

ICANN BOARD SUBMISSION NO. 2018.10.03.1a

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

PROPOSED ACTION: **For Board Consideration and Approval**

EXECUTIVE SUMMARY:

The Board previously considered the Final Declaration as to the merits (Final Declaration) and the Final Declaration As To Costs (Costs Declaration) in the *Gulf Cooperation Council (GCC) v. ICANN Independent Review Process (IRP)* regarding the .PERSIANGULF application, including the IRP Panel’s recommendation “that the ICANN Board take no further action on the ‘persiangulf’ gTLD application, and in specific not sign a 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 March 2018, the Board accepted that the IRP Panel declared the GCC as the prevailing party and that ICANN reimburse the GCC its IRP costs, and directed the Board Accountability Mechanisms Committee (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>.)

The Board determined that treating the statement in the GAC Durban Communiqué regarding .PERISANGULF as if it were non-consensus advice pursuant to the Guidebook is the best course of action and consistent with the way a similar circumstance (in the .HALAL/.ISLAM matter) has been handled. In addition, conducting a further review and consideration of the materials related to the .PERSIANGULF matter, including the

materials identified by the IRP Panel in the Final Declaration, will assist the Board in conducting an evaluation of the current .PERSIANGULF application as well as provide the GCC with the “due process” that the IRP Panel considered was not previously adequate.

Pursuant to the Board’s directive, members of the BAMC and concerned members of the GAC engaged in a dialogue regarding .PERSIANGULF on 28 June 2018, at ICANN62 in Panama City, wherein representatives from the United Arab Emirates (UAE), Bahrain, and Oman reiterated the previously-expressed concerns regarding the .PERSIANGULF application, referencing the sensitive nature of the long-standing “Arabian Gulf” vs. “Persian Gulf” naming dispute, and indicating that they “don’t envisage any solution other than...the application being terminated.” In addition, the BAMC reviewed the relevant materials related to the .PERSIANGULF matter, including the objections and concerns raised by the UAE, Bahrain, Qatar, Oman, Kuwait, the League of Arab States (representing 22 member states), and the GCC (representing six member states), as well as the comments received both in support of and in opposition to the application.

After extensive analysis and discussion, the BAMC has recommended that the Board adopt the portion of the IRP Panel’s recommendation that the application for .PERSIANGULF submitted in the current new gTLD round not proceed. The BAMC made this recommendation based not only the IRP Panel Declaration and on the BAMC’s review of all relevant materials, but also on its consideration and commitment to ICANN’s Mission and core values set forth in the Bylaws, including ensuring that this decision is in the best interests of the Internet community and respects the concerns raised by a large portion of the community most impacted by the proposed .PERSIANGULF gTLD. The BAMC, however, did not recommend that the Board prohibit potential future applications (by any applicant) for .PERSIANGULF given that new rules and criteria might be established for a future gTLD application round that have not been considered.

BOARD ACCOUNTABILITY MECHANISMS COMMITTEE

RECOMMENDATION:

The BAMC recommends that the Board adopt the portion of the IRP Panel’s recommendation that the application for .PERSIANGULF submitted in the current new gTLD round not proceed. However, the BAMC is not recommending that the Board prohibit potential future applications (by any applicant) for .PERSIANGULF given that new rules and criteria might be established for a future gTLD application round that have not been considered.

PROPOSED RESOLUTION:

Whereas, ICANN organization received the Final Declaration as to the merits (Final Declaration) and the Final Declaration As To Costs (Costs Declaration) in the Gulf Cooperation Council (GCC) v. ICANN Independent Review Process (IRP).

Whereas, among other things, the IRP Panel declared that “the GCC is the prevailing Party,” and ICANN shall reimburse the GCC its IRP costs. (Final Declaration, pg. 45; Costs Declaration, pg. 6, V.2.)

Whereas, the IRP Panel recommended that the “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.)

Whereas, in accordance with Article IV, section 3.21 of the applicable version of the Bylaws, the Board considered the Final Declaration and the Costs Declaration at its meeting on 16 March 2017, and determined that further consideration and analysis was needed.

Whereas, at its 15 March 2018 meeting, the Board accepted that the IRP Panel declared the GCC as the prevailing party, directed the President and CEO to take all steps necessary to reimburse the GCC its IRP costs, and directed the Board Accountability Mechanisms Committee (BAMC): (i) to follow the steps required as if the Governmental Advisory Committee (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>.)

