

Response to Documentary Information Disclosure Policy Request

To: Mike Rodenbaugh

Date: 10 October 2015

Re: Request No. 20150910-1

Thank you for your Request for Information dated 10 September 2015 (Request), which was submitted through the Internet Corporation for Assigned Names and Numbers' (ICANN's) Documentary Information Disclosure Policy (DIDP), on behalf of Asia Green IT System Ltd. (AGIT). For reference, a copy of your Request is attached to the email forwarding this Response.

Items Requested

Your Request seeks disclosure of the following documents:

1. 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 AGIT's applications for .HALAL and .ISLAM.
2. All records of the NGPC meeting with GAC members in Durban relating to these applications, referenced in the February 7, 2014 letter to AGIT.
3. All documents considered by the Board in coming to its February 5, 2014 resolution and February 7, 2014 letter to AGIT.
4. All documents considered by the Board Governance Committee (BGC) and New gTLD Program Committee (NGPC) in rejecting AGIT's Request for Reconsideration of that resolution.
5. All documents regarding any effort by ICANN to facilitate resolution of the purported "conflicts" referenced in the February 7 letter.
6. 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.

Response

All but one of your Request seeks documents related to AGIT's applications for .HALAL and .ISLAM. In its Beijing Communiqué, the Governmental Advisory Committee (GAC) advised the ICANN Board:

[w]ith regard to Module 3.1 part II of the Applicant Guidebook:...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.

(Beijing Communiqué, § IV.1.a.i.ii.1, <https://www.icann.org/en/system/files/correspondence/gac-to-board-11apr13-en.pdf>.) Prior to the issuance of the Beijing Communiqué, the applications received GAC Early Warning notices from two GAC members: (i) the United Arab Emirates (“UAE”) (<https://gacweb.icann.org/download/attachments/27131927/Islam-AE-23450.pdf>; <https://gacweb.icann.org/download/attachments/27131927/Halal-AE-60793.pdf>); and (ii) India (<https://gacweb.icann.org/download/attachments/27131927/Islam-IN-23459.pdf>; <https://gacweb.icann.org/download/attachments/27131927/Halal-IN-60793.pdf>.) Both members expressed serious concerns regarding the AGIT’s Applications, including a perceived lack of community involvement in, and support for, the AGIT’s Applications. (*See id.*)

On 4 June 2013, the NGPC adopted the NGPC Scorecard (“4 June 2013 Resolution”) setting forth the NGPC’s response to the GAC Advice found in the Beijing Communiqué (“NGPC Scorecard”). (<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04jun13-en.htm#1.a>; <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-04jun13-en.pdf>.) With respect to the .ISLAM and .HALAL strings, the NGPC Scorecard stated in pertinent part:

The NGPC accepts [the GAC] advice. The AGB provides that if “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.” Pursuant to Section 3.1ii of the [Guidebook], the NGPC stands ready to enter into dialogue with the GAC on this matter. We look forward to liaising with the GAC as to how such dialogue should be conducted.

(NGPC Scorecard, Pg. 3.) The NGPC Scorecard further noted the Community Objections filed against the AGIT’s Applications and indicated that “these applications cannot move to the contracting phase until the objections are resolved.” (*Id.*)

Module 3.1 of the AGB states that GAC Advice may take several forms. Part II of the Module 3.1 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.

(AGB § 3.1.II, <http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf>.)

Pursuant to Module 3.1, part II, the ICANN New gTLD Program Committee (NGPC) and some members of the GAC met during the ICANN 47 meeting in Durban to discuss the concerns about the .HALAL and .ISLAM applications. (See Annex 1 to NGPC Resolution 2014.02.05.NG01 at <https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-05feb14-en.pdf>.)

On 25 July 2013, the Ministry of Communications for the State of Kuwait sent a letter to ICANN expressing its support for UAE's Community Objections and identifying concerns that the AGIT did not receive the support of the community, the AGIT's Applications are not in the best interest of the Islamic community, and the strings "should be managed and operated by the community itself through a neutral body that truly represents the Islamic community such as the Organization of Islamic Cooperation." (<http://www.icann.org/en/news/correspondence/al-qattan-to-icann-icc-25jul13-en.pdf>)

On 4 September 2013, in a letter to the NGPC Chairman, the Republic of Lebanon expressed general support for the .ISLAM and .HALAL strings, but stated that it strongly believes "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." (<http://www.icann.org/en/news/correspondence/hoballah-to-chalaby-et-al-04sep13-en.pdf>.)

