

**IN THE MATTER OF AN INDEPENDENT REVIEW PROCESS BEFORE THE
INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION**

Asia Green IT System Bilgisayar San. ve)
Tic. Ltd. Sti.,)
)
Claimant,)
)
vs.)
)
Internet Corporation For Assigned Names)
And Numbers,)
)
Respondent.)
)
_____)

ICDR Case No. _____

**REQUEST FOR INDEPENDENT REVIEW PROCESS
BY ASIA GREEN IT SYSTEM BILGISAYAR SAN. VE TIC. LTD. STI.**

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Claimant Asia Green IT Systems Bilgisayar San. ve Tic. Ltd. Sti. (“AGIT”) is the sole applicant to ICANN to operate the .Islam and .halal top-level domain spaces. AGIT hereby requests Independent Review of ICANN’s decision to place AGIT’s applications indefinitely “On Hold”, and related decisions of ICANN’s Board and/or Staff. AGIT requests that contracts for these TLDs be issued by ICANN immediately, as AGIT has met all of ICANN’s documented criteria.

I. FACTUAL BACKGROUND

1. ICANN and the New TLD Program

ICANN is a public benefit corporation, chartered to “pursue the charitable and public purposes of lessening the burdens of government and promoting the global public interest in the operational stability of the Internet”, and to develop “policies for determining the circumstances under which new top-level domains are added to the DNS root system.”¹

From 2005 to 2011 — fully six years — the ICANN Board tasked its Generic Names Supporting Organization (“GNSO”)² to develop a program to introduce new top-level domains (TLDs) into the domain name system.³ The purpose of the New gTLD Program (the “Program”) was to “open up the top level of the Internet’s namespace to foster diversity, encourage competition, and enhance the utility of the DNS.”⁴ Via its lengthy community deliberations, the GNSO developed

¹ ICANN Articles of Incorporation, Art. 3, <https://www.icann.org/resources/pages/governance/articles-en>.

² The GNSO is composed of seven different Constituencies, each with clear interests in the generic DNS namespace, and each composed of dozens or hundreds of different member organizations, entities and individuals. The Constituencies are each represented on the GNSO Council, which oversaw dozens of Working Groups tasked with specific policy development for the Program, each Working Group consisting of dozens of volunteers with expertise and interest in that area. From all of that work, the GNSO devised its fundamental Principles and Recommendations for the New gTLD Program, which were adopted unanimously by the GNSO Council, and then by a Super-majority of the ICANN Board. *See* ICANN GNSO, Stakeholder Groups and Constituencies, <http://gnso.icann.org/en/about/stakeholders-constituencies>; *also see* ICANN GNSO, *Final Report - Introduction of New Generic Top-Level Domains* (Aug. 8, 2007), http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm#_Toc43798015.

³ ICANN, *About the Program*, <https://newgtlds.icann.org/en/about/program>.

⁴ ICANN, gTLD Final Applicant Guidebook, Sec. 1.1.5.

and the ICANN Board approved seven “Guiding Principles” and 19 “Recommendations” for the Program. Among the Guiding Principles, the GNSO stated that the new gTLDs “must be introduced in an orderly, timely and predictable way.”⁵ The Recommendations also supported this important Principle. Recommendation 1 stated:

The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.⁶

Accordingly, ICANN developed an “Applicant Guidebook” (“Applicant Guidebook”) over several years, including input from specialized, community Working Groups (each with its own iterative rounds of public comment and Constituency comment), and four iterative rounds of formal public comment, government comment and Constituency comment to the overall Applicant Guidebook.⁷

The 400+ page Applicant Guidebook was incorporated into AGIT’s contract with ICANN, and provided clear and equal criteria for all applications in accord with Recommendation 1, to account for all possible application types and conflict scenarios. ICANN estimated that the lifecycle for an application that passed Initial Evaluation, prevailed in an objection process, and did not involve multiple applications for the string would be 14 months.⁸ The subject applications fit this criteria, but have now gone nearly four years without resolution — and with no resolution in sight.

Each application consisted of several hundred pages of text and attachments, providing detailed responses to 50 pointed questions designed to glean the applicant’s foundational, technical, operational and financial wherewithal to operate a TLD registry. Each application cost at least several hundred thousands of dollars in fees to ICANN and to consultants and service providers necessary to fulfill ICANN’s requirements. Each application was required to undergo a thorough evaluation by experts appointed and trained by ICANN, as documented in great detail in the

⁵ *Id.*

⁶ *Id.*

⁷ See ICANN, *Applicant Guidebook*, <https://archive.icann.org/en/topics/new-gtlds/dag-en.htm>.

⁸ Applicant Guidebook, Sec. 1.1.5, Scenario 4, *quoted infra*, p.6.

Applicant Guidebook. More than 1900 applications were submitted from across the world, for more than 1000 unique TLD strings, including, .Islam and .halal.⁹

2. AGIT — the Sole Applicant to Operate .Islam and .Halal

AGIT is a Turkish corporation that specializes in information and communication technology solutions. AGIT is the sole applicant to ICANN to operate the .Islam and .halal top-level domains (hereinafter collectively referenced as the subject “TLDs”).¹⁰ AGIT’s applications to ICANN were submitted in early 2012, and the public portions are attached as Annex 1.

AGIT’s stated purpose for the .Islam TLD is to:

open up the vast resources of the Internet and the interconnectedness it brings to the Muslim community, while stimulating the introduction of more information and resources among Muslims online. The .Islam gTLD is designed to accommodate a global community, ... thus serving Muslims and those interested in the Muslim faith all around the world – whilst simultaneously achieving ICANN’s goal of creating greater competition in the gTLD space.

AGIT’s stated purpose for the .halal TLD is to:

open [the internet] to those who embrace the concept and requirements of halal. ... The concept of halal has slowly become accepted as a consumer lifestyle choice encompassing not only religious practices and food, but also finance, non-food products and logistics. Halal provides a set of laws and guiding principles, and separates out those animals that are prohibited (‘haram’) and permitted (‘halal’). ... A robust gTLD has the power to bring together Muslims across national borders in a free-flowing exchange of information and commerce.

As of August 30, 2013, both of AGIT’s applications were approved by ICANN’s expert evaluation panels. The two ICANN reports are attached as Annex 2. In each case, ICANN

⁹ ICANN, *Program Statistics*, <http://newgtlds.icann.org/en/program-status/statistics>.