Whereas, the BAMC followed the steps pursuant to Module 3.1 (subparagraph II) of the Guidebook by engaging in a dialogue with the concerned members of the GAC regarding .PERSIANGULF, and conducted the requested further review and consideration of the relevant materials.

Whereas, the BAMC has recommended that the Board adopt the portion of the IRP Panel's recommendation that the application for .PERSIANGULF submitted in the current new gTLD round not proceed; the Board agrees.

Whereas, the BAMC has also recommended that the Board not prohibit potential future applications (by any applicant) for .PERSIANGULF given that new rules and criteria might be established for a future gTLD application round that have not been considered; the Board agrees.

Whereas, the BAMC has recommended this action based not only on the IRP Panel's Declaration and the BAMC's extensive review of all relevant materials, but also on its consideration of and commitment to ICANN's Mission and core values set forth in the Bylaws, including ensuring that this decision is in the best interest of the Internet community and that it respects the concerns raised by a large portion of the community most impacted by the proposed .PERSIANGULF gTLD; the Board agrees.

Resolved (2018.10.03.xx), the Board adopts the portion of the IRP Panel's recommendation that the application for .PERSIANGULF submitted in the current new gTLD round not proceed and directs the President and CEO, or his designee(s), to take all steps necessary to implement this decision.

PROPOSED RATIONALE:

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. (Asia Green) 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, para. 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 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.” (Final Declaration, para. 127.) 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.)

In sum, the Panel stated that it “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.” (Final Declaration, para. 131.) The Panel further stated that the Board should have reviewed and considered 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.

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. In its Rationale, the Board specifically noted that it does not agree with or accept all of the Panel's underlying factual findings and conclusions, identifying several specific refuted points. (Rationale, <https://www.icann.org/resources/board-material/resolutions-2018-03-15-en#2.b>.) The Board further directed the Board Accountability Mechanisms Committee (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 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 Accountability Mechanisms Committee Review and Recommendation:

Pursuant to the Board's directive, the BAMC followed the steps required as if the GAC provided non-consensus advice to the Board pursuant to Module 3.1 (subparagraph II) of the Guidebook regarding .PERSIANGULF by engaging in a dialogue with concerned members of the GAC regarding .PERSIANGULF on 28 June 2018, at ICANN62 in Panama City. 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. The representatives noted

that: the “Persian Gulf” name “misrepresents what we believe as our region”; this is a “very, very sensitive” issue; all but one of the countries bordering the body of water do not recognize the “Persian Gulf” name; if the “Persian Gulf” name was 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”; and they “don’t envisage any solution other than...the application being terminated.” (See transcript, Attachment C to the Reference Materials.)

In addition, and in accordance with the Board’s Resolution, the BAMC reviewed and considered the relevant materials related to the .PERSIANGULF matter – including the comments submitted by the ICANN community regarding the application; the correspondence from the governments of the UAE, Bahrain, Qatar, Oman, Kuwait, the League of Arab States (representing 22 member States), and the GCC (representing six member States) expressing concerns and objections regarding the application; the GAC Early Warning indicating the concerns of the the governments of the UAE, Bahrain, Qatar, and Oman; the determination of the ICANN Independent Objector, noting the positions of the concerned parties; the Expert Determination dismissing the GCC’s community objection, noting the positions advanced by both the GCC and Asia Green; the GAC Beijing and Durban Communiqués; and the GAC Durban Meeting Minutes. It should be noted that certain of these materials were available only after the NGPC’s 10 September 2013 decision to continue processing the application.

After extensive analysis and discussion, and after considering various options regarding the IRP Panel’s recommendation that the “Board take no further action on the ‘.persiangulf’ gTLD application, and in specific not sign a registry agreement with Asia Green, or any other entity, in relation to the ‘.persiangulf’ gTLD,” the BAMC recommended that the Board adopt the portion of the IRP Panel’s recommendation that the application for .PERSIANGULF submitted in the current new gTLD round not proceed. The BAMC recommended this action based not only on its due diligence and care in considering the IRP Panel Declaration and reviewing all relevant materials, but also on its consideration of and commitment to ICANN’s Mission and core values set forth in the Bylaws, including ensuring that this decision is in the best interest of the

Internet community and that it respects the concerns raised by a large portion of the community most impacted by the proposed .PERSIANGULF gTLD. The BAMC, however, did not recommend that the Board prohibit potential future applications (by any applicant) for .PERSIANGULF given that new rules and criteria might be established for a future gTLD application round that have not been considered at this time.

