Board did not have a reasonable amount of facts in front of it.

Did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the internet?

123. By the Respondent failing to foresee the need for or advance a formalised mechanism under which an “On Hold” applications are to proceed, the parties find themselves in front of this IRP in order to resolve the questions which have arisen following the “On Hold” decision. It is the opinion of this Panel that, although independent judgement was exercised by the Board, the decision to place the applications “On Hold” without foreseeing the difficulties that could arise from such a decision was not in the best interests of the internet. Clear, efficient and effective mechanisms are essential in ensuring that the best interests of the internet are suitably considered and served by ICANN.

ACTION: DECIDING IN A MANNER INCONSISTENT WITH EXPERT ADVICE

124. Core Value 7 calls for “well-informed decisions based on expert advice”, but does not mandate that once advice is provided, it must be followed.
125. The Guidebook permits the Board to consult with independent experts under §3.1 *The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures.*
126. The Guidebook therefore does not mandate consulting with independent experts, rather the discretion is left to the Board. This is clear through the inclusion of the term “may”. It would therefore be counter-logical if this Panel were to interpret the Guidebook as to allowing the Board discretion to determine *whether* to obtain an expert opinion, but should they decide to, *bind them* to the contents of the opinion.
127. In light of the provisions of both the Guidebook and the Bylaws, it is the opinion of this Panel that the Board is entitled to decide in a manner inconsistent with expert advice.

Did the Board act without a conflict of interest?

128. This is not applicable. There is no evidence that the Board acted under a conflict of interest.

Did the Board exercise due diligence and care in having a reasonable amount of facts in front of it?

129. Although ultimately deciding to follow a course contrary to expert opinion, ICANN was privy to the opinions of experts when making their decision, including that of the Independent Objector, Dr. Pellet and of Mr. Cremades, the Community Objection Expert. There is no evidence of a lack of due diligence and care in having a reasonable amount of facts in front of it.

Did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the internet?

130. Although deciding contrary to expert opinion, ICANN submitted that it did so in light of all of the facts in front of them. Expert opinion was sought and considered, and those experts were considered to be independent. This fact has not been contested. It is therefore the view of this Panel that the Board did exercise independent judgement in reaching its decision with regards expert opinions.

ACTION: DISTINGUISHING BETWEEN THE GRANTING OF .KOSHER/.SHIA AND “ON HOLD” STATUS OF .HALAL/.ISLAM

131. ICANN informed the Panel through their Response to the Supplemental Brief of the following:

“The applications for .KOSHER and .SHIA were not the subject of any GAC advice or successful Community Objections, and thus were properly delegated pursuant to the procedures set forth in the Guidebook”⁶⁵

132. In reaching its decision, the Panel have considered the .AMAZON case, whereby an allegation arose of disparate treatment by the NGPC against the Claimant.⁶⁶

Amazon argues that the NGPC discriminated against it by denying its application for .amazon, yet an application by a private Brazilian oil company for the string .ipiranga, another famous waterway in Brazil, was approved. Amazon contends that by approving .ipiranga and denying .amazon, the ICANN Board, here the NGPC, engaged in disparate treatment in violation of Article II, Section 3 of the Bylaws.

(...) As pointed out by ICANN’s counsel, in this instance neither the Board nor NGPC, acting on its behalf, considered, much less granted, the application for .ipiranga and, therefore, did not engage in discriminatory action against Amazon. We agree. In the context of this matter, the Bylaws’ proscription against disparate treatment applies to Board action, and this threshold requirement is missing.

⁶⁵ See ICANN’s response to the Supplemental Brief Pg 21, Para 48

⁶⁶ G : Para 120 – 121 AMAZON EU S.A.R.L

Thus, we do not find the NGPC impermissibly treated these applications differently in a manner that violated Article II, Section 3 of the Bylaws regarding disparate treatment.

133. It is the opinion of this Panel that, as with .AMAZON, no Board action took place with regards the .KOSHER application, and therefore the threshold for this requirement is missing. No action inconsistent with Article II, S3 of the Bylaws has occurred.