¹⁰ AGIT files this consolidated proceeding because ICANN thus far has treated both the .Islam and .halal TLD applications precisely the same. However, AGIT maintains that they are two separate TLDs, the subject of two separate applications (each requiring a separate \$185,000 application fee to ICANN), derived from two distinct common words and concepts, with distinct business models, and each subject to a separate evaluation by ICANN and its commissioned experts. AGIT maintains that ICANN, since approving the TLDs in August, 2013, subsequently has unfairly amalgamated them, ignoring key differences between them, and instead deciding to treat them as one and the same. *See also, infra*, n. 12, 28, 34.

congratulated AGIT for meeting all of ICANN’s voluminous, documented criteria, stating for each: “Congratulations! Based on the review of your application against the relevant criteria in the Applicant Guidebook (including related supplemental notes and advisories), your application has passed Initial Evaluation.”

The Applicant Guidebook specifically considered the scenario of AGIT’s applications, stating that when an application passes Initial Evaluation, prevails in an Objection proceeding, and does not face contention for the same string from any other applicant — it should therefore proceed to delegation. Section 1.1.5 of the Applicant Guidebook states (emphasis added):

Scenario 4 – Pass Initial Evaluation, Win Objection, No Contention – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. During the objection filing period, an objection is filed on one of the four enumerated grounds by an objector with standing (refer to Module 3, Objection Procedures). The objection is heard by a dispute resolution service provider panel that finds in favor of the applicant. The applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

AGIT did pass Initial Evaluation, did win the Community Objection brought against its applications, and had no contention from any other applicant — but ICANN has refused to issue contracts or to allow these strings to proceed to delegation. Thus, AGIT has filed this IRP complaint.

3. ICANN’s Independent Objector

ICANN’s New gTLD Program was carefully designed to protect the public interest by providing a path for parties to file formal objections to gTLD applications on certain grounds. A formal objection would trigger a documented dispute resolution proceeding by an expert panel provided by ICANN. One fundamental component of the objection process was the ICANN-appointed expert, the Independent Objector (“IO”). As contemplated by Applicant Guidebook Sec. 3.2.5, ICANN commissioned a renowned international legal practitioner and scholar, Professor Allain Pellet, to object to any application which he deemed either: 1) “contrary to generally accepted legal norms of morality and public order that are recognized under fundamental principles of international law” (“Limited Public Interest Objection”); or 2) there exists “substantial opposition to

the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted” (“Community Objection”).¹¹

The Independent Objector’s report is attached as Annex 3.¹² As Professor Pellet summarized: “Opponents to the launch of the gTLD .Islam mainly argue that the applicant lacks legitimacy to represent the Muslim community.” As to any potential Public Interest objection, he concluded:

For all these reasons, the IO is of the opinion that an objection to the launch of the new gTLD “.Islam” on the limited public interest ground is not warranted. Quite the contrary, the gTLD could encourage the promotion of the freedom of religion, a fundamental right under public international law, by creating and developing a new space for religious expression that could benefit the Muslim community.

With respect to any potential Community Objection, Dr. Pellet considered the specifically expressed concerns of the United Arab Emirates (“UAE”), discussed *infra*, as well as similar concerns then expressed — and since dropped — by government representatives from India and Saudi Arabia.

Dr. Pellet engaged in two rounds of written, public dialogue with AGIT, expressing his initial concerns and allowing AGIT the opportunity to respond. His inquiries and AGIT’s responses are attached as Annex 4. In his Final Assessment, Dr. Pellet found that “guarantees presented by the applicant properly address his initial concerns. Therefore and for all these reasons, the IO is finally of the opinion that an objection on community ground is not warranted.” Specifically, he was persuaded by AGIT’s proposal for the governance of the .Islam TLD, which would have registration, dispute resolution and content monitoring policies developed by an inclusive and representative

¹¹ “Professor Pellet’s credentials and experience are an ideal fit for this key role. He is a highly regarded professor of Public International Law and practitioner of law and has represented numerous governments as Counsel and Advocate in the International Court of Justice in many significant and well-known cases. Former member and Chairperson of the International Law Commission of the United Nations, he is widely published and holds several significant honors.” *Introducing the Independent Objector*, <http://www.independent-objector-newgtlds.org/home/introducing-the-independent-objector/>.

¹² Significantly, the Independent Objector only reviewed the “controversial” .Islam TLD application, thus finding AGIT’s .halal TLD application to be non-controversial.

Policy Advisory Council (“PAC”) to be comprised of government representatives, religious leaders, and civil society.¹³ Additionally, in the end he reasoned that:

In the present case, the IO is of the opinion that the Organization of Islamic Cooperation is an established institution representing and associated with a significant part of the targeted community. The Organization of Islamic Cooperation is already fully aware of the controversial issues and is better placed than the IO to file an objection, if it deems it appropriate.

4. UAE and OIC’s “Community Objections”

On November 20, 2012, as allowed by Applicant Guidebook Sec. 1.1.2.4, the UAE representative to ICANN’s Governmental Advisory Committee (“GAC”) issued an “Early Warning” with respect to both of AGIT’s applications.¹⁴ Copies of these notifications are attached as Annex 5. The UAE purported to list three bases for objection, but essentially they all boil down to alleged lack of “community support” for AGIT’s operation of the TLDs:

- (1) Private entity control over sensitive name (“It is unacceptable for a private entity to have control over religious terms such as Islam [and halal] without significant support and affiliation with the community it’s targeting.”);
- (2) Lack of community involvement and support (“If there is lack of support from the majority of the community to this application then this application will most probably be dominated by a subgroup from the religion and will ignore the interests of the remaining majority.”); and,
- (3) Sensitivity of the name and domain use policy (“These issues will be eliminated if this TLD is supported and supervised by an IGO which represents a majority of the community.”)

AGIT filed a formal response to the Early Warnings, including the proposed Governance Model and Public Interest Commitments (“PICs”) which would become binding contractual obligations on AGIT. AGIT’s proposal for the governance of the .Islam TLD would have registration, dispute resolution and content monitoring policies developed by an inclusive and representative Policy Advisory Council (“PAC”), to be comprised of government representatives, religious leaders, and civil society. AGIT’s responses are attached hereto as Annex 6.

¹³ See Annex 4.

¹⁴ The government of India also issued Early Warnings as to both applications, but did not subsequently object to either of them.

Unlike the Indian government, the UAE apparently was not satisfied with AGIT's response. So, as allowed by Applicant Guidebook Sec 3.2.1, on March 13, 2013, the UAE filed a separate Community Objection against each of the two applications. The Community Objections were heard by an experienced, neutral panelist from the International Chamber of Commerce, Mr. Bernardo M. Cremades.¹⁵ Mr. Cremades paid particular attention to the UAE's allegation that the OIC did not support AGIT's applications, indeed issuing two Procedural Orders designed to increase his understanding of that particular issue, and allowing UAE to provide any other letters of support for its position. A copy of those orders is attached as Annex 7.