Board Consideration:

The Board agrees with the BAMC’s recommendation to not proceed with the pending application for .PERSIANGULF and to not prohibit potential future applications (by any applicant) for .PERSIANGULF. Future rounds of new gTLD applications may be subject to different procedures and/or a different version of the Guidebook; therefore, it is important to leave open the option for future applications for .PERSIANGULF, which may be evaluated through a different set of rules and procedures that have not been considered at this time. The Board again notes that it does not agree with or accept all of the Panel’s underlying factual findings and conclusions, as explained more fully in its Rationale for Resolutions 2018.03.15.12 – 2018.03.15.14 (<https://www.icann.org/resources/board-material/resolutions-2018-03-15-en#2.b>), which are incorporated in this Rationale as if set forth fully here.

Notwithstanding the refuted points referenced above and noted in Resolutions 2018.03.15.12 – 2018.03.15.14, the Board thinks that adopting the Panel’s recommendation as it relates to the current new gTLD round is the right thing to do in that it reflects the Board’s acceptance of certain portions of the IRP Panel’s findings, including that the GCC is the prevailing party. In addition, the IRP Panel conducted a lengthy review and analysis of the materials presented in this IRP and, based upon that analysis, the Panel came to the conclusion that Asia Green’s application for .PERSIANGULF should not proceed. The Board acknowledges that the Panel conducted an independent analysis of both the underlying materials and the arguments presented in the IRP, and came to its own decision regarding the merits. In adopting the Panel’s recommendation as it relates to the current new gTLD round, the Board is respecting the principle and role of the independent review panel and its analysis.

In addition, the Board, in exercising its own independent judgment, thinks that adopting the portion of the Panel’s recommendation that the application for .PERSIANGULF submitted in the current new gTLD round not proceed is the right thing to do based upon, among other things, the Board’s own review and analysis of the 28 June 2018 dialogue with concerned members of the GAC, all materials relevant to the .PERSIANGULF matter (some of which were available only after the NGPC’s 10 September 2013 decision), the discretion conferred upon the Board by the Guidebook, and the Mission and core values set forth in ICANN’s Bylaws. The Board would also like to point out that it has considered this matter over many meetings – the IRP Panel issued the IRP Final Declarations in October/December 2016 and, since that time, the Board and the BAMC have reviewed and considered the issues relating to the .PERSIANGULF matter during numerous committee or Board meetings.

Based upon the Board’s review of the relevant materials, numerous discussions, extensive due diligence, and its dialogue with concerned members of the GAC regarding .PERSIANGULF, it is apparent that the objections and concerns expressed by the governments of the UAE, Bahrain, Qatar, and Oman as early as 2012 continue to be reiterated today by those countries as well as by further countries and entities (such as Saudi Arabia, Kuwait, the Gulf Cooperation Council, and the League of Arab States). These objecting parties have repeatedly expressed their “serious concern” regarding the .PERSIANGULF application – noting that the “naming of the Arabian Gulf has been [a] controversial and debatable subject in various national and international venues and levels” (October 2012 letters from the UAE, Bahrain, Qatar, and Oman; [GAC Early Warning](#)); 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” (October 2012 letters from the UAE, Bahrain, Qatar, and Oman; [GAC Early Warning](#)); 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” ([20 June 2018 letter](#) from the government of Kuwait; and [10 July 2018 letter](#) from the government of Oman); if the .PERSIANGULF gTLD 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" (28 June 2018 Board/GAC dialogue transcript, Attachment C to the Reference Materials); "We don't recognize the name [Persian Gulf]. It is very, very sensitive to us." "[W]e don't envisage any solution other than...the application being terminated" (28 June 2018 Board/GAC dialogue transcript, Attachment C to the Reference Materials).