Did the Board act without a conflict of interest?

134. This is not applicable as the Board decision is not being considered due to the distinction made above.

Did the Board exercise due diligence and care in having a reasonable amount of facts in front to it?

135. This is not applicable as the Board decision is not being considered due to the distinction made above.

Did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the internet?

136. This is not applicable as the Board decision is not being considered due to the distinction made above.

ACTION: IMPACT OF THE GAC FAILING TO REJECT AN APPLICATION

137. This is outside of the remit of this Panel, which is tasked with ascertaining whether or not there have been actions by the Board which are inconsistent with the Bylaws, Articles of Incorporation or the Guidebook. However, as an observation, following the Guidebook, the GAC are not mandated to expressly accept or reject an application, and therefore their decision not to reject is in accordance with the Guidebook.

ACTION: DECIDING IN A MANNER INCONSISTENT WITH GUIDEBOOK SCENARIO

138. Following the overarching aim of the Guidebook, one must assume that the scenarios referenced were included in order to assist candidates with their applications, but with no intention of binding the Board. The following, found under §1.1.5, is deemed instructive of this: *“The following scenarios briefly show a variety of ways in which an application*

may proceed through the evaluation process.” The express inclusion of the term “may” is further indication that §1.1.5 was not intended to be binding on the Board, nor provide applications with a guaranteed route of success.

139. It is the opinion of this Panel that such scenarios act merely to provide examples of how an application may proceed, but do not purport to provide a roadmap to follow to ensure success. Although it is understandable that a certain level of reliance may be placed on such scenarios by applicants, one would expect in the majority of cases for there to be distinguishing factors. As such, the scenarios cannot be considered binding on the Respondent, and no inconsistent act occurs should ICANN deviate from the scenarios.

Did the Board act without a conflict of interest?

140. The Board were not mandated to follow the scenarios laid down in the Guidebook, as it is found by this Panel that the scenarios were merely instructive. There is no evidence that the Board were conflicted in making this decision, rather they were exercising their judgement in order to distinguish the Claimant’s application from the scenario listed.

Did the Board exercise due diligence and care in having a reasonable amount of facts in front to it?

141. The decision to act in a manner contrary to the Guidebook scenario was made following an assessment of the objections, independent expert opinions and the applications, whereupon ICANN made the decision to distinguish the scenario from the applications. The status of the scenarios being advisory rather than mandatory confirms the notion that the Board acted with due diligence in choosing to distinguish the applications and act in a manner contrary to the scenario listed.

Did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the internet?

142. Independent judgement is evidenced by the Board choosing to distinguish the applications from the scenarios. It is submitted that it is in the best interests of the internet for consideration to be given to each case in turn, rather than mandate through prescribed scenarios the way in which a case must proceed. The Board have utilised their right of independent judgement in taking the decision, and it is submitted that this path is in the best interests of the internet.

ACTION: CLASSIFICATION OF A NUMBER OF DOCUMENTS AS CONFIDENTIAL

143. ICANN has a published Documentary Information Disclosure Policy (DIDP) which states:

“ICANN's Documentary Information Disclosure Policy (DIDP) is intended to ensure that information contained in documents concerning ICANN's operational activities, and within ICANN's possession, custody, or control, is made available to the public unless there is a compelling reason for confidentiality.”

144. The Claimant claims a request was made under this policy for documents related to the parties' dispute, which was subsequently declined by ICANN, thereby acting in breach of Recommendation No. 1, Core Value 7 and Core Value 8. ICANN claims that the Claimant did not file a reconsideration request seeking the Board's review of ICANN staff's DIDP response. As no reconsideration request was filed, the DIDP response involved no Board action.⁶⁷

145. The remit of this Panel is restricted to the analysis of Board actions or inactions. The Claimant has not produced any evidence to indicate that a reconsideration request was filed, and it is therefore outside the purview of this IRP to consider the actions of ICANN staff members.

