

**THE INTERNATIONAL CENTRE FOR EXPERTISE OF THE  
INTERNATIONAL CHAMBER OF COMMERCE**

CASE No. EXP/427/ICANN/44

TELECOMMUNICATIONS REGULATORY AUTHORITY OF THE UNITED ARAB  
EMIRATES

(UAE)

vs/

ASIA GREEN IT SYSTEM BILGISAYAR SAN. VE TIC. TLD. STI.

(TURKEY)

This document is an original of the Expert Determination rendered in conformity with the New gTLD Dispute Resolution Procedure as provided in Module 3 of the gTLD Applicant Guidebook from ICANN and the ICC Rules for Expertise.

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TELECOMMUNICATIONS REGULATORY AUTHORITY  
OF THE UNITED ARAB EMIRATES  
(UNITED ARAB EMIRATES)

*OBJECTOR*

v.

ASIA GREEN IT SYSTEM BILGISAYAR  
SAN. VE TIC. LTD. STI.  
(REPUBLIC OF TURKEY)

*RESPONDENT*

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**EXPERT DETERMINATION BY  
BERNARDO M. CREMADES  
OCTOBER 24, 2013**

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**Parties' Representatives:**

Telecommunications Regulatory Authority of the  
United Arab Emirates

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## LIST OF ABBREVIATIONS

<b>Term</b>	<b>Meaning</b>
<b>Appendix III</b>	Means Appendix III to the Rules for Expertise of the International Chamber of Commerce, Schedule of expertise costs for proceedings under the new gTLD dispute resolution procedure
<b>Applicant</b>	Means Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti.
<b>Centre</b>	Means the International Centre for Expertise of the International Chamber of Commerce
<b>DNS</b>	Means Domain Name System
<b>Expert</b>	Means Bernardo M. Cremades
<b>Expert Determination</b>	Means this expert determination rendered on October 24, 2013
<b>gTLD</b>	Means generic top level domain
<b>Guidebook</b>	Means the gTLD Applicant Guidebook
<b>ICANN</b>	Means Internet Corporation for Assigned Names & Numbers
<b>ICC</b>	Means International Chamber of Commerce
<b>ICC Practice Note</b>	Means the ICC Practice Note on the Administration of Cases under the New gTLD Dispute Resolution Procedure
<b>ICCIA</b>	Means Islamic Chamber of Commerce, Industry and Agriculture
<b>ICRIC</b>	Means Islamic Chamber Research and Information Center
<b>Objection</b>	Means the community objection filed by the Objector against Respondent's application for the String on March 13, 2013
<b>Objector</b>	Means the Telecommunications Regulatory Authority of the United Arab Emirates
<b>OIC</b>	Means the Organization of Islamic Cooperation
<b>OIC's Letter</b>	Means the letter from the OIC dated January 29, 2013 (attached as Annex 1 to the Objection in English and as Annex [without number] to the Reply in both Arabic and French)
<b>Procedure</b>	Means the Attachment to Module 3 of the gTLD Applicant Guidebook, New gTLD Dispute Resolution Procedure
<b>Rejoinder</b>	Means the rejoinder to the Reply filed by the Respondent on August 4-5, 2013

<b>Reply</b>	Means the reply to the Response filed by the Objector on July 26, 2013
<b>Respondent</b>	Means Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti.
<b>Response</b>	Means the response to the Objection filed by the Respondent on May 15, 2013
<b>Rules</b>	Means the Rules for Expertise of the International Chamber of Commerce
<b>String</b>	Means the applied-for gTLD “.HALAL” by the Applicant (Application No. 1-2131-60793)
<b>Telecom Law</b>	Means the UEA’s Federal Law by Decree No. 3 of 2003
<b>UAE</b>	Means the United Arab Emirates

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1. This expert determination (the “**Expert Determination**”) is issued under the Rules for Expertise of the International Chamber of Commerce (the “**Rules**”), supplemented by the ICC Practice Note on the Administration of Cases (the “**ICC Practice Note**”), and under the Attachment to Module 3 of the gTLD Applicant Guidebook, New gTLD Dispute Resolution Procedure (the “**Procedure**”) of the gTLD Applicant Guidebook (the “**Guidebook**”).

## **I. THE PARTIES AND THE EXPERT**

### **A. Objector**

2. The Objector is:

Name	Telecommunications Regulatory Authority of the United Arab Emirates
Contact person	Mr. Mohammed Al Ghanim
Address	P.O.Box 26662, Sheikh Zayed Street, Abu Dhabi, United Arab Emirates
City, Country	Abu Dhabi, United Arab Emirates
Telephone	(+971) 2 626 9999
Email	<a href="mailto:mohamed.alghanim@tra.gov.ae">mohamed.alghanim@tra.gov.ae</a>

3. The Objector is represented herein by:

Name	Talal Abu Ghazaleh Legal Member to Talal Abu Ghazaleh Organization
Contact person	Mr. Badr El-Dein Abdel Khalek
Address	A26 Smart Village, Km 28 Cairo/Alex Desert Road, P.O.Box: 150 Smart Village 12577, Egypt
City, Country	Cairo, Egypt
Telephone	(+ 202) 35 37 0434 / 35 37 0435
Email	<a href="mailto:taglegal.egypt@tag-legal.com">taglegal.egypt@tag-legal.com</a>

4. The Objector has appointed its legal representative to receive all communications and notifications in the present proceeding.