Under these circumstances, taking the decision to not proceed with the pending .PERSIANGULF application, after reviewing, considering, and discussing the objections raised by the countries and entities representing a large portion of the community most impacted by this proposed gTLD, is in the public interest, is in accordance with the Guidebook provisions that confer upon the Board the discretion to consider individual applications and whether they are in the best interest of the Internet community, and reflects the Board's commitment to ICANN's Mission and core values set forth in the Bylaws, including ensuring that this decision is in the best interest of the Internet community and that it respects the concerns raised by a large portion of the community most impacted by the proposed .PERSIANGULF gTLD.

Specifically, Section 5.1 of the Guidebook provides: "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 the use of an ICANN accountability mechanism." (Guidebook, Section 5.1, <https://newgtlds.icann.org/en/applicants/agb>.) Moreover, in applying for the gTLD, the applicant acknowledged and agreed that the Board has the discretion to make such a decision – "Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more gTLDs and to delegate new gTLDs

after such approval is entirely at ICANN discretion.” (Guidebook, Section 5.1, <https://newgtlds.icann.org/en/applicants/agb>.)

This decision is also in keeping with ICANN’s core values as set forth in the operative Bylaws, in particular those mentioned below, in that it takes into consideration the broad, informed participation of the Internet community and those members most affected, it respects ICANN’s accountability mechanisms, and it recognizes the concerns expressed by the countries and entities representing a large portion of the affected community (Bylaws, <https://www.icann.org/resources/pages/bylaws-2012-02-25-en>; and similarly reflected in the current Bylaws, <https://www.icann.org/resources/pages/governance/bylaws-en>):

- 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.
- 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.
- Remaining accountable to the Internet community through mechanisms that enhance ICANN’s effectiveness.
- 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.

While the Board strives to follow all the core values in making its decisions, it is also the Board’s duty to exercise its independent judgment to determine if certain core values are particularly relevant to a given situation. And, in fact, the operative Bylaws anticipate and acknowledge that ICANN may not be able to comply with all the core values in every decision made and allows for the Board to exercise its judgment in the best interests of the Internet community: “...because [the core values] are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. Any ICANN body making a recommendation or decision shall 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.” (Bylaws, <https://www.icann.org/resources/pages/bylaws-2012-02-25-en>.)

Taking this decision is within ICANN’s Mission as the ultimate result of ICANN’s consideration of this matter is a key aspect of coordinating the allocation and assignment of names in the root zone of the domain name system (DNS). Further, the Board’s decision is in the public interest, taking into consideration and balancing the goals of resolving outstanding new gTLD disputes, respecting ICANN’s accountability mechanisms and advisory committees, recognizing the input received from the Internet community, and abiding by the policies and procedures set forth in the Guidebook, which were developed through a bottom-up consensus-based multistakeholder process over numerous years of community efforts and input, and is consistent with ICANN’s core values.

Taking this decision is not expected to have a direct financial impact on the ICANN organization and will not have any direct impact on the security, stability or resiliency of the domain name system.

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

Submitted By: Amy Stathos, Deputy General Counsel
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ICANN BOARD SUBMISSION NO. 2018-10-03-1b

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

PROPOSED ACTION: **For Board Consideration and Approval**

EXECUTIVE SUMMARY:

The Board previously considered the Final Declaration in the *Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti. (AGIT) v. ICANN Independent Review Process (IRP)* regarding the .HALAL and .ISLAM applications. The IRP challenged 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, 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).

At its 15 March 2018 meeting, the Board accepted that the IRP Panel declared AGIT the prevailing party, and that ICANN reimburse AGIT its IRP costs. The Board also considered the IRP Panel's recommendation that, in order to be consistent with Core Value 8, "the Board needs to promptly make a decision on the [.HALAL and .ISLAM] application[s] (one way or another) with integrity and fairness," and the Panel's indication 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, <https://www.icann.org/en/system/files/files/irp-agit-final-declaration-30nov17-en.pdf>.) 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 .HALAL and .ISLAM and would assist the Board in making its determination as to whether or not AGIT's applications should proceed. The Board therefore 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>.)