Mr. Cremades exhaustively addressed all of the UAE's and OIC's arguments and evidence in his 40-page opinions, published October 24, 2013. A copy of the decisions is attached as Annex 8. He ultimately agreed with AGIT and with ICANN's Independent Objector, holding in each case that "there is not substantial opposition from the community to Respondent's application," and that "Respondent's application does not create a likelihood of any material detriment to the rights or legitimate interests of a significant portion of the relevant community." Consequently, he dismissed the Community Objections, found AGIT to be the prevailing party in each matter, and ordered that AGIT's advance payment of costs be refunded.

5. ICANN's GAC Discussions

The Applicant Guidebook Sec. 3.1 provides that the GAC may consider any TLD application and provide advice to the ICANN Board. If the GAC gives its consensus advice, then a presumption is created that the Board will accept that advice. If the GAC gives less-than-consensus advice, then

¹⁵ According to *Global Arbitration Review*:

Among other roles, he is a former vice president of the London Court of International Arbitration and a current member of the International Council of Commercial Arbitration. He is a founding member of the Spanish Arbitration Club and was, for many years, a president of the Spanish Court of Arbitration. ... He has also received a medallion from the Arab Association for International Arbitration recognising him as an "ideal arbitrator in Euro-Arab arbitration".

"B. Cremados & Avocados — Spain's most famous arbitrator leads this boutique practice", <http://globalarbitrationreview.com/journal/article/33432/b-cremades-asociados/>.

the Board is expected only to engage in dialogue with the GAC and to provide a rationale for its decision. At the conclusion of each ICANN meeting, the GAC typically issues its advice to the Board via a “Communique”.

On June 4, 2013, ICANN’s New gTLD Program Committee (“NGPC”) reacted to the GAC’s Beijing Communique. After its secret, closed Beijing meetings, the GAC had noted that “some GAC members” (i.e. far less than any semblance of “consensus”) believed the applications “lack community involvement and support [and] should not proceed.” The NGPC responded to this Communique by producing an omnibus Scorecard, and committing to further dialogue with the GAC. This Scorecard further referenced the aforementioned Community Objections, and said that “these applications cannot move to the contracting phase until the objections are resolved.” A copy of the Beijing Communique, and resulting NGPC Resolution and Scorecard are attached as Annex 9.

Yet, right after the Community Objections were dismissed, and long after ICANN’s objection window had closed, in November 2013, the Chair of the ICANN Board forwarded to the GAC Chair a letter from the OIC, which requested the GAC to “kindly consider this letter as an official opposition of the Member States of the OIC ... [to] use of these [TLDs] by any entity not representing the collective voice of the Muslim people.” The letter stated that the NGPC had engaged in dialogue with GAC and sought any further GAC input before deciding about the applications. The GAC further discussed these applications and the OIC letter during its next meeting in Buenos Aires, and decided not to issue any advice against the applications. Instead, the GAC only stated that “it concluded its discussion on these strings” six months earlier in Beijing. The GAC Chair clarified in her letter that “no further GAC input on this matter can be expected.” A copy of these letters is attached as Annex 10.

Thus, at most, “some GAC members” secretly and belatedly objected to AGIT’s two applications in June, 2013, without any specific identification of those members — or their rationale — provided by GAC or ICANN to AGIT. The OIC’s objection was further raised, again very late, to the GAC via the ICANN Board in November, 2013. But the GAC deliberated again, concluded its second discussion of these applications, and did not recommend that either application be rejected. Pursuant to the Applicant Guidebook, ICANN had no further reason to delay or reject either of

AGIT's pending applications. AGIT had overcome all of the potential "objection" processes set forth in ICANN's exhaustively developed Applicant Guidebook.

6. The NGPC Decision

Despite the findings of 1) the expert Independent Objector that ICANN had appointed to review controversial matters, 2) the Community Objection expert appointed by ICANN to review this specific matter in accord with the Applicant Guidebook, and 3) ICANN's Government Advisory Committee which had twice reviewed the matter — the NGPC nevertheless decided in February, 2014, to place these applications into a unique "On Hold" status akin to purgatory. That decision effectively disregarded the expert IO decision, overruled the expert Community Objection decision, disregarded the implicit GAC advice, and gave a very few governmental representatives an unfettered veto over the applications — all with virtually no rationale, and no guidance as to how AGIT could further proceed. AGIT primarily challenges that decision in this IRP.¹⁶

By letter dated Feb. 7, 2014, ICANN's Chairman informed AGIT that two IGOs and two government representatives ("the Objectors") had indicated "conflicts" with AGIT's governance proposal and PICs, and that "the NGPC will not address the applications further until such time as the noted conflicts have been resolved." A copy of the NGPC Resolution, Scorecard, and Letter to AGIT of Feb. 7, 2014 are attached as Annex 12. ICANN mentions just four letters which purportedly comprise the "substantial body of opposition" to AGIT's applications. Yet this purported opposition – from the Cooperation Council for Arab States of the Gulf ("CCASG"), Lebanon, OIC and Indonesia (hereinafter collectively the "Objectors") – thoroughly has been addressed by AGIT, and generally has been deemed insubstantial by the Independent Objector, the ICC arbitrator, and the GAC. Moreover, much of the crux of what is said in the letters is supportive of AGIT and its promised governance model. A copy of the letters is attached as Annex 13.

¹⁶ Compare *DotConnectAfrica Trust v. ICANN*, CASE #50 2013 001083 (ICDR July 9, 2015) (.Africa TLD was subject of consensus GAC advice to reject it, but ICANN was held to have violated its Bylaws by not further investigating nor requiring any rationale from the GAC; therefore, the IRP decision required ICANN to disregard the consensus GAC advice, reverse the resulting ICANN Board decision to reject the Complainant's application, and pay Complainant's IRP costs of more than \$300,000). A copy of the decision is attached as Annex 11.

As specifically found by ICANN’s own expert Independent Objector, AGIT indeed has proposed a multi-stakeholder governance model as suggested by the government of Lebanon (seeking a “neutral, non-governmental multistakeholder group”) and by the OIC (seeking an “entity representing the collective voice of the Muslim people”). AGIT has even committed to contractual PICs in this regard.¹⁷ The NGPC did not acknowledge this proposed governance model or the PICs in its Resolution, and so presumably did not consider them. The NGPC also did not address the expert determination in the Community Objection, and so presumably did not consider it.