**B. Respondent**

5. The Respondent (also referred to as the Applicant) is:

Name	Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti.
Contact person	Mr. Mehdi Abbasnia
Address	Büyükdere Cad. Kırgülü Sk. Metrocity AVM, D Block, Floor 4, No.11
City, Country	34394 Levent, Istanbul, Turkey
Telephone	(+90) 212 319 38 87
Email	<a href="mailto:abbasnia@agitsys.com">abbasnia@agitsys.com</a>

6. The Respondent is represented herein by:

Name	Rodenbaugh Law
Contact person	Mr. Mike Rodenbaugh
Address	548 Market Street
City, Country	San Francisco, California, U.S.A.
Telephone	(+1) 415 738 8087
Email	<a href="mailto:mike@rodenbaugh.com">mike@rodenbaugh.com</a>

7. The Respondent has appointed its legal representative to receive all communications and notifications in the present proceeding.

**C. Expert**

8. The Expert is:

Name	Mr. Bernardo M. Cremades
Firm	B. Cremades & Asociados
Address	Calle Goya 18 – Planta 2
City, Country	Madrid, Spain
Telephone	(+34) 914 237 200
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## II. APPLIED-FOR GTLD

9. The applied-for generic top level domain (“**gTLD**”) is “.HALAL” (the “**String**”).

## III. PROCEDURAL MATTERS

10. On March 13, 2013, the Objector filed a community objection against Respondent’s application for the String in accordance with Article 3.2.1 of the Guidebook and Article 2 of the Procedure (the “**Objection**”).<sup>1</sup>

11. According to Article 3.2.1 of the Guidebook, a community objection is filed when “[t]here is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted”.

12. On May 15, 2013, the Respondent filed a response disputing “both standing and grounds for the Objection” and “pray[ed] that it be dismissed” (the “**Response**”).<sup>2</sup>

13. On June 12, 2013, the Chair of the Standing Committee of the Centre appointed Mr. Bernardo M. Cremades as Expert in accordance with Article 7 and Article 3(3) Appendix I of the Rules. On July 9, 2013, the Centre transferred the file to the Expert and confirmed in writing that: (i) the estimated costs had been paid in full by each Party; and (ii) the full constitution of the Expert Panel had taken effect as of that same day.<sup>3</sup>

14. On July 11, 2013, the Expert issued Procedural Order No.1 directing both Parties to submit their views on certain procedural matters. The Parties replied on July 15, 2013.<sup>4</sup> On July 16, 2013, the Expert issued Procedural Order No. 2 directing the Parties to submit additional evidence and allegations on very limited matters (Articles 17(a) and 18 *in fine* of the Procedure). The Expert also found that no hearing was necessary in this proceeding (Article 19 of the Procedure) and that the Expert Determination should be published in full (Article 21(g) of the Procedure).

15. On July 26, 2013, the Objector filed its reply memorial together with the additional evidence requested by the Expert (the “**Reply**”). On August 4 and 5, 2013, the

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<sup>1</sup> Objection, p. 3.

<sup>2</sup> Response, p. 4.

<sup>3</sup> Letter from the Centre to the Parties and Expert, dated July 9, 2013.

<sup>4</sup> Due to the time difference, the Respondent’s comments were received by the Expert on July 16, 2013.



Respondent filed its second memorial, together with the supporting evidence, in response to the Reply (the “**Rejoinder**”).

16. In the Rejoinder, the Respondent requested the Expert to disregard the section “Further points raised in the response” of the Reply because, in its opinion, it was outside the scope of Procedural Order No. 2.<sup>5</sup> Alternatively, the Respondent requested additional time to reply to the new allegations of the Objector.<sup>6</sup>

17. On August 6, 2013, the Objector submitted an email explaining the reasons why it included in the Reply a section with allegations beyond the scope of Procedural Order No. 2. On the same day, the Expert issued Procedural Order No. 3 in which he refused to accept the section “Further points raised in the response” of the Reply. In the Expert’s opinion, the Objector did not sufficiently justify the reasons for having disobeyed the Expert’s instructions contained in Procedural Order No. 2. For this reason, such portion of the Reply will not be taken into consideration by the Expert in rendering his Expert Determination. However, as will be seen below, the Expert’s reasoning would not have been affected by such disregarded allegations.