Pursuant to the Board’s directive, the BAMC reviewed the GAC non-consensus advice and the opinions expressed in the dialogue between members of the Board and concerned members of the GAC on 18 July 2013, and reviewed the additional relevant materials related to the .HALAL and .ISLAM matter – including the comments received both in support of and in opposition to the applications; the correspondence from the governments of the Kuwait, Iran, Lebanon, and Indonesia, the Gulf Cooperation Council (representing six member States) and the OIC (representing 57 member States and 1.6 billion Muslims) expressing concerns and objections regarding the applications; the Resolutions issued by the OIC against the applications; the determination of the ICANN Independent Objector (IO), as well as AGIT’s first and second responses (December 2012 and February 2013) to the IO’s Initial Notice; the Expert Determinations dismissing the UAE’s community objections, which were issued based on the Expert’s belief that the OIC “remains neutral” as to the applications; and the GAC Buenos Aires Communiqué and correspondence indicating that “no further GAC input on this matter can be expected.” The BAMC also reviewed the endorsement letters submitted by AGIT in support of its applications, the correspondence from AGIT and its counsel, and the support letter submitted by the Republic of Mali in February 2014.

After extensive analysis and discussion, the BAMC has recommended that the Board direct the President and CEO, or his designee(s), that the pending application for .HALAL and the pending application for .ISLAM not proceed. The BAMC made this recommendation based not only on its review of all relevant materials, but also on its consideration and commitment to ICANN’s Mission and core values set forth in the Bylaws, including ensuring that this decision is in the best interests of the Internet community and that it respects the concerns raised by the majority of the community most impacted by the proposed .HALAL and .ISLAM gTLDs.

BOARD ACCOUNTABILITY MECHANISMS COMMITTEE

RECOMMENDATION:

The BAMC recommends that the Board direct the President and CEO, or his designee(s), that the pending application for .HALAL and the pending application for .ISLAM not proceed.

PROPOSED RESOLUTION:

Whereas, ICANN organization received the Final Declaration in the Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti. (AGIT) v. ICANN Independent Review Process (IRP).

Whereas, among other things, the IRP Panel declared that AGIT is the prevailing party, and ICANN shall reimburse AGIT its IRP costs. (Final Declaration, paras. 151, 156.)

Whereas, in the Final Declaration, 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,” and noted 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.)

Whereas, in accordance with Article IV, section 3.21 of the applicable version of the Bylaws, the Board considered the Final Declaration at its meeting on 15 March 2018.

Whereas, at its 15 March 2018 meeting, the Board accepted that the IRP Panel declared AGIT as the prevailing party, directed the President and CEO to take all steps necessary to reimburse AGIT its IRP costs, and directed the Board Accountability Mechanisms Committee (BAMC) to re-review the GAC non-consensus advice (as defined in Section 3.1 subparagraph II of the Applicant Guidebook) as well as the subsequent communications from or with objecting and supporting parties, in light of the Final Declaration, and 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.>)

Whereas, the BAMC re-reviewed the GAC non-consensus advice regarding the .HALAL and .ISLAM applications, and conducted the requested further review and consideration of the relevant materials.

Whereas, the BAMC has recommended that the Board direct the President and CEO, or his designee(s), that the pending application for .HALAL and the pending application for .ISLAM not proceed; the Board agrees.

Whereas, the BAMC recommended this action based not only on the BAMC's extensive review of all relevant materials, but also on its consideration of and commitment to ICANN's Mission and core values set forth in the Bylaws, including ensuring that this decision is in the best interest of the Internet community and that it respects the concerns raised by the majority of the community most impacted by the proposed .HALAL and .ISLAM gTLDs; the Board agrees.

Resolved (2018.10.03.XX), the Board directs the President and CEO, or his designee(s), that the pending application for .HALAL and the pending application for .ISLAM not proceed.

PROPOSED RATIONALE:

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 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 at its 15 March 2018 meeting. After thorough review and consideration of the Panel’s findings and recommendation, 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.

Board Accountability Mechanisms Committee Review and Recommendation:

Pursuant to the Board’s directive, the BAMC reviewed the GAC non-consensus advice

regarding the .HALAL and .ISLAM applications in the 11 April 2013 Beijing Communiqué, indicating 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>.) In conjunction, the BAMC also re-reviewed the GAC Early Warning notices submitted in November 2012 by the UAE and India against both applications, expressing serious concerns regarding a perceived lack of community involvement in, and support for, the .HALAL and .ISLAM applications, and noting concerns regarding a lack of mechanisms to prevent abuse of the gTLDs. (Early Warnings, <https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings>.) The BAMC also reviewed the opinions expressed in the dialogue between members of the Board and concerned members of the GAC, which occurred on 18 July 2013 in accordance with the steps required when the GAC provides non-consensus advice to the Board pursuant to Module 3.1 (subparagraph II) of the Guidebook. 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 “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.”
- 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.