Directly contrary to the expert IO’s determination made after consultation with AGIT and the Objectors, directly contrary to the ICC expert’s determination made after full legal briefing from the Objectors and AGIT, and directly contrary to the GAC’s resolution, ICANN said that “a substantial body of opposition urges ICANN not to delegate the strings.” And so AGIT’s two applications were sent to a unique purgatory, “On Hold”, with no inkling as to how they ultimately will be evaluated. AGIT withstood every potential challenge to these applications set forth in the Applicant Guidebook, at great expense of time, money and business opportunity. And still, the NGPC unilaterally decided that there would be one more surely insurmountable hurdle, unique only to AGIT and these two applications. This causes clear harm to AGIT, and indeed to the entire Muslim world, as these applications are indefinitely and mysteriously “On Hold” with no path to delegation.

7. AGIT’s Request for Reconsideration

AGIT timely filed a Request for Reconsideration with ICANN’s Board Governance Committee (“BGC”) on Feb. 26, 2014. AGIT sought reconsideration of two NGPC decisions in its Feb. 5th Resolution: 1) to refuse to initiate contracting with AGIT to operate the .Islam and .halal gTLD applications; and, 2) to provide effective veto power over just these two applications to the Objectors. AGIT asked ICANN to approve the applications for contracting. Failing that, AGIT requested that ICANN: 1) provide clear definition of the purported “conflicts” mentioned in Dr. Crocker’s letter, and provide clear criteria for AGIT to “resolve” those purported conflicts; and 2) explain how such conflicts have not already been resolved by (i) AGIT’s PICs and proposed

¹⁷ Annex 6; *compare* to .kosher PIC, *infra* n.27, Annex 17.

governance model, (ii) the Independent Objector determination, (iii) the expert determinations in the Community Objections, (iv) the manifest lack of GAC Advice against the applications, and/or (v) AGIT's compliance with every other rule and procedure set forth in the Applicant Guidebook.

ICANN has granted reconsideration requests in less than a handful of the many dozens of cases in which it has been requested, and this was not one of those cases. As typical, AGIT's request was summarily dismissed by the BGC on March 13, 2014, and that decision was later, unsurprisingly accepted by the NGPC. A copy of the Request and the BGC decision is attached as Annex 14. No further definition of the purported "conflicts" has ever been given, nor any criteria by which AGIT could "resolve" those vague conflicts with the Objectors, nor any further explanation in response to AGIT's pointedly specific questions.

8. The "Cooperative Engagement" Process

On February 21, 2014, AGIT timely requested that ICANN cooperatively engage with AGIT in effort to resolve this dispute, or at least narrow the issues to be decided by this Panel. ICANN has designed a Cooperative Engagement Process for this purpose.¹⁸ AGIT has attempted in good faith to engage ICANN and to resolve the dispute, but ICANN has refused to provide any further explanation as to the purported "conflicts" that AGIT must "resolve", nor how they could be satisfactorily resolved. Subsequent meetings and correspondence over nearly two years have not produced any progress towards resolution of AGIT's applications, or of this dispute.

Meanwhile, the highly analogous *DCA Trust* IRP concerning the .Africa TLD was decided after lengthy and expensive litigation.¹⁹ In that case, the .Africa TLD was subject of full consensus GAC Advice to reject it, but ICANN was held to have violated its Bylaws by not further investigating nor requiring any rationale from the GAC. Therefore, the IRP decision required ICANN to disregard the consensus GAC advice, reverse the resulting ICANN Board decision to reject the Complainant's application, and pay the Complainant's IRP costs of more than \$300,000.

¹⁸ ICANN Bylaws, Art. IV, Sec. 3.

¹⁹ *See supra*, n.16 and Annex 11.

That decision should have substantially resolved this case, or at least drastically narrowed the issues to be considered by this IRP panel. On August 10, 2015, AGIT’s counsel wrote to ICANN’s counsel, explaining the clear analogy between the two cases, and concluding: “Logically, as the Board is not able to accept unsubstantiated, consensus GAC Advice to reject one application for .AFRICA, it is not able to accept unsubstantiated, non-consensus advice of just a few GAC members to reject two applications for .HALAL and .ISLAM.” On September 10, 2015, ICANN’s counsel purported to respond, but did not address this logic nor provide any substantial explanation for ICANN’s position. A copy of both letters is attached as Annex 15.

On November 13, 2015, ICANN suddenly announced to AGIT that it would unilaterally terminate the Cooperative Engagement Process. This proceeding then was timely initiated by AGIT.

II. ARGUMENT

AGIT seeks Independent Review of various actions and inaction of the ICANN Board and Staff which violate ICANN’s Articles and/or Bylaws. Specifically, by letter from ICANN to AGIT dated Feb. 7, 2014, ICANN’s Chairman, Dr. Steve Crocker, informed AGIT “the NGPC will not address the applications further until such time as the noted conflicts have been resolved.” Through the NGPC decision resulting in that letter, and other Staff actions and inaction, the Board has failed to exercise due diligence and care in having a reasonable amount of facts in front of them, and has failed to exercise independent judgment in taking the decision.²⁰

Specifically, AGIT alleges that at least the following actions and inaction of the ICANN Board and Staff has violated ICANN’s Bylaws and Articles:

1. Consulting in secret with the GAC and with Objectors regarding delay or denial of AGIT’s applications.
2. Refusing to specifically identify the Objectors’ concerns, how those concerns might be resolved by AGIT, or any process by which the concerns might be resolved.
3. Creating new policy, without community input, which allows effective, far-from-consensus government veto of just two applications.

²⁰ ICANN Bylaws, Art. IV, Sec. 3, No. 4.

4. Deciding such policy via NGPC resolution, ignoring unanimous advice of the GNSO Council and resolution of the Board that ICANN, *inter alia*, must provide clear criteria for evaluation of all applications.
5. Refusing to provide documents reasonably requested by AGIT, which would illuminate and narrow the scope of the IRP, and thus reduce costs and time to decision.
6. Refusing to provide a Standing Panel as required by the Bylaws, in order to more effectively and efficiently resolve IRP disputes.
7. Refusing to acknowledge that IRP decisions are binding and precedential, causing expensive and unnecessary relitigation of settled issues.

These actions and inaction are not in the best interests of ICANN. As to each, ICANN has violated its Articles of Incorporation, Art. 4, which require it to “carry out its activities in conformance with relevant principles of international law and applicable conventions and local law.” Surely, ICANN cannot be allowed to collect \$370,000 in application fees from AGIT, create reasonable reliance as to fair disposition of AGIT’s investment in the applications, fundamentally alter the thoroughly documented evaluation and objection process mid-stream, fail to provide clear evaluation criteria, and indefinitely usurp AGIT’s investment and business opportunity without due process or recourse.