ACTION: FAILING TO ESTABLISH A STANDING PANEL

146. §4 (6) of the Articles of Incorporation and Bylaws requires a 'Standing Panel' be established, and this Panel recommends, along with previous IRP panel recommendations⁶⁸, that one is created. However, for clarity, this is not to be taken as or in any way inferred as a binding order (as the Panel has no such authority). Also, whether or not there is a standing panel seems to have no direct relationship with the facts of this IRP.

CONCLUSION

147. For the reasons stated above, the Panel concludes that ICANN has acted in a manner inconsistent with ICANN's Articles of Incorporation and Bylaws. Specifically:

⁶⁷ See ICANN's Supplementary Response para 4 and <https://www.icann.org/en/system/files/files/didp-response-process-29oct13-en.pdf>

⁶⁸ See *.AFRICA (DotConnectAfrica Trust v ICANN – Case #50 2013 001083)*

148. Core Value 7 – Articles of Incorporation and Bylaws

It is the opinion of the Panel that the volume and quality of information disseminated following the meeting of the GAC in Beijing constituted an act which was inconsistent with Core Value 7; to be consistent with Core Value 7 requires ICANN to act in an open and transparent manner.

149. Core Value 8 - Articles of Incorporation and Bylaws

It is the opinion of the Panel that, by placing the Claimant's applications "on hold", the Respondent acted inconsistently with Core Value 8; to be consistent with Core Value 8 requires the Respondent to make, rather than defer (for practical purposes, indefinitely), a decision ("making decisions by applying documented policies neutrally and objectively, with integrity and fairness") as to the outcome of the Claimant's applications. The Respondent, in order to act in a manner consistent with its Articles of Incorporation and Bylaws, needs to promptly make a decision on the application (one way or the other) with integrity and fairness. However, nothing as to the substance of the decision should be inferred by the parties from the Panel's opinion in this regard. The decision, whether yes or no, is for the Respondent.

150. Article III (S3 (b)) Articles of Incorporation and Bylaws

It is the opinion of the Panel that, by placing the Claimant's applications "on hold", the Respondent created a new policy. In light of this, the Respondent failed to follow the procedure detailed in Article III (S3 (b)), which is required when new policy is developed.

151. We further conclude that Claimant is the prevailing party in this IRP. We hold this view consistent with the finding that the designation of "On Hold" is a new policy. ICANN failed to implement procedures pursuant to which applications placed in an "On Hold" status are to proceed. As a result, the Board has not acted with due diligence in this regard.

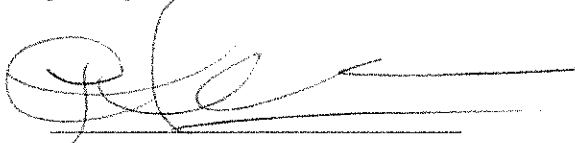
152. The failure to determine how Claimant should proceed under the new "On Hold" policy has largely resulted in the Claimant's costs in this IRP. Accordingly, pursuant to Article IV, Section 4.3(18) of the Bylaws, Rule 11 of ICANN's Supplementary Procedures and Article 34 of the ICDR Rules, ICANN shall bear the costs of this IRP, the cost of the Reporter, as well as the cost of the IRP provider.

153. The administrative fees and expenses of the International Centre for Dispute Resolution (ICDR) totalling US \$6,279.84 shall be borne by ICANN.

154. The compensation and expenses of the Panelists totalling US \$175,807.82 shall be borne by ICANN.
155. The fees and expenses of the Reporter, Ms. Bommarito, shall be borne by ICANN. ICANN has already settled Ms. Bommarito's invoices.
156. Therefore, ICANN shall reimburse AGIT the sum of US \$93,918.83, representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by Respondent.
157. Each party shall bear its own expenses and attorneys' fees.
158. This Final Declaration may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

The Panel would like to take this opportunity to congratulate the Parties' legal representatives for their hard work, civility and responsiveness during the proceedings. The Panel was pleased with the quality of the written submissions, in addition to the oral advocacy skills displayed throughout the proceedings.