On 4 November 2013, the Secretary General of the Organization of Islamic Cooperation ("OIC") submitted a letter to the GAC Chair, stating that, as the "second largest intergovernmental organization with 57 Member States spread across four continents" and the "sole official representative of 1.6 million Muslims," the Member States of the OIC officially opposed the use of the .ISLAM and .HALAL strings "by any entity not representing the collective voice of the Muslim people". (<http://www.icann.org/en/news/correspondence/crocker-to-dryden-11nov13-en.pdf>.)

On 11 November 2013, having received a copy of the OIC's 4 November 2013 letter, the ICANN Board Chairman sent a letter to the GAC Chair, noting that the NGPC has not taken any final action on the .ISLAM and .HALAL applications while they were subject to formal objections. The letter further stated that since the objection proceedings have concluded, the NGPC will wait for any additional GAC input regarding the strings and stands ready to discuss the applications if additional dialog would be helpful. (See <https://www.icann.org/en/news/correspondence/crocker-to-dryden-11nov13-en>.)

On 21 November 2013, the GAC issued its Buenos Aires Communiqué, which stated the following with respect to the AGIT's Applications:

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.

(Buenos Aires Communiqué, Pg. 4, available at https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_GAC_Communique_20131120.pdf?version=1&modificationDate=1385055905332&api=v2.)

On 29 November 2013, the GAC Chair responded to the ICANN Board Chairman's 11 November 2013 correspondence, confirming that the GAC has concluded its discussion on the AGIT's Applications and stating that "no further GAC input on this matter can be expected." (<http://www.icann.org/en/news/correspondence/dryden-to-crocker-29nov13-en.pdf>.)

On 4 December 2013, AGIT submitted a letter to the ICANN Board Chairman requesting contracts for .ISLAM and .HALAL "as soon as possible." (<http://www.icann.org/en/news/correspondence/abbasnia-to-crocker-04dec13-en.pdf>.)

On 19 December 2013, the Secretary General of the OIC sent a letter to the ICANN Board Chairman, stating that the Foreign Ministers of the 57 Muslim Member States of the OIC have unanimously approved and adopted a resolution officially objecting to the .ISLAM and .HALAL strings and indicating that the resolution "underlines the need for constructive engagement between the ICANN and OIC as well as between ICANN and OIC Member States." (<http://www.icann.org/en/news/correspondence/ihsanoglu-to-crocker-19dec13-en.pdf>.)

On 24 December 2013, the Ministry of Communication and Information Technology on behalf of the government of Indonesia sent a letter to the NGPC Chairman, stating that Indonesia "strongly objects" to the .ISLAM string and, in principle, "approves" the .HALAL string "provided that it is managed properly and responsibly." (<http://www.icann.org/en/news/correspondence/iskandar-to-chalaby-24dec13-en.pdf>.)

On 30 December 2013, the AGIT submitted a letter to the ICANN Board Chairman challenging the nature and extent of the OIC's opposition to the AGIT's Applications, reiterating its proposed policies and procedures for governance of .ISLAM and .HALAL, and requesting to proceed to the contracting phase. (<http://www.icann.org/en/news/correspondence/abbasnia-to-crocker-30dec13-en.pdf>.)

On 5 February 2014, the NGPC adopted an updated iteration of the NGPC Scorecard ("Actions and Updates Scorecard"). (5 February 2014 Resolution, available at <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-05feb14-en.htm#1.a.rationale>; Actions and Updates Scorecard, available at <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-05feb14-en.pdf>.) With respect to the AGIT's Applications, the NGPC's Actions and Updates Scorecard stated in pertinent part:

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.

(Action and Updates Scorecard, Pg. 8.) In accordance with Module 3.1, part II, the NGPC provided a detailed explanation for its decision in the Rationale to Resolution 2014.02.05.NG01 at <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-02-05-en#1.a.rationale> and in Annex 1 (<https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-05feb14-en.pdf>). In addition, the NGPC directed the transmission of a letter from the NGPC, via the Chairman of the Board, to the AGIT. (<http://www.icann.org/en/news/correspondence/crocker-to-abbasnia-07feb14-en.pdf>.)

On 7 February 2014, Dr. Steve Crocker, Chair of the ICANN Board sent a letter to Mehdi Abbasnia, Chairman and Managing Director of AGIT. The letter acknowledges AGIT's stated commitment to a multi-stakeholder governance model, but states:

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.