1. ICANN consulted in secret with the GAC and Objectors regarding delay or denial of AGIT’s applications.

All GAC deliberations leading to the Beijing Communique were held in closed session, with only ICANN Staff, executives and Board members allowed in the room. No minutes, transcripts or rationale from those meetings have ever been released; only the Communique stands to represent the GAC deliberations and advice as to AGIT’s applications. Since the GAC stated that “some members” were opposed, pursuant to Applicant Guidebook Sec. 3.1, “some members” of the NGPC then held at least one secret, closed meeting with “some GAC representatives” at the ICANN meeting in Durban, South Africa in July 2013. No minutes, notes or other record of the substance of that meeting has ever been released, despite AGIT’s specific request for such records.²¹ No effort was made to reach out to AGIT, either to participate in these discussions or to provide any other input into the NGPC’s deliberations.

²¹ See *infra*, Sec. II.5.

The NGPC Resolution dated Feb. 5, 2014, cites only one document from AGIT as a source upon which the NGPC relied. That document, AGIT's response to the GAC's Beijing Communique, was dated May 23, 2013. Given all of the other matters discussed both in the Resolution and in the many various applicants' responses to the GAC's Beijing communique, it is highly doubtful that any NGPC member actually even read AGIT's response before coming to its omnibus Resolution. Moreover, much happened between May 23, 2013 and Feb. 5, 2014, of which the NGPC apparently was not aware.²²

Dr. Crocker's letter dated Feb. 7, 2014, conveying the Staff's interpretation of this Resolution to AGIT, mentions just four governmental letters which purportedly comprise the "substantial body of opposition" to the applications. Yet this opposition from the Objectors has been thoroughly addressed by AGIT, and generally has been deemed insubstantial by both the Independent Objector, the ICC expert arbitrator, and the GAC. Indeed, the crux of what is said in these letters is supportive of AGIT and its promised governance model. A copy of these letters is attached as Annex 13.

As specifically found by ICANN's own expert Independent Objector, AGIT indeed has proposed a multi-stakeholder governance model as suggested by the government of Lebanon (seeking a "neutral, non-governmental multi-stakeholder group") and by the OIC (seeking an "entity representing the collective voice of the Muslim people"). AGIT has even committed to contractual PICs in this regard.²³ The NGPC did not acknowledge this proposed governance model or the PICs in its Resolution, and so presumably did not consider them.²⁴

Instead, Dr. Crocker said "[t]here seems to be a "conflict" between AGIT's governance commitments and "the concerns" raised by the Objectors in the four cited letters. But neither the Resolution nor Dr. Crocker's letter make any effort whatsoever to explain any such purported conflict, nor how such conflict was not fully resolved by AGIT's governance model, the Independent

²² AGIT has received a voluminous archive of letters of support from prominent Muslim organizations and individuals. A copy of these letters, with Summary, is attached as Annex 16. Many of these letters were provided after May 23, 2013, in context of the Community Objection proceeding in which the expert allowed additional submissions per the request of the Objector.

²³ Annex 6; *compare* to .kosher PIC, *infra* n.25, Annex 17.

²⁴ Dr. Crocker did reference the governance model in his letter of Feb. 7, 2014, so at least ICANN had received it, even if it was not considered by the NGPC.

Objector, the Community Objection expert, and/or the lack of any GAC advice against the applications. This notion of conflict is belied by the critical text of both the Lebanese and OIC “opposition” quoted above. Even though it was not required by the Applicant Guidebook or any other ICANN policy, AGIT has documented via PIC and otherwise its commitment to a multi-stakeholder, inclusive operational model representing the collective voice of the Muslim world. These are the criteria set forth by Lebanon and the OIC in their letters of purported opposition.²⁵

Consequently, ICANN has violated its Bylaws Art. I, Sec. 2, (“core values that should guide the decisions and actions of ICANN”) (hereinafter “Core Values”):

Core Value No. 7 — employing open and transparent policy development mechanisms that promote well-informed decisions based on expert advice.

ICANN has employed a closed, secret policy development mechanism as to these two applications. ICANN ignored the well-informed, expert advice of the Independent Objector and the Community Objection panelist, both of whom found AGIT’s applications to be within the public interest, and community objections insubstantial. Instead, ICANN held secret meetings with the Objectors, were presented only with their general and unsubstantiated “concerns”, obtained no other expert advice nor engaged in any other fact-finding, and then secretly developed and implemented a policy designed to indefinitely delay only these two AGIT applications.

Core Value No. 9 — obtaining informed input from those entities most affected.

The Board did not request any input from AGIT in coming to its Feb. 5 resolution, considering one AGIT document. The Board also did not obtain any informed input from the Objectors, instead receiving and relying upon only the Objectors’ unspecified, unsubstantiated, and unfair “concerns”. Those concerns had already been addressed by two experts appointed by ICANN, and twice by ICANN’s GAC. Those concerns were raised again too late, and outside of ICANN’s thoroughly documented evaluation, objection and governmental advice processes designed for the Program.

²⁵ ICANN has approved the .kosher gTLD application, to be operated by a private entity with a multi-stakeholder governance model no more inclusive than the model proposed by AGIT for .halal and .Islam. The .kosher application, PIC and contract status page are attached as Annex 17.

2. ICANN refuses to specifically identify the Objectors’ concerns, how those concerns might be resolved by AGIT, or any process by which the concerns might be resolved.

AGIT has repeatedly asked ICANN to explain the conclusory allegations in Dr. Crocker’s letter and the NGPC Resolution. What are the “conflicts” that AGIT must “resolve”, to whom’s criteria and satisfaction, via what process, in order for ICANN to reach a decision as to AGIT’s applications? No answers have been provided to these key questions.

This violates a fundamental principle of the Program and the Applicant Guidebook, that the new gTLDs “must be introduced in an orderly, timely and predictable way.”²⁶ The fundamental Recommendations²⁷ also supported this Principle, and were unanimously adopted by the GNSO Council and almost unanimously by the ICANN Board:

Recommendation No. 1: The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.

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

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

To the contrary in this matter, ICANN has unfairly engaged in secret process and policy development to discriminate against AGIT. ICANN not only has created additional, immeasurable selection criteria for AGIT’s applications, but those criteria appear entirely subjective — completely within the Objectors’ discretion. ICANN also has failed even to specify those criteria or any process by which AGIT could satisfy them. ICANN instead has ignored the dispute resolution and challenge processes that it established for the Program, and has placed the applications into an indefinite and undefined “On Hold” status for nearly two years, and counting. AGIT is left to wonder what

²⁶ ICANN GNSO, *Final Report — Introduction of New Generic Top-Level Domains*, 8 August 2007, http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm#_Toc43798015

²⁷ *Id.*

“conflicts” it must “resolve” with the Objectors, why it must do so, how it might do so, who will judge whether it has done so, by what criteria and schedule.