Respectfully submitted:



Calvin A. Hamilton FCI Arb., Chair

November 28, 2017

Date

Honourable William Cahill (Ret.)

Date

Klaus Reichert SC

Date

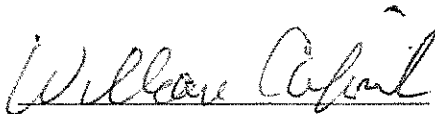
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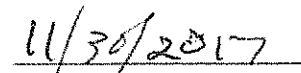
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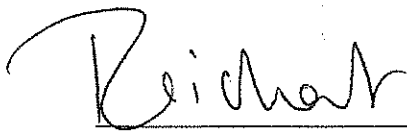
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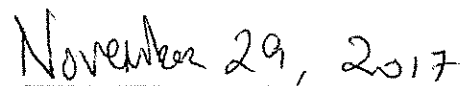
Date

Honourable William Cahill (Ret.)

Date



Klaus Reichert SC



Date

HEATHER DRYDEN:

Everyone. Let's get started. So, there are a few points that I'd like to make from a GAC perspective. First of all, this is not a GAC plenary meeting, so the full GAC is not here, and this is order to have a meeting where those GAC members that are referenced in the advice from Beijing that have raised sensitivities about the specific strings, .ISLAM and .HALAL, have an opportunity to express their concerns to members of the new gTLD program committee.

And this is a provision that is contained in the guidebook, in fact, that there would be such an opportunity, or such a dialogue to occur between the new gTLD program committee and the GAC, and so, given some of the sensitivities around this issue, we have come to this particular arrangement, in order, again, as I say, so that, in particular, those GAC members that are referenced in the advice as having sensitivities in relation to these strings may speak, although, I recognize that others may also have a particular interest.

And so, I would -- I think want to make it possible to hear those other views, but further GAC members, I do not expect them to participate in the discussion. So, with that, Cherine, if you can introduce us to your side of things. Thank you.

CHERINE CHALABY:

Thank you very much, Heather, and let me start by thanking the governments, or representatives of the governments available here today, for reaching out to us. And let me start by saying that I'd like to renew our assurance of our sincere respect for those governments, and

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we are here today to listen to those parties and to hear your concerns and your point of view.

This is not a decision-making meeting, and I would like to stress this very much. As you would appreciate, we are talking about two application, .HALAL and .ISLAM. Both of those are still pending initial evaluation results. Both of those have received GAC warning and have been mentioned in the recent communique from the GAC. And both have objections from other countries filed against them.

The Board, or the new gTLD committee on behalf of the Board, does not interfere with the process. It will allow the process to continue, in order to be fair to all applicants. So, until such time that the initial evaluation results or the objection filing are resolved and we know what the results of those are, the new gTLD committee on behalf of the Board will not interfere with the process.

But we respect your desire to talk. We respect your desire to be heard, and we're hear to hear those parties, and we will listen very carefully and take whatever input you can give us into consideration. Thank you very much.

HEATHER DRYDEN:

Okay. So, perhaps, we could do just a "tour de tab" to establish who's here for everyone and also, I think we should just note that this meeting is being recorded, yes, and [CROSSTALK] -- yes, so if can say your name and just indicate who you are, that will help us to keep track of that. So, I will go to my right. So, I'm Heather Dryden, as you know, the chair of the Governmental Advisory Committee.

BILL GRAHAM: I'm Bill Graham, ICANN Board member.

UNKNOWN SPEAKER: [inaudible], staff.

UNKNOWN SPEAKER: [inaudible], Portugal.

GONZALO NAVARRO: Gonzalo Navarro, ICANN Board member.

GEORGE SADOWSKY: George Sadowsky, ICANN Board member.

OLGA MADRUGA-FORTI: Olga Madruga-Forti, ICANN Board member.

KAVOUSS ARASTEH: Kavouss Arasteh from Iran.

UNKNOWN SPEAKER: [inaudible].

