TABLE OF CONTENTS – NGPC REFERENCE MATERIALS

REFERENCE MATERIALS - NGPC PAPER NO. 2013.07.13.2a

TITLE: **Funding Objections**

Please find the following:

- Attachment A – Request from International Chamber of Commerce for Second Retainer Payment, dated 4 June 2013

Signature Block:

Submitted by:	Christine Willet
Position:	VP-gTLD Operations
Date Noted:	2 July 2013
Email:	christine.willett@icann.org

ICANN

ICANN
Attention of: Ms. Cherrie Teves
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
USA

By email: cherrie.teves@icann.org

Paris, 4 June 2013

Dear Madam,

We are writing to you with reference to the recent correspondence between ICANN and the International Chamber of Commerce ("ICC") regarding Objections filed with the International Centre for Expertise ("Centre") which are funded by ICANN.

A total of 29 Objections founded by ICANN have been filed with the Centre. For these cases ICANN already provided the non-refundable Filing Fee with a first retainer payment in the total amount of € 200 000 received by the Centre on 14 March 2013. A total of € 145 000 of the first retainer payment was credited towards these 29 cases. Further, and following ICANN and ICC's agreement, the left over amount of € 55 000 will be credited towards the further payments due from ICANN to ICC.

Since the Centre has received the Objections, two of the Objections funded by ICANN were withdrawn (EXP/406/ICANN/23 regarding gTLD .hospital and EXP/408/ICANN/25 regarding gTLD .med). Accordingly, currently 27 cases are pending involving Objections funded by ICANN.

Following ICANN's indication that it would like to proceed with a second retainer fee payment for the estimated costs of the pending cases, ICC has made an estimate of the costs for the pending proceedings. This cost provision is based on the current information available for the cases and is subject to later readjustments. In particular, the Centre draws your attention to the fact that in some cases the estimate for each case might still be adjusted following the receipt of the Applicant's Response. Any overpayment by ICANN for a specific case will be credited towards any future readjustment of the costs or, as the case may be, reimbursed to ICANN at the end of the proceeding.

Based on the currently available information, and taking in particular into account the grounds for the objections, the number of experts to be appointed, the amount of documents filed and the complexity of each case, the Centre invites ICANN to proceed with a second retainer fee payment in the amount of € 2 361 600.

…/…

This amount is based on the following estimate:

Case reference and string		**Objection Ground**	**Estimate in €**
EXP/391/ICANN/8	.PATAGONIA	CO	€ 53 600
EXP/396/ICANN/13	.アマゾン	CO	€ 39 200
EXP/397/ICANN/14	.亚马逊	CO	€ 39 200
EXP/398/ICANN/15	.AMAZON	CO	€ 39 200
EXP/401/ICANN/18	.INDIANS	CO	€ 39 200
EXP/402/ICANN/19	.PATAGONIA	CO	€ 53 600
EXP/403/ICANN/20	.MED	CO	€ 39 200
EXP/404/ICANN/21	.MED	CO	€ 39 200
EXP/405/ICANN/22	.HEALTHCARE	CO	€ 39 200
EXP/407/ICANN/24	.MEDICAL	CO	€ 39 200
EXP/409/ICANN/26	.HEALTH	LPIO	€ 141 800
EXP/410/ICANN/27	.MED	LPIO	€ 174 200
EXP/411/ICANN/28	.HEALTHCARE	LPIO	€ 141 800
EXP/412/ICANN/29	.HOSPITAL	LPIO	€ 141 800
EXP/413/ICANN/30	.MEDICAL	LPIO	€ 141 800
EXP/414/ICANN/31	.MED	LPIO	€ 174 200
EXP/415/ICANN/32	.MED	LPIO	€ 141 800
EXP/430/ICANN/47	.ISLAM	CO	€ 39 200
EXP/395/ICANN/12 (Response not received yet)	.CHARITY	CO	€ 53 600

…/…

Case reference and string	**Objection Ground**	**Estimate in €**
EXP/399/ICANN/16 .慈善 (Response not received yet)	CO	€ 53 600
EXP/400/ICANN/17 .CHARITY (Response not received yet)	CO	€ 53 600
EXP/416/ICANN/33 .HEALTH (Response not received yet)	LPIO	€ 174 200
EXP/417/ICANN/34 .HEALTH (Response not received yet)	LPIO	€ 174 200
EXP/418/ICANN/35 .HEALTH (Response not received yet)	LPIO	€ 174 200
EXP/504/ICANN/121 .HEALTH (Response not received yet)	CO	€ 53 600
EXP/505/ICANN/122 .HEALTH (Response not received yet)	CO	€ 53 600
EXP/506/ICANN/123 .HEALTH (Response not received yet)	CO	€ 53 600

We invite ICANN to proceed with the payment of the above mentioned amount to the following bank account **on or before 11 June 2013**:

Confidential Business Information

…/…

Should ICANN wish to proceed with the full payment in a single transaction, we invite it to clearly indicate "ICANN, Second Retainer Fee Payment" on its payment. Should ICANN wish to proceed with individual payments per case, we invite it to clearly indicate "ICANN – Payment Objection" and the exact case reference of the relevant case.