The Applicant Guidebook represents the implementation of these Principles and Recommendations. Yet the NGPC and Staff have now gone completely outside the bounds of these bedrock principles underlying the New gTLD Program, and outside the bounds of all of the various processes set forth in the Applicant Guidebook, pertaining *inter alia* to the Independent Objector, Community Objection, and GAC Advice. Instead they have allowed a last-minute veto to a few governmental actors, with no input from any ICANN stakeholder group, for no discernible purpose whatsoever, and with no discernible means for the applications to be further evaluated.²⁸

This further violates Core Value No. 8 — making decisions by applying documented policies neutrally and objectively, with integrity and fairness. ICANN ignored all of its documented policies, and instead has kowtowed to the Objectors’ unspecified, unsubstantiated, and unfair “concerns”.

3. ICANN created new policy, without community input, which allows effective, non-consensus government veto of just AGIT’s two applications.

The NGPC resolution effectively grants a veto to the Objectors, since AGIT’s applications will not be further considered by the NGPC unless and until the Objectors agree. This despite AGIT passing ICANN’s thorough evaluations documented in the Applicant Guidebook, despite AGIT satisfying ICANN’s Independent Objector, despite AGIT prevailing in the Community Objection

²⁸ .Halal should proceed, regardless of concerns about .Islam. ICANN has ignored important details relating to the difference between the two applications at issue here. First, Indonesia only objected to .Islam, and specifically endorsed AGIT’s operation of .Halal. “In principle, Indonesia approves the proposal and use of domain name .halal, provided that it is managed properly and responsibly.” Similarly, the Independent Objector did not even inquire about .halal as potentially problematic, focusing only on .islam. Moreover, AGIT has provided a specific letter of support from the OIC’s affiliated HalalWorld Institute. *See* Annex 16. This is the single largest halal certification organization in the world, with specific backing from the OIC. Indeed it is an Institute within the OIC’s Islamic Chamber Research and Information Center (ICRIC). It is OIC’s own unified Halal Standard project operator; its developed Halal Food Standards were approved by the Organization of Islamic Cooperation (OIC) in 2010, and now its scope of activities was expanded into new sectors like “Halal science,” “Halal regulations,” and “Halal code of conduct”. The ICRIC has also provided three specific letters of support to AGIT. *See* Annex 16.

process (designed by ICANN to decide such disputes), and despite clear refusal of ICANN's Government Advisory Committee to recommend that ICANN reject AGIT's applications.

All of those processes were carefully designed and documented by the entire ICANN Community, ICANN Staff and its paid consultants, via some six years of policy development and implementation, many thousands of hours, and many millions of dollars of expense. These processes were designed so that decisions as to all TLD applications would be made through transparent process, by experts — and not on a one-off basis by ICANN. They were designed specifically to keep ICANN from having to make such decisions. Indeed, ICANN has decided many times that it will not revisit decisions made by its expert evaluators, or by experts in the Objection processes. The vast majority of requests for reconsideration arising from the Program have involved this issue.²⁹

Yet in this matter, the NGPC never requested community input to its deliberations or resolution, in stark contrast to many other decisions that it has made within the New gTLD Program. Furthermore, the NGPC never requested expert input to its deliberations, in stark contrast to many other decisions that it has made within the New gTLD Program. Not one Advisory Committee, Supporting Organization, Stakeholder Group, Constituency, Working Group, Review Panel, Implementation Team, Independent Expert or any other ICANN creation is or ever has been opposed to these applications. Only a “few governments”, at various times, have opposed them.

Consequently, the Board has violated its Core Values:

Core Value No. 3 — delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of third parties.

²⁹ See, e.g., *Request 13-16: dot Sport Limited*, Determination of the BGC (January 8, 2014) (“In the context of the New gTLD Program, the reconsideration process does not call for the BGC to perform a substantive review of expert determinations. Accordingly, here the BGC is not to evaluate the Panel’s conclusion that there is substantial opposition from a significant portion of the community to which the Requester’s application for .SPORTS may be targeted.”); *Request 14-8: DotMusic*, Determination of the BGC (March 22, 2014) (“[T]he Reconsideration Process does not call for the BGC to perform a substantive review of expert determinations. The BGC is not to evaluate the Panelist’s conclusions that the Requester lacked standing to bring its Community Objections.”). A copy of these decisions is attached as Annex 18.

Core Value No. 7 — employing open and transparent policy development mechanisms that promote well-informed decisions based on expert advice.

Core Value No. 8 — making decisions by applying documented policies neutrally and objectively, with integrity and fairness.

Specifically, the Board properly delegated the New gTLD Program policy development to the GNSO³⁰ and Staff, involving hundreds of community volunteers, many thousands of hours of their time, and enormous Staff resources. That lengthy, involved process created the fundamental principles of the Program, and also the detailed Applicant Guidebook setting forth clear evaluation criteria and ancillary processes for all applications -- reflecting the many various interests of all potentially relevant third parties, including governments and community organizations.

But ICANN has thrown all of that out the window in evaluating AGIT's applications, instead giving the Objectors an unforeseen and unwarranted veto, and indefinitely delaying just these two applications. ICANN has ignored all of its carefully developed and documented policies, and instead has kowtowed to the Objectors' "concerns" — allowing them to effectively decide if, when and under what conditions AGIT will operate these TLDs.

The Applicant Guidebook specifically documents that the ICANN Board should consider the advice of experts in making determinations about new gTLD applications which raise sensitive government issues. Guidebook §3.1 re GAC Advice specifically provides: "The ICANN Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures." And of course, the Guidebook contains specific lengthy provisions about the Independent Objector and the Community Objection process, and about GAC advice.

ICANN ignored the advice of experts that it specifically commissioned to decide whether any "community" would be damaged by any TLD application. Both the Independent Objector and

³⁰ See Bylaws, Art. X, Sec. 1 ("There shall be a policy-development body known as the [GNSO], which shall be responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains.")

the ICC “Community Objection” expert found otherwise as to these applications. ICANN also ignored the implicit advice of its own GAC, which is tasked to provide governmental advice to the Board — which twice considered the applications, and refused to advise the Board to reject them.

A prominent CCASG and OIC member state, the UAE (represented by a highly prominent legal firm in the Middle East), filed a formal Community Objection which was dismissed by an experienced, neutral expert from the ICC. Not only was the purported community opposition deemed insubstantial, but also the expert found no likelihood of material detriment to any purported Muslim community.³¹ The Objections failed on both bases. ICANN cannot second-guess this expert finding,³² which was based upon the procedures set forth in ICANN’s contract with AGIT (incorporating the Applicant Guidebook). The arguments were unconvincing to the honorable ICC expert, as they previously had been found unavailing by ICANN’s appointed Independent Objector.