SAEED MAHDIOUN: In the name of God, Saeed Mahdioun, GAC representative of Islamic Republic of Iran.

TRACY HACKSHAW: Tracy Hackshaw, Trinidad and Tobago, GAC vice-chair.

MARCELA PAIVA: Hello. Marcela Paiva, Ministry of Foreign Affairs from Chile.

DENIS GONZALEZ: Good morning. Denis Gonzalez from the Undersecretariat of Telecommunications from Chile.

SHUJI YAMAGUCHI: Good morning, everyone. Yamaguchi from Japanese delegation, Ministry of Internal Affairs and Communications.

UNKNOWN SPEAKER: [inaudible] from Malaysia, MCMC.

RAFIDAH ISMAIL (ph): Hi. Rafidah from Malaysia.

PÄR BRUMARK: Pär Brumark, GAC representative, Niue.

SORINA TELEANU: Sorina Teleanu, Romania.

ROMULO NEVES (ph): Romulo Neves from Brazil.

ALEXANDRE FONTENELLE: Alexandre Fontenelle from Brazil.

ABDULRAHMAN AL MARZOOQI: Good morning everybody. Abdulrahman Al Marzooqi, GAC representative of the UAE.

JAMIE HEDLUND: Jamie Hedlund, ICANN staff.

RAY PLZAK: Ray Plzak, ICANN Board.

ERIKA MANN: Erika Mann, ICANN Board.

CHRIS DISSPAIN: Chris -- sorry, Chris Disspain, ICANN Board.

CHERINE CHALABY: Cherine Chalaby, ICANN Board and chairman of the new gTLD committee.

HEATHER DRYDEN: Okay. So, I think we will start with you UAE, please?

ABDULRAHMAN AL MARZOOQI: Thank you. So, just to give you a recap on UAE's position and, perhaps, many of the other Islamic countries who have had concern with these two particular TLDs. So, the UAE's position from the beginning was a sensitive name, such as that are referring religions like Islam and Halal, have to be carefully looked at, and we have to make sure that the community of the -- the Muslim community have to be involved in the launch of such TLD.

This is why we've -- from the beginning, we've looked at application and we've raised our concern in a formal GAC early warning, and that communication was sent to the applicant. There were other countries, as well, who, perhaps, are not present here in this meeting, who have also raised early warning, such as India.

And there were also some countries who have raised or expressed their concerns, and they're not a GAC member, such as Saudi Arabia. But the position was documented in a formal -- the public comments page that was opened by ICANN to express all the public opinion. So, we've raised the early warning and there was dialogue and communication with the applicant, but however, we still -- our main concern is that the applicant was not representing the Muslim community. And there was not

substantial effort to have dialogue with the Muslim community, in order to, you know, formulate the policy, have a strategy to open this TLD.

So, we reiterated our position during the GAC deliberations -- not only us, also other countries. And today, we still have the same concern; although, we've actually also utilized the objection mechanism to -- being part of the community, we felt that we have the right to also object as part of that community. But, unfortunately, others have not utilized it; basically, because of -- and this is the feedback that I got from many other countries -- is that the complexity of the process.

You know, there's so many variables and uncertainties, and it takes time to reach into positions. This is why some of the countries had challenges in putting -- and there are costs, as well, involved in filing a dispute. So, we have the objection from -- as a UAE government, but we felt that many other countries, as well, have this concern.

And on the other side, I want to highlight, as well, the organizations that are also concerned with the TLD, which is the Organization of Islamic Cooperation, the OIC, which is basically an intergovernmental organization representing the cooperation between the Muslim countries, all the countries where there is a significant population of Muslims.

And the OIC position was, it's a sensitive subject, and it's a sensitive TLD, and it has to be born with the cooperation and support of the community. So, the OIC have done their deliberation, as well. And, basically, there are communities concerned with such topics, and

they've proposed certain resolutions that would be communicated, as well, to ICANN.

And basically, it was a consensus resolution and the next step is to communicate it to, perhaps, ICANN and that resolution is basically opposing having -- introducing these TLD, or these -- accepting these applications.

