1. **Procedural History:** In its Procedural Order No. 1, dated July 17, 2015, the Tribunal, inter alia, advised the Parties that “[a]ny further exchanges of documents and other information between the Parties should occur through cooperation and in the manner set forth in Article 21 of the ICDR Rules.”

2. By email dated August 8, 2015, Mr. Genga informed the Tribunal, in pertinent part, that:

   Regarding the document requests, while the parties have no dispute as to certain of them, they disagree as to others. As such, the parties would like to present their respective positions to the Panel expeditiously so as not to delay resolving this proceeding on the merits as soon as their respective schedules reasonably allow.

   In furtherance of these objectives, the parties have agreed upon, and respectfully propose that the Panel adopt, the following schedule in lieu of that suggested in Procedural Order No. 1: 1) The parties shall simultaneously submit letter briefs of no more than five (5) pages concerning the document requests by 5:00 p.m. PDT on August 10, 2015;...

3. In it Procedural Order No. 2, in view of the foregoing agreed procedure, the Tribunal requested the Parties to simultaneously submit letter briefs of no more than five (5) pages concerning the document requests by 5:00 p.m. PDT on August 10, 2015.

4. In that Order, the Parties were directed to address the controlling questions of “necessity” and “appropriateness” as established in ICDR Rule 20(4), and to bear in mind Article 21 of the ICDR Rules text, in particular paragraphs 1, 4, 5 and 8 of that article.

5. The Parties made the simultaneous submissions contemplated in Procedural Order No. 2, and, pursuant to a request by Mr. LeVee on behalf of ICANN, were authorized to submit, sequentially, an additional page each (styled as ‘postscripts’); that process was completed on August 12, 2015 with Mr. Genga’s email to the Tribunal, time-stamped 1:59 pm.
6. Previously Contested Matters: The Parties’ submissions confirmed that the following requests by Donuts for information had been resisted by ICANN, and thus called for a Tribunal determination [original numbering maintained]:

1. All communications, training materials and other documents between ICANN, including its staff, Board or any part thereof, on the one hand, and the ICC, Jonathan Peter Taylor and/or Mark Kantor, on the other hand, in furtherance of “applying documented policies neutrally and objectively, with integrity and fairness,” pursuant to Bylaws Art. I § 2.8, with respect to any of the following:
   a. The four standards, or any of them, applicable to community objections as set forth in Guidebook section 3.5.4;
   b. The burden of proof on the objector for all new gTLD objections, pursuant to Guidebook section 3.5;
   c. The right of an applicant to submit a standard or a community application pursuant to Guidebook section 1.2.3.1;
   d. That “An allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment,” as set forth in Guidebook section 3.5.4 at 3-24;
   e. That “[a]ll applicants for a new gTLD registry should … be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process,” and/or that “no subsequent additional … criteria should be used,” as set forth in the final GNSO Report adopted by ICANN’s Board for the new gTLD program;
   f. Applying Guidebook new gTLD objection standards, policies and procedures so as not to “single out any particular party for disparate treatment;” or
   g. The handling and/or avoidance of conflicts of interest.

2. All documents in the possession, custody or control of ICANN reflecting communications of any person with, and/or training by any person of, the ICC, Jonathan Peter Taylor or Mark Kantor, concerning:
   a. The four standards, or any of them, applicable to community objections as set forth in Guidebook section 3.5.4;
   b. The burden of proof on the objector for all new gTLD objections, pursuant to Guidebook section 3.5;
c. The right of an applicant to submit a standard or a community application pursuant to Guidebook section 1.2.3.1;

d. That “An allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment,” as set forth in Guidebook section 3.5.4 at 3-24;

e. That “[a]ll applicants for a new gTLD registry should … be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process,” and/or that “no subsequent additional … criteria should be used,” as set forth in the final GNSO Report adopted by ICANN’s Board for the new gTLD program;

f. Applying Guidebook new gTLD objection standards, policies and procedures so as not to “single out any particular party for disparate treatment;” or

g. The handling and/or avoidance of conflicts of interest.