With respect to AGIT’s applications, not only has the GAC not advised ICANN to reject them, but two of ICANN’s appointed experts have advised ICANN not to reject them. So what reasonable basis exists for ICANN’s determination to effectively kill those applications? None. ICANN has violated Bylaws Art. II, Sec. 3, which mandates that ICANN “shall not apply its standards, policies, procedures, or practices inequitably, or single out any particular party for disparate treatment, unless justified by substantial and reasonable cause.” The Board has not provided any substantial or reasonable cause for infinitely delaying only AGIT’s two applications, the only two applications made subject to the Objectors’ effective veto. That veto has been granted inequitably without community input or transparency, demonstrating disparate treatment of AGIT.

This decision is also directly contrary to ICANN’s Principle “G”.³³ The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law. This freedom of expression principle was cited by both ICANN’s appointed Independent Objector and Community Objection expert, in deciding that

³¹ *See supra*, Sec. I.4 and Annex 8.

³² *See supra*, n.29.

³³ ICANN GNSO, *Final Report — Introduction of New Generic Top-Level Domains*, 8 August 2007, http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm#_Toc43798015

AGIT's applications were important for the Muslim world's freedom of expression rights, and that this outweighed potential governmental concerns over control of these TLDs.³⁴

4. ICANN ignored unanimous advice of the GNSO Council and the Board's resolution that ICANN, *inter alia*, must provide clear criteria for evaluation of all applications.

ICANN also has violated Bylaws Art. II, Sec. 1, because the Board has not acted "by a majority vote of all members of the Board," nor followed other procedures set forth in Bylaws Art. III, Sec. 6 pertaining to "Notice and Comment on Policy Actions," nor the community and Board approved Applicant Guidebook. Instead, the policy adopted as to AGIT's applications was unjustifiably and uniquely developed and resolved only by the NGPC. The NGPC did not provide notice of any proposed policy, nor reasonable opportunity for comment, nor did it consider any GAC opinion, nor did it provide an in-person public forum for discussion. Instead, it only met secretly with the GAC and the Objectors, and devised a secret and unique policy only for these applications.

This effectively overruled unanimous advice of the GNSO Council that the Board, *inter alia*, must provide clear criteria for equal evaluation of all applications.³⁵ The Board also has violated Bylaws Art. X, Annex A, Sec. 9, requiring PDP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of 2/3 of the Board, the Board determines that such policy is not in the best interests of the ICANN community or ICANN; and, requiring, in the event the Board determines that such a policy is not in the best interests of the ICANN community or ICANN, the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"), and (ii) submit the Board Statement to the Council.

The Board has not decided that the GNSO-approved policies, set forth in the Applicant Guidebook, were not in the best interest of the ICANN community or ICANN. To the contrary, a

³⁴ ICANN cannot discriminate between the .halal and .kosher applications. From a government "sensitivity" perspective, they must be deemed equal, as essentially the words mean the same thing -- halal referring to Muslim lifestyle and kosher referring to Jew lifestyle. Certainly ICANN cannot explain to AGIT or to Muslim communities how and why .kosher can be operated by a private entity with an inclusive governance structure, yet .halal cannot. At minimum, ICANN should release the .halal application from the indefinite hold created by the NGPC Resolution.

³⁵ See *supra*, Sec. I.1 and II.2.

subset of the Board nominally adopted those policies, but subsequently has failed to implement them with respect to AGIT’s applications, and instead has resolved a separate and inequitable policy as to those two applications without GNSO or community input. Further, ICANN has not explained how AGIT’s applications, and/or the application of ICANN’s documented policies to those applications, may fail the public interest. Two experts it appointed to evaluate precisely that question, per ICANN’s documented policies, came to the opposite conclusion — that AGIT’s applications are in the public interest and should not be rejected.

5. ICANN refuses to provide documents reasonably requested by AGIT, which would illuminate and narrow the scope of IRP, and thus reduce costs and time to decision.

AGIT has requested documents from ICANN which are reasonably related to the parties’ dispute. Citing its own document disclosure policy (“DIDP”), ICANN has withheld key documents on the alleged, vague basis of “confidentiality” and “material prejudice” to its relationships with the Objectors and/or to ICANN’s own deliberative process. A copy of ICANN’s response is attached as Annex 19. This non-disclosure violates Core Value No. 7 — employing open and transparent policy development mechanisms; Core Value No. 8 — making decisions by applying documented policies neutrally and objectively, with integrity and fairness; and Program Recommendation No. 1 — the evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination.

ICANN has demonstrated a pattern of unfairly withholding documents despite requests for production from opposing parties and presiding panels. For example, in one IRP, after failing to provide documents in response to numerous requests to produce, ICANN was ordered³⁶ to turn over

³⁶*Corn Lake, LLC v. ICANN*, Procedural Order No. 2, Production Ruling (ICDR, 17 November 2015) (“No documents are to be withheld on the basis of confidentiality. Any confidential documents are to be sent to the Panel for review of confidentiality and, if necessary, appropriate protection measures will be put in place.”).

such documents to claimant. In another case, ICANN failed to provide documents requested by the IRP panel itself.³⁷ ICANN must provide the requested documents.

6. ICANN refuses to provide a Standing Panel as required by the Bylaws, in order to more effectively and efficiently resolve IRP disputes.

The panel in *DCA Trust v. ICANN*³⁸ stated:

29. First, the Panel is of the view that this Independent Review Process could have been heard and finally decided without the need for interim relief, but for ICANN's failure to follow its own Bylaws (Article IV, Section 3, paragraph 6) and Supplemental Procedures (Article 1), which require the creation of a standing panel as follows:

"There shall be an omnibus standing panel between six and nine members with a variety of expertise, including jurisprudence, judicial experience, alternative dispute resolution and knowledge of ICANN's mission and work from which each specific IRP Panel shall be selected."

30. This requirement in ICANN's Bylaws was established on 11 April 2013. More than a year later, no standing panel has been created. Had ICANN timely constituted the standing panel, the panel could have addressed DCA Trust's request for an Independent Review Process as soon as it was filed in January 2014. It is very likely that, by now, that proceeding would have been completed, and there would be no need for any interim relief by DCA Trust.

Now more than two and a half years since the Bylaws were implemented, and more than eighteen months since this decision of that IRP panel, ICANN still has not begun to create the required standing panel. That will make this IRP process more lengthy, cumbersome and expensive, causing further clear harm to AGIT. Indeed, in another pending IRP proceeding, the panel selection process alone has lasted a full year.³⁹ The Bylaws mandate that the "IRP Panel should strive to issue its written declaration no later than six months after the filing" of the IRP request.⁴⁰ So ICANN must be forced to proceed more quickly in this matter, to mitigate the harm already caused to AGIT.