So, my message is that the community is opposing the introduction of those TLDs in this manner, and there has to be better coordination with the community, in order to properly introduce the TLD. So, this is, in a nutshell, our position and many other Islamic and, perhaps, other countries -- Islamic countries who want to comment on our position, as well. Thank you.

HEATHER DRYDEN:

Thank you for that, UAE. Is there anyone that you would like to give the floor to next? Would you like to give the floor to one of your colleagues next? Okay. Malaysia, please?

RAVIDAH ISMAIL:

I just would like to reiterate that we actually -- we support the concern from UAE, regarding the issues of .HALAL and .ISLAM and the applicant's [inaudible] representation of the community. We don't get any -- we don't even know who's the applicant, so this is a very sensitive issue, very sensitive names -- for these name to be used, widely, globally -- so you need to have -- they need to, at least, come from an known

organization like the OIC that we know they represent Muslim as a whole. So, that's our opinion.

HEATHER DRYDEN: Thank you. A question? Okay. Go ahead, Chris.

CHRIS DISSPAIN: Thank you. Thanks to both of you. Two things -- personally, I'd just like to say [inaudible], I understand, you know, you've got the objection, and I just want to say you only need to have one objection.

So, the fact that groups of other people didn't object -- didn't actually file a formal objection, it doesn't -- you know, it doesn't take away our understanding of your strength of feeling on it. I'm curious if you could -- someone could explain -- I understand the sensitivity around .ISLAM, obviously, I'm less clear about why there is a concern -- as much of a concern in respects to, in respect to .HALAL -- perhaps, if someone could maybe explain that, that would be very helpful?

HEATHER DRYDEN: UAE.

ABDULRAHMAN AL MARZOOQI: That's a good question. So, halal, as a word -- I'm not sure if you understand what it means in Arabic -- halal means "permissible." So, basically, something that is permissible in Islamic Sharia Law --

something that you are allowed to either consume, or do, or -- you know, etc. And it's strongly associated, also, with products.

So, this is where you probably know the name -- with products, food, specifically. So, halal food and the word, itself, we use it in our language in situations where people want to know whether this is, according to the Sharia, is it allowed to do, or not. And we thought that if halal is to be used in a TLD, it might give an assumption that this specific name or subject or item, associated with this TLD is permissible.

So, as if you are saying that the name, the products, associated with it, the things that are associated with it are permissible, according to Sharia Law. So, this is the main concern of why there is a concern from our perspective in looking at a TLD. And there are so many organization around the world that are, in fact, regulating halal food, for example, or halal products, and every country might have where there are significant Muslim population, they have regulatory bodies governing the use, even the name.

So, you're not allowed to, for example, use the name in association with a product without getting certification or you go through an accreditation to make sure that, you know, if it was a food, then it is made in a way that is according with the Sharia Law, slaughtered according to Islamic Sharia Law, and etc.

So, this is -- the concern is that if a body want to govern this TLD, then who is he to -- and how the names will be approved and how it will be, you know, allowed to be registered? What are the measures that would be used to make sure that it is according Sharia law. So, it has to be

someone who is really -- someone like a regulatory body, to make sure that anything that goes in there are truly halal. So, this is the main concern from our perspective.

HEATHER DRYDEN: Thank you. So, Malaysia, you have your --

UNKNOWN SPEAKER: Okay. I would like to add on that. Halal not just for -- actually in Islam. Halal is not just for food; they also use for shampoo, for anything that use like perfume, so it has to be a halal product. So, in Malaysia, and in most of the Muslim country, we have accredited organization that actually do this, so any products not just -- they can't put just the word halal in the product; it has to be accredited. It has to be an accredited body that actually assigned the halal logo to hotels, to places -- public places, for example.

So, it's actually a big business for halal product, and I think it becomes a very common nowadays that whenever go buy stuff; we look at the bottles and look for that logo. So, that's the reason why it has to be managed properly; a safeguard has to be in place when we talk about the TLD.