(*See id.*)

Item No. 1 seeks the disclosure of 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 AGIT's applications for .HALAL and .ISLAM. These documents have been published on ICANN's correspondence page and include the following: <https://www.icann.org/en/news/correspondence/al-qattan-to-icann-icc-25jul13-en>, <https://www.icann.org/en/news/correspondence/mahdoiun-to-chalaby-icann-board-09aug13-en>, <https://www.icann.org/en/news/correspondence/hoballah-to-chalaby-et-al-04sep13-en>, <https://www.icann.org/en/system/files/correspondence/mahdioun-to-chehade-et-al-20nov13-en.pdf>, <https://www.icann.org/en/system/files/correspondence/ihsanoglu-to-crocker-19dec13-en.pdf>, <https://www.icann.org/en/news/correspondence/iskandar-to-chalaby-24dec13-en>, <https://www.icann.org/en/system/files/correspondence/kamel-to-iskandar-24jan14-en.pdf>, and <https://www.icann.org/en/system/files/correspondence/hawa-diakite-to-crocker-03feb14-en.pdf>. In addition, we note that the attached letter from Dr. Crocker to Mr. Ekmeleddin İhsanoğlu, dated 13 January 2014, is also responsive to this request but was inadvertently not published on the correspondence page. We will publish it on the correspondence page.

Item No. 2 seeks the disclosure of all records of the NGPC meeting with GAC members in Durban relating to these applications, referenced in the February 7, 2014 letter to AGIT. All non-privileged documents responsive to this request have been published, including, without limitation, <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-05feb14->

[en.pdf](#). To the extent there are other documents responsive to this item, they are subject to the following DIDP Defined Conditions for Nondisclosure:

- Information provided by or to a government or international organization, or any form of recitation of such information, in the expectation that the information will be kept confidential and/or would or likely would materially prejudice ICANN's relationship with that party.
- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.
- Information subject to the attorney– client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.

Item No. 3 seeks all documents considered by the Board in coming to its February 5, 2014 resolution and February 7, 2014 letter to AGIT. The 5 February 2014 Resolution and Rationale set forth the materials reviewed by the NGPC as part of its deliberations, including, without limitation, the following:

- GAC Beijing Communiqué
(https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130718.pdf?version=1&modificationDate=1375787122000&api=v2)
- GAC Durban Communiqué
(https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130717.pdf?version=1&modificationDate=1374215119858&api=v2)
- GAC Buenos Aires Communiqué
(https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_GAC_Communique_20131120.pdf?version=1&modificationDate=1385055905332&api=v2)

- Applicant responses to GAC advice (<http://newgtlds.icann.org/en/applicants/gac-advice/>)
- Applicant Guidebook, Module 3 (<http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf>)

(See <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-02-05-en#1.a>.) The Board briefing materials for the 5 February 2014 meeting have been published at <https://www.icann.org/en/groups/board/documents/briefing-materials-1-05feb14-en.pdf>. To the extent there are other documents responsive to this item, they are subject to the following DIDP Defined Conditions for Nondisclosure:

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- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.
- Information subject to the attorney– client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.

Item No. 4 seeks all documents considered by the BGC and NGPC in rejecting AGIT's Request for Reconsideration of that resolution. The documents considered by the BGC in its consideration on AGIT's Reconsideration Request 14-7 are set forth in the BGC's Recommendation to Request 14-7 available at

<https://www.icann.org/en/groups/board/governance/reconsideration/14-7/recommendation-agit-13mar14-en.pdf>, which includes, without limitation, the documents cited above, as well as

<https://www.icann.org/en/groups/board/governance/reconsideration/14-7/request-agit-26feb14-en.pdf>, <https://www.icann.org/en/groups/board/governance/reconsideration/14-7/request-agit-exhibit-26feb14-en.pdf>,

<https://www.icann.org/en/groups/board/governance/reconsideration/14-7/request-attachment-agit-1-28feb14-en.pdf>,
<https://www.icann.org/en/groups/board/governance/reconsideration/14-7/request-attachment-agit-2-28feb14-en.pdf>,
<https://www.icann.org/en/groups/board/governance/reconsideration/14-7/request-attachment-agit-3-28feb14-en.pdf>,
<https://www.icann.org/en/groups/board/governance/reconsideration/14-7/request-attachment-agit-4-28feb14-en.pdf>,
<https://www.icann.org/en/groups/board/governance/reconsideration/14-7/request-attachment-agit-5-28feb14-en.pdf>, and
<https://www.icann.org/en/groups/board/governance/reconsideration/14-7/request-attachment-agit-6-28feb14-en.pdf>. In addition, the minutes of the BGC 13 March 2014 meeting have been published at <https://www.icann.org/en/groups/board/documents/minutes-bgc-13mar14-en.htm>. Similarly, the document considered by the NGPC in Resolution 2014.03.22.NG04 adoption the BGC's Recommendation on Request 14-7 are set forth in the Rationale for Resolution 2014.03.22.NG04, available at <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-03-22-en#1.e>. Additionally, the Board briefing materials for the 22 March 2014 NGPC meeting are available at <https://www.icann.org/resources/pages/2014-2015-01-28-en>. Further, the Minutes of the 22 March 2014 NGP C meeting are available at <https://www.icann.org/en/groups/board/documents/minutes-new-gtld-22mar14-en.htm>.