In addition, and in accordance with the Board’s Resolution, the BAMC reviewed and considered the additional relevant materials related to the .HALAL and .ISLAM matter – including the comments submitted by the ICANN community regarding the applications; the correspondence from the governments of the Kuwait, Iran, Lebanon, and Indonesia, the Gulf Cooperation Council (representing six member States) and the OIC (representing 57 member States and 1.6 billion Muslims) expressing concerns and objections regarding the applications; the Resolutions issued by the OIC against the applications; the determination of the ICANN Independent Objector (IO), as well as AGIT’s first and second responses (December 2012 and February 2013) to the IO’s Initial Notice; the Expert Determinations dismissing the UAE’s community objections, which were issued based on the Expert’s belief that the OIC “remains neutral” as to the applications; the GAC Buenos Aires Communiqué and correspondence indicating that “no further GAC input on this matter can be expected.” The BAMC also reviewed the endorsement letters submitted by AGIT in support of its applications, the correspondence from AGIT and its counsel, and the support letter submitted by the Republic of Mali in February 2014.

After extensive analysis and discussion, and after considering various options regarding the .HALAL and .ISLAM applications, the BAMC recommended that the Board direct the President and CEO, or his designee(s), that the pending application for .HALAL and the pending application for .ISLAM submitted by AGIT not proceed. The BAMC recommended this action based not only on its due diligence and care in reviewing all relevant materials, but also on its consideration and commitment to ICANN's Mission and core values set forth in the Bylaws, including ensuring that this decision is in the best interest of the Internet community and that it respects the concerns raised by the majority of the community most impacted by the proposed .HALAL and .ISLAM gTLDs.

Board Consideration:

The Board agrees with the BAMC's recommendation to not proceed with the pending application for .HALAL and the pending application for .ISLAM.

The Board, in exercising its independent judgment, thinks that not proceeding with AGIT's .HALAL and .ISLAM applications is the right thing to do based upon the Board's review and analysis of the GAC non-consensus advice, the 18 July 2013 dialogue with concerned members of the GAC, the materials relevant to the .HALAL and .ISLAM matter (in particular, the Resolutions adopted by and the communications from the OIC), the discretion conferred upon the Board by the Guidebook, and the Mission and core values set forth in ICANN's Bylaws.

The Board acknowledges and appreciates that AGIT included a proposed governance model in its applications in an attempt to alleviate potential concerns by the Muslim community regarding the management and operation of the proposed .HALAL and .ISLAM gTLDs, that AGIT submitted over 300 additional letters of support for the .HALAL and .ISLAM applications from various individuals and entities within the Muslim community (dated approximately 2012-2013), and that approximately 30 comments were submitted by the community in support of each application (in 2012). The Board also notes that in AGIT's responses to the IO's Initial Notice, AGIT explained 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, Afganistan, Tajikistan, and Uzbekistan Ministries. (First Response (26 December 2012) and Second

Response (20 February 2013), <https://www.independent-objector-newgtlds.org/home/the-independent-objector-s-comments-on-controversial-applications/islam-general-comment/>.) AGIT further noted 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 OIC), requesting that they provide feedback on the draft. AGIT also noted a “positive” conversation it had with the UAE GAC representative regarding AGIT’s .HALAL and .ISLAM applications.

Nevertheless, despite these efforts, the majority of the Muslim population as well as several of the specific governments and representative entities noted above by AGIT continue to object to AGIT’s applications for .HALAL and .ISLAM. AGIT, through its counsel, argues that it has not received any response from the objecting parties regarding AGIT’s proposed governance model. However, the objecting parties have effectively responded by continuing to voice their objections to the applications, which are publicly posted on ICANN’s website. After AGIT made efforts to reach out and provide a draft of its proposal to various parties (as noted in AGIT’s December 2012 and February 2013 IO responses), those governments and representative entities continued to object to the applications.