HEATHER DRYDEN: Thank you. Okay. So, I see Turkey and -- Turkey, please go ahead.

UNKNOWN SPEAKER: Thank you. Just -- we, also -- as Turkish government feels some concerns, although this company's a Turkish company, applied for .ISLAM and .HALAL, along with many strings. But we believe that these are a very sensitive strings and needs the community support. And the company applied; although, it's a legitimate company and legitimate application, Turkish company, do not have that support.

They did not get any support. Did not achieve to any support from organizations for Islamic countries, which is an umbrella organization -- covers all different sects and differences within the same religion -- nor they get support from the -- ask for support from Turkish governmental institute [inaudible], so there's no governmental support. And we have the concern that it's just an IT company handling this kind of religious and sensitive issues could be a very difficult and problematic one in the future. Thank you.

HEATHER DRYDEN: Thank you, Turkey. Iran.

KAVOUSS ARASTEH: Yes, if you wish Madame. First of all, like all other countries, we in the Islamic [inaudible] we are Muslim. We have the same belief to the use of the concept, term, and objective of halal. There is no halal in one Muslim country and another halal is another Muslim country -- all of them have the same, irrespective of any ramification or any other division and so on, so forth. This is at the top. This is top-level domain.

We have heard of the concerns of our distinguished sisters and brothers. In general, we have no disagreement with them. We know people express concerns -- concerns are recognized, acknowledged and I think it is, in principle, valid. We are not going here -- we are not gathered here to have one view, but rather we are going to address the concern, and we have to find the most appropriate modality or modalities, how the concerns of the community, in general, be addressed.

In this issue of Islam and Halal, we are all together. We are all Muslims. In Arabic, it says, [Participant speaking in another language] -- all Muslims are brothers; make peace and relations [inaudible] the brothers, so we have belief of that. The issue is that how this concerns to be addressed, through the appropriate means and modalities, to satisfy the communities. There is not one single community; there are communities, and so on, so forth.

So, we would like to, perhaps -- as a very preliminary idea, to mention that perhaps we should take the approach that what we have to -- for to do -- I think we are dealing an issue in ICANN. ICANN has or is famous, or is known for the approach it's taken. The ICANN approach is an inclusive, multistakeholder model, rather bottom up or up to bottom, for us is inclusive of everybody. To be consulted, no doubt, including, but not limited to the Islamic cooperation organizations, Organizations of Islamic Cooperations, OIC.

There might be other entities, such as Economic Cooperation Organization, also -- including but not limited -- it could include individuals, entities, governments, personalities -- they have views on

that. To be consulted in an inclusive, multistakeholder approach, with the view that appropriate mechanisms, modality, be developed to properly address the concerns raised with respect to [inaudible] community.

So, now we have to look at the modality. What are the modality and so on, so forth -- so, in general, there is no difference. We have to address the concerns in appropriate manner -- concerns of community, which is inclusive. There are different group. There are different type, and so on, so forth.

But, fortunately, all of them having one objective is halal in appropriate manner, and to also -- we all totally agree with that, but the issue is not how to find that consultation, how do find the most appropriate manner to address that concerns in an exclusive -- inclusive manner that everybody be involved, and everybody be consulted -- I'm not saying go to the voting and I'm not going to through the referendum, but there are ways and means that we have addressed that issue.

So, I think the matter on the issue on the table is how to find this modality and so on, so forth. So, I don't think that there is a difference between the views of here. Everybody says that we have to use these both properly, we have to avoid any misuse of the term or of the TLD, any abuse of that, and so on, so forth, whether in the commercial term, whether it's a noncommercial term -- so, I don't think, Madame, there is a difference view.

The difference is of how we could address this issue and what manner, which way we have to do that. What we believe that it is not in a single

entity, who could say that this is the order -- you have to consult all involved peoples, on one way or other, in an appropriate manner to have views that yes, now we have something that concerns of the people are -- whether this concerns to be to true -- whether safeguard or the approach or some conditions, or some arrangement, and so on, so forth -- that is that, so I don't think that at this stage, we have more than to say to this, and perhaps we should work together among the Muslim countries.