5. All documents, including staff briefings to the Board, reflecting consideration of or communications concerning any of the following by the ICANN staff, Board or any committee(s) or designee(s) thereof:

h. Subsequent to March 15, 2013, implementation of a means for review of or appeal from contested community objection rulings;

i. Subsequent to March 15, 2013, implementation of a means for review of or appeal from contested rulings on any new gTLD objection other than for string confusion, including in connection with the recently-formed review procedure for addressing “perceived inconsistent and unreasonable Expert Determinations” as described in ICANN Board Resolutions 2014.10.12.NG02 – 2014.10.12.NG03 (October 12-14, 2014);

j. Exhibits 51 and/or 52 to Donuts’ IRP Request; or

k. Any oversight mechanisms or procedures for ensuring new gTLD objection panels arrive at consistent results based upon standards provided in the Guidebook.

7. Previoulsy Agreed Matters: The Parties’ submissions also confirmed that ICANN has agreed to respond to the following requests [original numbering maintained]:

3. All communications between ICANN, including its Board or any part thereof, on the one hand, and the ICC, Jonathan Peter Taylor or either of them, on the other hand, concerning:
   a. The community objections against Application ID 1-1174-59954 by dot Sport Limited for .SPORT and/or Application ID 1-1614-27785 by Donuts (Steel Edge LLC) for .SPORTS; or
   b. The service of Mr. Taylor on a panel hearing either of the foregoing objections.
4. All communications between ICANN, including its Board or any part thereof, on the one hand, and the ICC, Mark Kantor or either of them, on the other hand, concerning the community objections against Application ID 1-1206-66762 by dot Rugby Limited, and/or Application ID 1-1612-2805 by Donuts (Atomic Cross LLC), for .RUGBY.

8. The Tribunal consulted the submissions of the Parties and considered the instructions of the ICDR Rules (Articles 20(4) and 21(1)(4)(5) and (8)) to, on the one hand, avoid surprise, assure equality of treatment, and safeguard each party’s opportunity to present its claims and defenses fairly, and, on the other hand, to manage the exchange of information between the parties with a view to maintaining efficiency and economy, and to avoiding unnecessary delay and expense.

9. The Tribunal further noted its obligation under those same Rules, in resolving any dispute about pre-hearing exchanges of information, to require the requesting party to justify the time and expense that its request may involve in light of the timing of the request, the stage of these proceedings, the scope of the request, and the limited mandate of this Tribunal as described in Rule 8 of the ICDR Supplemental Procedures. The Tribunal also considered its continuing power under ICDR Rules, Article 20(4), subject to contrary agreement by the Parties, to “[a]t any time during the proceedings, order the parties to produce documents, exhibits, or other evidence it deems necessary or appropriate.”

10. Past Rulings: Given the foregoing, in its Procedural Order No. 3 (Issued August 14, 2015) the Tribunal ordered as follows:
    A. ICANN should perform its undertaking to respond in good faith to the requests identified in Paragraph 7 above.
B. In the course of performing its undertaking under Paragraph 7 above, ICANN should remain alert to other materials that may help that Parties establish common factual ground in the current IRP; subject to applicable privileges, it will disclose to Donuts any such additional items it uncovers. Its principal duty, however, is to acquit itself under Paragraph 7.

Categories 1, 2 and 5; meet and confer: The Tribunal shall defer any decision with respect to the disputed categories 1, 2 and 5, and makes no finding concerning them at this time. Rather, the Tribunal orders the Parties to meet, confer, and strive to identify further production they can agree to make, or to forego, in light of the burdens and costs of production and such other factors as may guide them in good faith. The Parties are further ordered to advise the Tribunal as to the result of their meet-and-confer sessions within ten days from the date hereof.

11. The Tribunal further noted its power, under ICDR Rules Article 20(7), to allocate costs and draw adverse inferences, explaining that: In appropriate circumstances, those powers would be available to address unreasonable requests for disclosure as well as unreasonable objections or failures to fully perform reasonable requests for disclosure.

12. Results of the Parties’ Meet-and-Confer Collaboration: By email dated August 24, 2015 (sent at 5:03pm) Mr. Genga informed the Tribunal that:

Pursuant to its Procedural Order No. 3, the Panel directed the parties to meet and confer further regarding Donuts’ requests for production of documents, and to report on the status of same by today.