On 11 April 2013, the GAC issued the Beijing Communiqué indicating that “[s]ome 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 application should not proceed.” (Beijing Communiqué, <https://www.icann.org/en/system/files/correspondence/gac-to-board-11apr13-en.pdf>.) In the 18 July 2013 Board/GAC dialogue, representatives from the UAE (on behalf of itself, Saudi Arabia, and the OIC), Malaysia, and Turkey reiterated their concerns regarding the applications (as noted in detail above). On 25 July 2013, the State of Kuwait and the Gulf Cooperation Council each sent letters to ICANN 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).”

(<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>.) In August and November 2013, the Islamic Republic of Iran sent letters to ICANN indicating: “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.” (See <https://www.icann.org/en/system/files/correspondence/mahdoiun-to-chalaby-icann-board-09aug13-en.pdf>.) Additional letters were received in 2013 from the Republics of Lebanon and Indonesia similarly expressing concerns regarding the applications. (See <https://www.icann.org/en/system/files/correspondence/hoballah-to-chalaby-et-al-04sep13-en.pdf>; and <https://www.icann.org/en/system/files/correspondence/iskandar-to-chalaby-24dec13-en.pdf>.)

Most noteworthy are the Resolutions passed and the correspondence sent by the OIC, which consists of 57 member States and represents over 1.6 billion members of the Muslim community. The OIC began voicing its objections against the applications as early as December 2013 (if not earlier) and has continued to do so as recently as April 2018:

- 11 December 2013 OIC Resolution against the .HALAL and .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.” (OIC Resolution, <https://www.oic-oci.org/subweb/cfm/40/fm/en/docs/IT-%2040-CFM-FINAL-ENG.pdf>.)
- 19 December 2013 OIC letter to ICANN: “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.” (19 December 2013 letter, <https://www.icann.org/en/system/files/correspondence/ihsanoglu-to-crocker-19dec13-en.pdf>.)

- 11 July 2017 OIC Resolution against the .HALAL and .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.” (OIC Resolution, https://www.oic-oci.org/subweb/cfm/44/en/docs/final/44cfm_res_it_en.pdf.)
- 15 April 2018 OIC letter to ICANN: “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].” (15 April 2018 letter, <https://www.icann.org/en/system/files/correspondence/al-othaimeen-to-chalaby-15apr18-en.pdf>.)

Based upon the Board’s review of the relevant materials, its extensive due diligence, and its dialogue with concerned members of the GAC regarding .HALAL and .ISLAM, it is apparent that the vast majority of the Muslim community (more than 1.6 billion members) object to the applications for .HALAL and .ISLAM. It should be noted that, in February 2014, the ICANN Board sent a letter to AGIT – noting the substantial opposition to AGIT’s applications; listing 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,” with detail as to the concerns of each; and providing AGIT with additional time to reach out to the objecting parties. (7 February 2014 letter, <https://www.icann.org/en/system/files/correspondence/crocker-to-abbasnia-07feb14-en.pdf>.) It is unclear whether or not AGIT made such additional efforts. Two weeks later (on 21 February 2014), AGIT initiated the Cooperative Engagement Process

and, ultimately, the IRP Panel determined that placing the applications on hold was inconsistent with ICANN's Articles and Bylaws, and that the Board should "make a decision on the application[s] (one way or another) with integrity and fairness." In addition to the extensive objections against the applications voiced prior to the IRP Final Declaration, the OIC again reiterated the "unanimous" objection of the Foreign Ministers of its 57 member States in April 2018, months after the IRP Final Declaration.

Under these circumstances, taking the decision to not proceed with the current .HALAL and .ISLAM applications, after reviewing and considering the objections raised by the countries and entities representing the majority of the Muslim community, is in the public interest, is in accordance with the Guidebook provisions that confer upon the Board the discretion to consider individual applications and whether they are in the best interest of the Internet community, and reflects the Board's commitment to ICANN's Mission and core values set forth in the Bylaws, including ensuring that this decision is in the best interest of the Internet community and that it respects the concerns raised by the majority of the community most impacted by the proposed .HALAL and .ISLAM gTLDs.