To the extent there are other documents responsive to this item, they are subject to the following DIDP Defined Conditions for Nondisclosure:

- Information provided by or to a government or international organization, or any form of recitation of such information, in the expectation that the information will be kept confidential and/or would or likely would materially prejudice ICANN's relationship with that party.
- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.

- Information subject to the attorney– client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

Item No. 5 seeks the disclosure of all documents regarding any effort by ICANN to facilitate resolution of the purported "conflicts" referenced in the 7 February letter from Dr. Crocker to AGIT. This request seems to be premised on the mistaken belief that ICANN's Chairman suggested in his letter that ICANN would facilitate the resolution referenced in the 7 February 2014 letter. He did not. Specifically, the letter states:

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.

(<https://www.icann.org/en/system/files/correspondence/crocker-to-abbasnia-07feb14-en.pdf>.) To the extent there are any documents responsive to this item, they are subject to the following DIDP Defined Conditions for Nondisclosure:

- Information provided by or to a government or international organization, or any form of recitation of such information, in the expectation that the information will be kept confidential and/or would or likely would materially prejudice ICANN's relationship with that party.
- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.
- Information subject to the attorney– client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.

- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

With respect to Item No. 6, except for the GAC designated confidential information, ICANN has unredacted the IRP Final Declaration in the DotConnectAfrica Trust IRP, as well as all papers filed by the parties and the hearing transcripts (see <https://www.icann.org/resources/pages/dca-v-icann-2013-12-11-en>). With respect to the GAC designated confidential information, such information is subject to the following DIDP Defined Conditions for Nondisclosure:

- Information provided by or to a government or international organization, or any form of recitation of such information, in the expectation that the information will be kept confidential and/or would or likely would materially prejudice ICANN's relationship with that party.
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.

About DIDP

ICANN's DIDP is limited to requests for documentary information already in existence within ICANN that is not publicly available. In addition, the DIDP sets forth Defined Conditions of Nondisclosure. To review a copy of the DIDP, please see <http://www.icann.org/en/about/transparency/didp>. ICANN makes every effort to be as responsive as possible to the entirety of your Request. As part of its accountability and transparency commitments, ICANN continually strives to provide as much information to the community as is reasonable. We encourage you to sign up for an account at MyICANN.org, through which you can receive daily updates regarding postings to the portions of ICANN's website that are of interest because, as we continue to enhance our reporting mechanisms, reports will be posted for public access.

We hope this information is helpful. If you have any further inquiries, please forward them to didp@icann.org.

Attachment



The Internet Corporation for Assigned Names and Numbers

13 January 2014
Mr. Ekmeleddin İhsanoğlu
Secretary General of the Organization of Islamic Cooperation

Dear Mr. İhsanoğlu,

Thank you for your letter dated 19 December 2013 regarding the new gTLD applications of .islam and .halal.

We received with great interest the news about the Resolution on preserving gTLDs with Islamic identity that was unanimously adopted by OIC's 57 Member States in the Fortieth Session of the Council of Foreign Ministers held in Conakry, Republic of Guinea, on 9-11 December 2013. I have forwarded the Resolution to the New gTLD Program Committee of the ICANN Board (NGPC) for their consideration. The time window for formal objections on new gTLD strings has ended, but we will have to wait for the consideration and decision of the NGPC according to their rules and procedures.

On the other hand, I am delighted that one of articles of the Resolution encourages the OIC and its Member States to become more active in ICANN, which we surely welcome and support as ICANN Board and staff. This will build the necessary bridges for engagement and dialogue and foster the cooperation between our two organizations in the future. We were pleased to see the OIC become an observer at ICANN's Government Advisory Committee (GAC), and look forward to an era of more active participation of OIC's Member States in the GAC as well as in other ICANN constituencies. The active engagement will enrich constituencies and support ICANN's constant efforts to become more global and inclusive. In this respect, I would like to propose that the ICANN Regional VP for the Middle East, Baher Esmat, work closely with your team to foster more active engagement with OIC and its Member States, and I count on your support to this effort.

Once again, thank you for your communication and we look forward to working more closely with OIC and its Member States.

Sincerely,

Stephen D. Crocker, Chair
ICANN Board of Directors