The Panel will recall that Donuts had requested five categories of documents. ICANN originally agreed to produce documents in response to request nos. 3 and 4, and in fact did produce documents last week that we are now going through.

Also last week, the parties met and conferred further regarding request nos. 1, 2 and 5. Donuts proposed specific modifications to narrow each of the requests, and ICANN has agreed to produce documents to request nos. 1 and 2 as so redefined, but stands on its objection to request no. 5. Attached is an email string that describes the ways in which the subject requests were modified and as to which ICANN partially agreed to produce responsive documents.

13. Donuts reiterated its view that ICANN should produce documents responsive to request no. 5 as modified, referring the Tribunal to its prior letter brief on the
subject, its "post-script" thereto, and supplemental submission on the merits that it submitted on August 20, 2015 (pursuant to Procedural Order No. 3).

14. The modifications in the request relative to request no. 5 are indicated in the “email string” supplied by Mr. Genga, in which he communicated to counsel for ICANN the following proposal:

As for request no.5, I could eliminate subparagraphs a. and d., and modify b. as follows:
Subsequent to March 15, 2013, implementation of a means for review of or appeal from contested rulings on any new gTLD objection other than for string confusion in connection with the recently-formed review procedure for addressing “perceived inconsistent and unreasonable Expert Determinations” as described in ICANN Board Resolutions 2014.10.12.NG02 2014.10.12.NG03 (October 12-14, 2014).

15. **Tribunal’s Ruling regarding Category No. 5:** The Tribunal has attempted to balance the still-controlling considerations reiterated in Paragraphs 1, 4, 8 and 9 above. It believes that some items falling under category 5 may be helpful to it in discharging its mandate to consider specific Board action and inaction judged against the requirements of ICANN’s Articles and Bylaws. Accordingly, ICANN shall respond to Donuts’ Category No. 5 request, as further narrowed by the Tribunal; specifically:

5. All documents reflecting consideration by the Board of any of the following, and all documents submitted to the Board by the ICANN staff or by any ICANN committee that refer expressly to, any of the following:

   a. Subsequent to March 15, 2013, implementation of a means for review of, or appeal from, contested rulings on any new gTLD community objection.

   b. The recently-formed review procedure for addressing “perceived inconsistent and unreasonable Expert Determinations” as described in ICANN Board Resolutions 2014.10.12.NG02 – 2014.10.12.NG03 (October 12-14, 2014); or

   c. Donuts’ March 12, 2014 request for a review procedure for community objections [Donuts’ IRP Request Exh. 51] and joint letter of November 1, 2013 [Donuts’ IRP Request Exh 52].
16. Documents made available to Donuts pursuant to Paragraph 15 above may be relied upon by either party at the Hearing for Argument. The Tribunal notes that it may order post-hearing written submissions if appropriate to do so for any reason, including to provide the parties a final opportunity to address matters raised by documents supplied pursuant to Paragraph 15.

17. **Briefing on the merits:** The Tribunal notes with appreciation receipt of Donuts’ supplemental written submission on the merits, delivered electronically on August 20, 2015 (pursuant to Procedural Order 3), and reiterates that, pursuant to Procedural Order No. 2, ICANN will make its supplemental written submission on the merits electronically by 5:00 p.m. PDT on September 20, 2015. In that submission, it should follow the “further briefing instructions” established in Procedural Order No. 3—specifically:

   ICANN should provide a reaction to the schedule of proposed common ground submitted by Donuts. It should be framed as neutrally as possible, should seek to establish agreement, but may offer refinements or qualifications. It may also propose items of common ground not identified by Donuts in its Appendix. The Appendix should not exceed 5 pages; those pages will not to be counted against the page limitation.

18. **Hearing for Argument:** The Tribunal reiterates that the Hearing for Argument is scheduled for **October 8, 2015**, commencing at 9:30 a.m. At this juncture, the Tribunal favors holding the Hearing at a physical meeting in Southern California, rather than telephonically, but requests the Parties to express, by **September 17, 2015**, their respective views on that prospect.

   Jack J. Coe, Jr (Chair, for the Tribunal)