Specifically, Section 5.1 of the Guidebook provides: "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 the use of an ICANN accountability mechanism." (Guidebook, Section 5.1, <https://newgtlds.icann.org/en/applicants/agb>.) Moreover, in applying for the gTLDs, the applicant acknowledged and agreed that the Board has the discretion to make such a decision – "Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more gTLDs and to delegate new gTLDs after such approval is entirely at ICANN discretion." (Guidebook, Section 5.1, <https://newgtlds.icann.org/en/applicants/agb>.)

This decision is also in keeping with ICANN's core values as set forth in the operative Bylaws, in particular those mentioned below, in that it takes into consideration the broad, informed participation of the Internet community and those members most affected, it respects ICANN's accountability mechanisms, and it recognizes the concerns expressed by the countries and entities representing the majority of the affected community (Bylaws, <https://www.icann.org/resources/pages/bylaws-2012-02-25-en>; and similarly reflected in the current Bylaws,

<https://www.icann.org/resources/pages/governance/bylaws-en>):

- 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.
- 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.
- Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.
- 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.

While the Board strives to follow all the core values in making its decisions, it is also the Board's duty to exercise its independent judgment to determine if certain core values are particularly relevant to a given situation. And, in fact, the operative Bylaws anticipate and acknowledge that ICANN may not be able to comply with all the core values in every decision made and allows for the Board to exercise its judgment in the best interests of the Internet community: "...because [the core values] are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. Any ICANN body making a recommendation or decision shall 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." (Bylaws, <https://www.icann.org/resources/pages/bylaws-2012-02-25-en>.)

Taking this decision is within ICANN's Mission as the ultimate result of ICANN's consideration of this matter is a key aspect of coordinating the allocation and assignment of names in the root zone of the domain name system (DNS). Further, the Board's decision is in the public interest, taking into consideration and balancing the goals of resolving outstanding new gTLD disputes, respecting ICANN's accountability mechanisms and advisory committees, recognizing the input received from the Internet community, and abiding by the policies and procedures set forth in the Guidebook, which were developed through a bottom-up consensus-based multistakeholder process over numerous years of community efforts and input, and is consistent with ICANN's core values.

Taking this decision is not expected to have a direct financial impact on the ICANN organization and will not have any direct impact on the security, stability or resiliency of the domain name system.

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

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

Pages 30-37 Removed - No Resolutions taken on agenda item

AGENDA – 3 OCTOBER 2018 SPECIAL BOARD MEETING – 90 minutes

Time, etc.	Agenda Item	Shepherd
Assembly, Roll Call & Consent Agenda Vote	1. Main Agenda	
90 min (including time for Board Info Call preceding Board Meeting)	1.a. Further Consideration of the Gulf Cooperation Council v. ICANN Independent Review Process Final Declarations	Chris Disspain
	1.b. Further Consideration of the Asia Green IT System v. ICANN Independent Review Process Final Declaration	Chris Disspain
	1.c. Consideration of Reconsideration Request 18- 8: Afilias Domains No. 3 Limited	Chris Disspain
	1.d. AOB	

Directors and Liaisons,

Attached below please find Notice of date and time for a Special Meeting of the ICANN Board (if needed) following the scheduled Board Informational Call on 3 October 2018 at 20:00 UTC.

Privileged and Confidential

3 October 2018 – Special Meeting of the ICANN Board of Directors - at 20:00 UTC. This Board meeting (if needed) is estimated to last approximately 90 minutes (which includes the time for the Informational Call).

<https://www.timeanddate.com/worldclock/fixetime.html?msg=Board+Info+Call%3A+3+Oct&iso=20181003T20&p1=1440&ah=1&am=30>

Some other time zones:

3 October 2018 – 1:00pm PDT Los Angeles

3 October 2018 – 4:00pm EDT Washington, D.C.

3 October 2018 – 10:00pm CEST Brussels

4 October 2018 – 5:00am JST Tokyo

SPECIAL MEETING OF THE ICANN BOARD

Main Agenda

- .PERSIANGULF
- .HALAL/.ISLAM
- Reconsideration Request 18-8: Afilias Domains No. 3 Limited
- AOB

MATERIALS – You can access the Board Informational Call materials and (T) Board Meeting materials, when available, in Google Drive here:

Contact Information Redacted

If you have trouble with access, please let us know and we will work with you to assure that you get access to the documents.

If call information is required, it will be distributed separately.

If you have any questions, or we can be of assistance to you, please let us know.

John Jeffrey

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