In order to secure prompt and accurate crediting, we invite ICANN to provide the Centre with a proof of payment as soon as possible.

Finally, the Centre confirms that it shall not dismiss any Objection on the grounds of an outstanding payment of ICANN, unless it has issued an additional payment reminder to ICANN with a final deadline for payment.

Should you have any questions, please do not hesitate to contact me.

Yours faithfully,

Hannah Tümpel
Manager
ICC International Centre for Expertise

c.c. Ms. Ann Yamashita *By email: ann.yamashita@icann.org*

Ms. Amy Stathos *By email: amy.stathos@icann.org*

REFERENCE MATERIAL NGPC SUBMISSION NO. 2013.07.13.2b

TITLE: CRM Implementation Project for New gTLD

Current Environment and Recent Developments

The New gTLD Program has utilized the TAS (TLD Application System) to manage the processing and evaluation of New gTLD Applications. TAS is difficult, time-consuming and costly to maintain, and was not implemented to support Program processing beyond Initial Evaluation.

Earlier this year, a migration path off of TAS was identified by the New gTLD Program team working in conjunction with the IT Department. The Salesforce.com system was selected as the operational platform of choice. Salesforce.com includes standard Customer Relationship Management (CRM) capabilities as well as offers a flexible, configurable platform to manage a variety of other operational activities. ICANN executives met with multiple implementation firms and considered several proposals before selecting one to perform the design and implementation work for the pilot CRM implementation of Salesforce.com.

This platform was deployed in a pilot mode in April 2013, replacing the SugarCRM system as the CRM system for New gTLD customer support. Key applicant contact and application data was migrated from TAS into Salesforce.com. This platform has been in use for over two months with minimal issues.

The success of the pilot has provided the New gTLD program team with additional confidence that the Salesforce.com system is a viable, robust platform that is appropriate to be used not only for standard customer service, but also in support of other New gTLD Program operational activities. As the contractor had already developed an understanding of

ICANN operations and the New gTLD Program in particular, it was retained to perform the system design work for New gTLD Program operational capabilities. This design work was successfully completed and that team is now prepared to proceed with the implementation activities necessary for a deployment of enhanced New gTLD Program operational capabilities on the Salesforce.com platform.

The ICANN IT department has also started to work with multiple other vendors to deliver implementation work for upcoming projects on the Salesforce.com platform. These new vendors will take time to become familiar with ICANN operations and the unique business requirements of our organization. The intention is to build working relationships with multiple vendors supporting the Salesforce.com platform to achieve the optimal mix of skills, expertise and cost-effective service delivery.

Attachments:

- Ernst & Young Statement of Work: ICANN CRM Implementation Project which sets out the basis for the cost estimates.

Submitted by:	Christine Willett
Position:	Vice President, gTLD Operations
Date Noted:	5 July 2013
Email:	christine.willett@icann.org

REFERENCE MATERIALS - BOARD PAPER NO. 2013.07.13.2c

TITLE: **Ombudsman Letters Regarding Dispute Resolution Service Provider Decisions**

The following attachments are detailed analyses of Applicant responses to GAC Advice

- Attachment A – Ombudsman Letter Regarding dot GAY Objection
- Attachment B – Ombudsman Letter Regarding dot AXIS Objection Response

Signature Block:

Submitted by: {Refer to Committee Paper}

Position:

Date Noted:

Email:

OFFICE OF THE ICANN
OMBUDSMAN
Creating Dialogue. Affirming Fairness.

CHRIS LAHATTE
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Monday, July 01, 2013

ICC Contact Information
R d d
Steve Crocker
Chair
ICANN Board

Scott Seitz
dotgay LLC
Contact Information Redacted

Christopher R Barron
Chairman Emeritus, GOProud
Contact Information Redacted

Objections for String .gay by GOProud

I have received a complaint in relation to the rejection of an objection to the string .gay lodged by the community group called GOProud. The objection was filed within time but then rejected because it exceeded the prescribed word length, by approximately 500 words. The notice of the rejection was sent to an email address which was not the one used to file the objection, and therefore notice of the rejection arrived later than expected, which meant that the amended objection was then not filed on time. GOProud made some enquiries about progress of their objection and assert they did not get any response until they were told the objection had been rejected. They make the point that if the rejection had been sent to the correct email address, they could have easily lodged the amended objection within time.