18. On August 12, 2013, the Respondent submitted an updated version of Annex 3 to the Rejoinder. On August 14, 2013, the Objector communicated its objection to Respondent’s late submission and recalled that, in ¶ 9 of Procedural Order No. 3, the Expert “order[ed] both parties to refrain from submitting any further allegations and/or evidence”. On August 15, 2013, the Respondent submitted comments on this issue. On August 19, 2013, the Expert rendered Procedural Order No. 4 refusing to take into consideration Respondent’s late submission of August 12, 2013. As will be seen below, the Expert’s reasoning would not have been affected by such disregarded exhibit.

19. In accordance with Articles 5(a) and 6(a) of the Procedure, as well as Articles 3.3.1 and 3.3.3 of the Guidebook, all of the Parties’ communications were submitted electronically in English, which is the official language of this proceeding. The Expert notes, however, that Annex 9 to the Response contains portions in languages other than English. Likewise, the Objector filed with the Reply the Arabic and French versions of

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<sup>5</sup> Rejoinder, p. 1.

<sup>6</sup> *Id.*

Annex 1 to the Objection. In all cases, the Expert does not consider it necessary to provide certified or official translations pursuant to Article 5(b) of the Procedure.

20. For all purposes, the place of the proceedings is Paris (France), where the Centre is located (Article 4(d) of the Procedure).

#### **IV. OBJECTOR'S STANDING**

21. In this section, the Expert will summarize the Parties' positions as to the Objector's standing to file the Objection. Thereafter, the Expert will draw his conclusions in this regard.

##### **A. Objector's Position**

22. As described in section I.A above, the Objector is the Telecommunications Regulatory Authority of the United Arab Emirates ("**UAE**"), which claims to be a governmental agency representing both the people and Government of said country.<sup>7</sup> The Objector asserts that it is acting following an "invitation" of the Organization of Islamic Cooperation ("**OIC**"), of which the UAE is member, to file the Objection that triggered the present proceeding.<sup>8</sup> Such "invitation" was furnished by the Objector in English as Annex 1 to the Objection and in both Arabic and French with the Reply (without Annex number) (collectively, "**OIC's Letter**"). The English version of the OIC's Letter provides in its relevant portion as follows:

[T]he OIC would like to draw the attention to the fact that new applications were already submitted for new gTLDs and these new applications are being evaluated according to the consensus-based mechanism determined by ICANN. The period for submitting any objections, if any, has been expanded until 13th March 2013 for any group and/or community that holds objection on religious or ethical values. The OIC Member States may kindly like to avail of this opportunity to act quickly through their representation in the organs of the ICANN, to avoid any

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<sup>7</sup> Objection, p. 4.

<sup>8</sup> *Id.*

misuse and misrepresentation of gTLDs of concern to them, including the ones like .ISLAM or .HALAL.<sup>9</sup>

23. Together with the Reply, the Objector submitted a draft resolution of the OIC and letters of support from governmental agencies of Bahrain, Qatar, Kuwait, Egypt, Oman and Turkey, as well as from the Gulf Cooperation Council.<sup>10</sup> For these reasons, the Objector claims to represent a substantial portion of the Muslim community.

24. The Objector was incorporated by Federal Law by Decree No. 3 of 2003 (the “**Telecom Law**”).<sup>11</sup> The Objector argues that, since its inception, it has been charged with a “wide range of responsibilities related to the Telecommunications and Information Technology Sector, both within and outside the UAE.”<sup>12</sup> The Objector lists a number of its “functions and powers” – none of which relate to religious or public policy matters – but fails to provide documental support.<sup>13</sup> The Expert notes, however, that such functions and powers are contained in Article 13 of the Telecom Law.

25. In light of the foregoing, the Objector claims to be “an established institution associated with the Arabian and Islamic UAE community having an institutional purpose related to the benefit of the community”.<sup>14</sup>

26. Next, the Objector explains that the word “Halal” is intrinsically linked to Islamic lifestyle.<sup>15</sup> For the Objector, because the Respondent allegedly gained neither the support of the Muslim Community nor of the OIC, it lacks legitimacy to register the String.<sup>16</sup> The Objector concludes by stating that, since religious matters are very sensitive, the

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<sup>9</sup> Annex 1 to the Objection, p. 1. “ICANN” means Internet Corporation for Assigned Names & Numbers (“**ICANN**”).

<sup>10</sup> Reply, p. 1. See also Annexes 1-9 to the Reply. The letter of support from Kuwait is duplicated (see Annexes 3 and 9 to the Reply).

<sup>11</sup> Objection, p. 4 (*citing* Federal Law by Decree No. 3 of 2003). The Expert notes that the Objector has not provided an electronic copy of the Telecom Law. However, the Expert has been able to obtain a copy of the Telecom Law by following a link included in the Objection (p. 4). The incorporation of the Objector is set forth in Chapter 3 (Part 1) of the Telecom Law under the official name “General Authority for Regulating the Telecommunication Sector”.

