



August 10, 2015

Mr. John Jeffrey
General Counsel, ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Dear John,

I write with respect to the longstanding "Cooperative Engagement Process" regarding Asia Green IT Systems' new gTLD applications for .HALAL and .ISLAM, initiated by AGIT on Feb. 21, 2014. This letter replaces our August 4 letter in its entirety. We request this letter be posted promptly to ICANN's correspondence page.

We believe that the recent IRP decision in the .AFRICA matter, and the Board's general acceptance of that decision in its July 16 resolution, require that 1) the Board also return the subject applications to processing by the Global Domains Division, and 2) that the GDD issue contracts immediately to AGIT to operate these two gTLDs.

The IRP panel's binding decision held that the Board violated ICANN's Articles of Incorporation and Bylaws by blindly accepting unsubstantiated GAC Advice (indeed, "consensus" advice) to reject DCA's application. The IRP panel held that, at minimum, the Board should have made an appropriate inquiry and investigation into the rejection, and should have provided substantial reasoning for any rejection, given the substantial investment DCA made in the application, and given ICANN's purported requirement that applicants waive all rights to redress in court.

In this matter, 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. The Board's unprecedented, extremely troubling letter dated February 7, 2014, essentially granted veto power over these applications to those few GAC members, without any reasoning whatsoever. That followed AGIT's successful opposition to the UAE government's Community Objection to these applications, by the neutral expert panel created by ICANN to resolve such objections. It also followed the Board-appointed Independent Objector's thorough investigation and refusal to object to these applications. The Board effectively overruled those decisions without any reasoning whatsoever, other than reference to these few objecting GAC members.

The action taken by the Board's February 5, 2014 resolution and February 7, 2014 letter, to place these applications into undefined limbo until such time as unspecified "conflicts" between AGIT and the few referenced objectors are resolved, is clearly a violation of



ICANN's Articles of Incorporation and Bylaws. That decision ignored both the Independent Objector's reasoned determination, and the ICDR's reasoned determination - each community consensus procedures approved by the Board and set forth in the Applicant Guidebook. That Board decision was completely non-transparent, as absolutely no reasoning is given by the Board, other than reference to vague concerns of these few objecting governments. There was no reasoning given for ignoring the IO and/or ICDR decisions, or for granting these few governments such unprecedented and troubling veto power over these applications. *Logically, as the Board is not able to accept unsubstantiated, consensus GAC Advice to reject one application for .AFRICA, it is not able to accept unsubstantiated, non-consensus advice of just a few GAC members to reject two applications for .HALAL and .ISLAM.*

To be sure, AGIT has been more than patient with respect to these applications and this "Cooperative Engagement Process". AGIT has passed all of ICANN's numerous evaluations set forth in the AGB and otherwise as to all eight of its applications. These two applications in particular withstood the scrutiny of ICANN's appointed expert "Independent Objector", who decided not to object. AGIT has overcome the Community Objection raised by the UAE government, on precisely the same, extremely vague and unsubstantiated grounds as raised by the referenced government objectors. Also, ICANN and AGIT have received OFAC approval from the US Government for ICANN to contract with AGIT. Thus ICANN's application evaluators, two independent experts commissioned by ICANN, and the U.S. government, have all approved issuance of these contracts. ICANN has no legitimate reason to continue withholding these two contracts from AGIT, based solely on the unsupported, indeed several times expertly refuted, whim of just a few IGO GAC members.

Therefore, we respectfully request that the ICANN Board, in its next meeting, reconsider its February 5, 2014 resolution and its unprecedented February 7, 2014 letter in light of the IRP panel decision and July 16, 2015 resolution of the ICANN Board with respect to the .AFRICA application.

Alternatively, in the context of the ongoing CEP and pursuant to ICANN's Bylaws, in order to narrow the issues for any IRP that AGIT may file against ICANN, and in order to comply with ICANN's transparency obligations as set forth in its Articles and Bylaws, AGIT makes the following further requests of ICANN:

1. Explain in detail the Board's reasoning for accepting the authority of the OIC to veto the subject applications.

2. Explain in detail the Board's reasoning for ignoring and/or rejecting the advice of the Independent Objector and the ICDR panelist in the Community Objection proceeding.



3. Explain in detail the purported "conflicts" referenced vaguely in the February 7, 2014 letter as requiring undefined "resolution" before the contracts can issue.
4. Explain in detail the procedure by which ICANN will facilitate the resolution of such conflicts.
5. Explain in detail the desired form and substance of the resolution that ICANN purportedly requires.
6. Preserve and promptly provide to AGIT, in unredacted form, all documents in ICANN's possession, custody or control which are related to these applications, including without limitation:
 - a. All correspondence between any representative of ICANN on the one hand, and on the other hand any purported representative of the OIC, GCC, Lebanon, Indonesia or any other objector to the subject applications.
 - b. All records of the NGPC meeting with GAC members in Durban relating to these applications, referenced in the February 7, 2014 letter to AGIT.
 - c. All documents considered by the Board in coming to its February 5, 2014 resolution and February 7, 2014 letter to AGIT.
 - d. All documents considered by the BGC and NGPC in rejecting AGIT's Request for Reconsideration of that resolution.
 - e. All documents regarding any effort by ICANN to facilitate resolution of the purported "conflicts" referenced in the February 7 letter.
7. Provide an entirely unredacted version of both the .AFRICA IRP decision and all documents submitted to and/or considered by the IRP panel in reaching that decision.

We hope the Board will choose to reconsider this matter, and thus avoid further, repetitive and costly litigation via the IRP process or otherwise. Please let us have your substantive reply no later than August 20, 2015.

Sincerely,

By: 

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