I am concerned about the fairness of such a decision to reject the objection, when there appears to be a valid reason why notice of the initial rejection was not received. It is of course possible for the objector and the applicant to meet to discuss the objection, which is contemplated by the objection process outlined in the guidebook. However my concern as the ombudsman, is that there is some unfairness in the subsequent rejection given the apparent error in the use of the wrong email. It seems to me that it would be relatively easy to unwind that decision, and permit the late filing of the objection. I can of course only make a recommendation, but in this case where there is some unfairness I think the matter should be revisited.

Please contact me if you have any queries about this matter. I believe a quick decision does need to be made.

I have sent a copy of this letter to the objector and to the applicant. I have already offered to facilitate or mediate the objection, but the position of GOProud is that they want the objection in place before they would consider such a process. Given the unfairness in the rejection, that does not seem to be an unreasonable position.

Yours faithfully,

Chris LaHatte

Chris LaHatte
ICANN Ombudsman

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Friday, June 07, 2013

The Chair and Board of ICANN
12025 Waterfront Drive
Los Angeles CA
USA

WIPO ADR
Contact Information Redacted

Time Limits and Objections ICANN New gTLD Programme .axis Application and Objection

Dear Dr Crocker

I have received a complaint to my office from one of the applicants for the new gTLD programme, being the applicant for .axis. The Saudi Telecom Company have applied for this string and are facing an objection from Axis Communications AB. In the normal course, under the procedure and policy established in the guidebook and on the procedure established by WIPO, a response must be filed to the objection. If no response is made, then the objection succeeds and the application for the string effectively comes to an end.

As you are aware the issue of the timeliness of objections has been the subject of some discussion. I have investigated the issue for the purpose of several other complaints, and have had responses from the dispute resolution providers as to the policy which was adopted. In the case of all three dispute resolution providers, there was an agreement for a brief window of extension of five minutes. However in the case of the .axis string application and objection, there is a different issue. In this case there was a delay in filing the response to the objection well outside of this type of window.

The procedural history shows the following. An objection was filed by Axis Communications AB to WIPO within time. On Thursday, 18 April 2013, WIPO advised the applicant that in accordance with article 11 (b) of the Procedure, a response to the objection should be filed. Apparently that notice did not state any specific date or time for the close of filing. WIPO followed this up on Tuesday, 14 May 2013 with a further reminder, although again without any specific specified deadline. The deadline was in fact Saturday, 18 May 2013.

In fact the response was not filed until Monday, 20 May 2013. Two days later WIPO confirmed receipt, but refused to accept the response stating that they did not have discretion or power to extend the deadline. The objector was approached to see if they would consent to the late filing, but refused to do so. The applicant Saudi Telecom Company then approached me asking that I recommend to the ICANN Board that they be given an extension to the deadline.

Before turning in more detail to the grounds submitted as to unfairness I need to outline my jurisdiction. As the Board is aware, my jurisdiction is restricted solely to making a recommendation where I find that there has been some unfairness about treatment by ICANN staff, the board or ICANN constituent bodies. I am aware that it is not accepted by the dispute resolution providers and specifically by WIPO that I have jurisdiction over them. However because I do not have any coercive powers, nor any ability to compel action by any of the persons or bodies within the ICANN community, then all I am able to do is offer a recommendation, or what has been called "moral suasion". So while I understand the reluctance of the dispute resolution providers to concede any jurisdiction, in fact, I cannot tell them to do anything, but just to reconsider what has happened in the light of my specific mandate which is that of fairness.

It is important in this context to consider the right to be heard on an issue. In this case the objection itself has not been heard on the merits, because it has at this stage, succeeded because of the rule about the lack of response filed within time. Under the procedure of course, if the response had been filed on time, then there would have been a dispute resolution process according to the rules established in the guidebook and by WIPO. I therefore do not think it is necessary to consider the merits or otherwise of the objection and have not taken this into account in investigating this matter, because that is possibly this is a subject for another day.

There are some unusual aspects of this objection and response which in my view have resulted in unfairness to the applicant Saudi Telecom Company. It is my view that the response, although filed outside the terms of the procedure established by WIPO, should have been accepted. The reason that I have come to this opinion is that that the reasons advanced by the applicant are in my view compelling in support of the rejection being unfair.