We have some gatherings. We have some tools. We have some arrangement, and so on, so forth --- we could enter into dialogue with each other and to find that one and to take the necessary approach and perhaps try to narrow down where [inaudible] might be two or three different roads to a different avenue, we should take them and narrow down -- okay, this is the proper avenue that we can go, and we take it, and we go and take the views and come to saying that, "Okay, this address the concerns of the community, and in that case, hopefully, we believe that we working together with that idea that we make this -- you continue to make this friendship among all Muslim countries. So, that is what I could say at this phase. Thank you.

HEATHER DRYDEN:

Thank you for those comments. We have a few minutes if any colleagues on the gTLD committee have any comments or we can go back, if any of the earlier speakers have anything to add. Okay. It looks like, no. Turkey, please?

UNKNOWN SPEAKER: Well, thank you for the comments made by our colleague from Iran. But saying that there are differences within Islam would be oversimplification of the situation. There are differences, unfortunately. And there are differences in understanding. There are differences in approach and reference points.

So, anything covers whole Islam should be referenced from an umbrella organization or any reference point that also covers whole Islam, not just one part; not one just sect; not just one approach, understanding.

So, that's why Organization for Islamic Countries is the best reference point, because it's the most comprehensive umbrella organization. And if they cooperate, if they get some kind of working relation with them, that would be acceptable from our point of view. Thank you.

HEATHER DRYDEN: Thank you, Turkey. Iran, you have further comments?

KAVOUSS ARASTEH: Yes. I think I need not to repeat myself, Madame Chairman. I said that there are concerns of different group, different people, with different way of thinking and so on, so forth, but I said that we will take a inclusive approach of all involved. I talk about individuals, personalities, entities, government, and said that including the Organization of Islamic Cooperations -- organization like, Economic and Cooperation Organization -- this, including, but not limited -- so, we don't to limit in one single, saying that that is not there -- we have to take that to have

views of everybody and so on, so forth; otherwise, we may not be fulfilling our task properly.

So, I don't see any difficulty here -- to consult the people and so on, so forth -- no doubt, we have my distinguished friend from Turkey. We have differences, but all of us, we have differences, but the end of the day; we resolve the differences -- become some sort of agreement, some sort of consensus -- no doubt, we don't have -- never we have something that -- everybody will be equally happy.

Sometimes, we have something everybody will be equally unhappy, but the issue is that we have a consensus. A consensus does not mean unanimous agreement. Consensus means that the people do not object to what is offered. So, I don't think it is very early to say that, "Okay, we have differences and that, no."

We have differences, let's work towards the differences, narrowing down to the extent that we can, through appropriate manners and so on, so forth, but let us not single out one single entity. Let us look at all possibilities to see -- to gather all the information, to gather all the things put in together to see where are, and then, from that, we will take approach.

And it is not something that we work individually. We should work together, collectively, and so on, so forth, as is appropriate modality and mechanism -- this modality, we don't know yet -- whether we have a group of -- whether we have a working group established under Islamic countries, whether we have -- I don't know -- do we have to work out,

we have to sit down together, but with this approach, that we want to solve the problem. That's all. Thank you.

HEATHER DRYDEN:

Thank you, Iran. So, I have a request from Malaysia and UAE, and then I think we can wrap-up this exchange. So, please Malaysia. Would you like Malaysia to go [CROSSTALK]?

RAFIDAH ISMAIL:

I just would like to add that just to like a wrap-up from all this discussion, from my perspective, is that before we conclude that the applicants can move on to next phase, it has to go through a dialogues, a conference, or anything to address the sensitivity of this issue, and to address, so that everyone's in the community agree with this.

So, that is the concern that we have. Because, at the moment, we don't get anything. We never talk to the applicants. We don't know where they're from, so that is the main concern, so before it allows to [inaudible], they have to get the communities -- through the umbrella. To go through the main and --

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