³⁷ *Dot Registry, LLC v. ICANN*, Procedural Order No. 3 (ICDR, 17 November 2015) (Panel holds that ICANN failed to produce "among other matters, internal ICANN documents and communications referring to or describing the above subject matters that the Panel would have expected to be created in the ordinary course of ICANN in connection with these matters").

³⁸ *See supra*, n.16 and Annex 11.

³⁹ *GCC v. ICANN* (filed Dec. 5, 2014; panel selected Dec. 2, 2015), *see* ICANN, *IRP & CEP Status Update*, <https://www.icann.org/en/system/files/files/irp-cep-status-12dec15-en.pdf>.

⁴⁰ ICANN Bylaws, Art. IV, Sec. 3, No. 18.

7. ICANN refuses to acknowledge that IRP decisions are binding and precedential, causing expensive and unnecessary relitigation of settled issues.

In *DCA Trust v. ICANN*,⁴¹ ICANN argued strenuously that IRP decisions are only advisory. However, after exhaustive analysis, the unanimous panel declared:

98. Various provisions of ICANN’s Bylaws and the Supplementary Procedures support the conclusion that the Panel’s decisions, opinions and declarations are binding. [...]

107. The above is further supported by the language and spirit of section 11 of ICANN’s Bylaws. Pursuant to that section, the IRP Panel has the authority to summarily dismiss requests brought without standing, lacking in substance, or that are frivolous or vexatious. Surely, such a decision, opinion or declaration on the part of the Panel would not be considered advisory. [...]

110. [...] The Panel would have expected, were a mere advisory decision, opinion or declaration the objective of the IRP, that this intent be clearly articulated somewhere in the Bylaws or the Supplementary Procedures. In the Panel’s view, this could have easily been done. [...]

115. Moreover, ... a straightforward acknowledgment that the IRP process is intended to be merely advisory might lead to a legislative or executive initiative to create a truly independent compulsory process. The Panel seriously doubts that the Senators questioning former ICANN President Stuart Lynn in 2002 would have been satisfied had they understood that a) ICANN had imposed on all applicants a waiver of all judicial remedies, and b) the IRP process touted by ICANN as the “ultimate guarantor” of ICANN accountability was only an advisory process, the benefit of which accrued only to ICANN.

Yet, in this case, ICANN has refused to acknowledge the precedential effect of the *DCA Trust* decision. In that case, the .Africa TLD was subject of full consensus GAC advice to reject it, but ICANN was held to have violated its Bylaws by not further investigating nor requiring any rationale from the GAC. Therefore, the IRP decision required ICANN to effectively disregard the unsupported, consensus GAC advice, to reverse the consequently presumptive ICANN Board decision to reject DCA's application, and to pay DCA’s IRP costs of more than \$300,000.

That decision should have substantially resolved this case, or at least drastically narrowed the issues to be considered by this IRP panel. On August 10, 2015, AGIT’s counsel wrote to ICANN’s counsel, explaining the clear analogy between the two cases, and concluding: “Logically, as the

⁴¹ See *supra*, n.16 and Annex 11.

Board is not able to accept unsubstantiated, consensus GAC Advice to reject one application for .AFRICA, it is not able to accept unsubstantiated, non-consensus advice of just a few GAC members to reject two applications for .HALAL and .ISLAM.” On September 10, 2015, ICANN’s counsel purported to respond, but did not address this logic nor provide any substantial explanation for ICANN’s position. A copy of both letters is attached as Annex 14.

Similarly, ICANN has not acknowledged the prior IRP panel holdings with respect to its document disclosure policy, or with respect to the standing panel required by its Bylaws. Instead, ICANN drives up AGIT’s costs and time to decision in this matter, forcing AGIT to relitigate issues that should be deemed settled. These repeated violations of ICANN’s Articles and Bylaws have caused AGIT to suffer injury directly caused by these violations. Specifically, the two applications have been indefinitely delayed, with no path to resolution. Each application represents a significant investment, which has been waylaid for nearly two years without any progress towards approval.

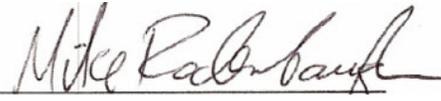
III. RELIEF REQUESTED

AGIT requests the panel to find that ICANN has violated its Bylaws in the seven aforementioned ways, and must be bound to comply with them and with the documented policies in the Applicant Guidebook. Consequently, AGIT requests that the panel require ICANN to disregard the non-consensus, unclear, unsubstantiated and out-of-bound governmental advice as to AGIT’s applications. Since there are no other outstanding issues as to the applications, the panel should require ICANN to issue the two TLD Registry Agreements to AGIT immediately.

AGIT respectfully requests that the IRP panel expedite these proceedings with respect to panel selection, discovery and any hearing. ICANN repeatedly has been found lacking compliance to its Bylaws with respect to such issues in previous IRP proceedings. AGIT requests this IRP be decided within the six months suggested by the Bylaws.

AGIT maintains that this is an exceptional case, which was largely already decided earlier this year in the .Africa IRP matter. It will be more expensive because of ICANN’s failure to create a standing panel, and intransigence as to document disclosure. Therefore, as in the .Africa matter, ICANN should pay 100% of the costs in this matter.

Respectfully submitted,

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List of Annexes

- Annex 1 – Public Portions of AGIT’s .Islam and .halal gTLD Applications
- Annex 2 – ICANN’s .Islam and .halal Initial Evaluation Reports
- Annex 3 – Independent Objector’s Report re .Islam
- Annex 4 – AGIT’s Responses to the Independent Objector’s Initial Comment re .Islam
- Annex 5 – GAC Early Warnings
- Annex 6 – AGIT’s GAC Advice Responses.
- Annex 7 – Community Objection Procedural Orders
- Annex 8 – Expert Determinations by Bernardo M. Cremades
- Annex 9 – Beijing Communique, NGPC Resolution and NGPC Scorecard
- Annex 10 – Letters between Stephen D. Crocker and Heather Dryden
- Annex 11 – *DCA Trust v. ICANN*, Final Determination
- Annex 12 – ICANN’s Resolution, Scorecard, and Letter to AGIT dated 7 February 2014
- Annex 13 – Letters from Objectors to ICANN
- Annex 14 – AGIT’s Request for Reconsideration and ICANN’s Decision
- Annex 15 - Communications between Mike Rodenbaugh and Amy Stathos
- Annex 16 – Letters in Support of AGIT’s Applications
- Annex 17 – .kosher TLD application, PIC and contract status page
- Annex 18 – ICANN Decisions re *Request 13-16: dot Sport Limited* and *Request 14-8: DotMusic*
- Annex 19 — ICANN DIDP response.