I was concerned about the cultural and language aspects of the procedure. Although ICANN operates in the UN languages which do include Arabic, the dispute resolution procedures have all been run in English. The very basis of the law which has been developed to deal with the objections is based on a combination of United States and European dispute resolution principles. However, Saudi Telecom Company is an applicant company headquartered in Saudi Arabia, with the legal system is based on traditional Arab legal principles and Sharia Law, with a more recent overlay of legislation largely based on civil law principles. It is also important to note that the Latin script and English are also not used except where necessary for Internet purposes. I have sought specific submissions about this from the applicant because I was concerned about unfairness resulting from the cultural differences. It is very

much part of my mandate to be an advocate for respecting diversity, and cultural differences are therefore of considerable importance.

The submissions made to me by Saudi Telecom Company raise some significant issues.

I deal with these in sequence below.

I have been provided with a considerable amount of material about the difference between the working week in the western cultures and Saudi Arabia. The way in which the Islamic calendar works is different from the Gregorian calendar used in Western cultures. The net effect of this is that their weekends and working week occur at different times from those used in Western cultures. The normal Saudi work week runs from Saturday to Wednesday, and the weekend is normally Thursday and Friday. Friday is the Moslem holy day, and apparently Saudi companies mostly close on Thursday and Friday. I was provided with interesting material in which the authorities in Saudi Arabia have been considering this issue, to better align their working week particularly with trading partners. But for present purposes this does not occur. The effect on the applicant was that when they received the 14 May reminder from WIPO, they had one working day to respond, followed by the weekend and instructed their current counsel on 19 May 2013, who achieved a response the next day, but still too late unfortunately.

The applicant goes further in submissions to me about the merits of accepting late responses with some detail and cases cited where matters are dealt with on the merits rather than relying upon deadlines. They have submitted that Saudi law does not favour default judgements, and to say there is strong policy in favour of resolution on the merits rather than application of pleading rules or penalties. They further submit that even where a defendant does not appear at a hearing, the usual response is to postpone to a further date. They submit that the practice is usually to enter a judgement in absence when there is no excuse acceptable to the court. They support this submission further by identifying supporting case law in the United States, and in the European Court of Justice Rules of Procedure. In a compelling example, they point out that WIPO itself accepts late UDRP responses in some circumstances. In the case which was cited to me, SNCF v Domains by Proxy Inc Case Number D2010-2177, the panel noted "since the late response was filed only two days after the appointment of the panellist, the admission of the late response does not lead to delaying the proceedings" and considered that the parties would not be prejudiced.

I sought specific comment on the issue of the reason for the delay. The applicant (through their counsel) pointed out the very substantial expenditure both in time and money by the applicant over a period of some years. They point out that the company is owned and operated by the government of Saudi Arabia, and that there is a strict adherence to Islamic law, which means they do not respond to a work-related enquiries on the Saudi weekend. They submit that it is customary to agree to extinction of deadlines that fall into that holiday or weekend. They also point out that the difference in weekends means that Saudi Arabia she is only three business days with Western business partners.

They also point out that the applicant primarily uses Arabic language and script internally, and while they do have competence in English it is not the primary or first language. They point out that terms such as 30 calendar days may well have a different meaning within this cultural context.

They also point out that they did not instruct counsel at the time of the mistake, but that when they obtained appropriate legal advice, dealt with the issue very promptly.

In my view, the reasons for the delay are quite understandable in the cultural context. As ICANN moves to being a truly international organisation, we need to be constantly aware of cultural differences which may require exploration and understanding. A system which has evolved in the western legal culture may not something which fits well into a different world view, particularly with the filter of language and script differences, and differences in relation to the way in which business operates with matters such as the working week and different weekends.

When the delay is placed into proportion, permitting the response to be accepted, to the objection, is a fairer result, than letting the effort over a number of years and the considerable expenditure be wasted by a formalistic approach to the time deadline. There is no shortage of legal precedent for permitting steps to be taken out of time, and it is important to note that the objector still has the opportunity to make their case if the response is permitted to be filed late. If this is put into a balance, on one hand the considerable effort put into making the string application will come to a complete halt if the response is not accepted, and the merits of the objection will never be tested. If the response is accepted, if the objection that has any merits then they can be heard, and if justified, they succeed anyway. So the objector has nothing to lose this situation except of course that they will have to make a cogent argument that the dispute resolution phase.

I therefore recommend to the Board, that WIPO be asked to reconsider the stance with regard to the rejection of the response. I appreciate that there is nothing coercive which can be done in this situation, but would invite a fresh approach.

Yours faithfully,

Chris LaHatte
ICANN Ombudsman