<sup>12</sup> Objection, p. 4.

<sup>13</sup> *Id.*, p. 5.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

Respondent – a commercial entity – should not be authorized to register or control a new gTLD of a religious nature.<sup>17</sup>

## **B. Respondent’s Position**

27. The Respondent takes the opposite view regarding the Objector’s standing to file the Objection. First, the Respondent sustains that the Objector is the regulatory authority of just one Islamic country – namely, the UAE – which “demonstrates no relevance to the global Muslim population, or to that subset that practices Halal lifestyle”.<sup>18</sup> The Respondent adds that the Objector merely provides a domestic technical function within the UAE and that, far from defending a community interest, is pursuing its own commercial interest.<sup>19</sup>

28. Second, the Respondent advances an argument based on Article 3.2.2.4 of the Guidebook,<sup>20</sup> which provides in the part quoted by Respondent as follows:

Established institutions associated with clearly delineated communities are eligible to file a community objection. The community named by the objector must be a community strongly associated with the applied-for gTLD string in the application that is the subject of the objection.

29. For the Respondent, the Objector has “no association whatsoever with any ‘Halal’ community, other than it is one of 57 member states of the [OIC]”.<sup>21</sup> Furthermore, the Respondent criticizes the Objector for grasping support from OIC’s Letter, specifically because such letter does not contain an invitation from the OIC to its members to file an objection (but is rather a simple instruction to review ICANN’s new gTLD program and act if necessary).<sup>22</sup>

30. Third, the Respondent points out that the OIC did not file an objection itself and that only the regulatory authority of one of its members (of a total of 57) filed an objection. Accordingly, for the Respondent, this represents no “semblance of the global

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<sup>17</sup> *Id.*

<sup>18</sup> Response, p. 4.

<sup>19</sup> *Id.* See also *id.*, p. 6.

<sup>20</sup> *Id.*, p. 4.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*, p. 5.

Halal community” and thus the Objector lacks standing.<sup>23</sup> Had there been substantial opposition, either the OIC itself or a significant number of States would have filed an objection.

31. Fourth, the Respondent asserts that all the functions and powers mentioned by the Objector are circumscribed to the territory of the UAE and that, in any case, they are of technical nature without relationship whatsoever to the global community of Halal individuals.<sup>24</sup> The Respondent adds that, even if the Objector were to have governmental authority within the UAE, it would only represent a small percentage (*i.e.*, 0.01%) of the Muslims of the world as of 2009.<sup>25</sup> In addition, the Respondent notes that the OIC did not entrust the Objector to act on its behalf or in the name of any other of its remaining 56 members.<sup>26</sup> For this reason, in the Respondent’s opinion, the Objector only “purport[s] to represent less than 2% of the OIC’s collective weight”, which does not amount to a representation of the “global Muslim community to which the .Halal TLD will be targeted”.<sup>27</sup>

32. Finally, the Respondent argues that one of the OIC’s most relevant affiliates – the Islamic Chamber Research and Information Center (“**ICRIC**”) – has endorsed Respondent’s application to register the String, which would support its argument that the Objector is not backed by the OIC, that the Objector does not represent any greater Muslim community than the UAE and, in sum, that it lacks standing overall.<sup>28</sup>

### **C. Expert’s Conclusion**

#### **(a) Standard**

33. Article 3.2.2.4 of the Guidebook provides guidance on who may file a community objection. As the Respondent has correctly quoted in its Response, such article provides in its very first paragraph as follows:

Established institutions associated with clearly delineated communities are eligible to file a community objection.

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*, pp. 5-6.

The community named by the objector must be a community strongly associated with the applied-for gTLD string in the application that is the subject of the objection. . . .<sup>29</sup>

34. The Guidebook provides some explanation regarding the main requirements set forth in the quoted passage. In this regard, the Guidebook states that, “[t]o qualify for standing for a community objection, the objector must prove both of the following”, which makes abundantly clear that the two requirements that follow must be met.<sup>30</sup> These two requirements are: (i) the objector must be an “established institution”; and (ii) the objector must have “an ongoing relationship with a clearly delineated community”.<sup>31</sup> Each of them will be analyzed separately below.

35. For each requirement, the Guidebook lists some “factors” to steer the Expert’s judgment. As a threshold matter, the Expert will analyze the value of the “factors” outlined in Article 3.2.2.4 of the Guidebook. In this regard, the Guidebook states that the “[f]actors that may be considered [by the Expert] in making its determination include, but are not limited to. . . .” The use of the optional term “may” instead of any other mandatory term clearly implies that the Expert has absolute discretion to apply or not the factors expressly included in the Guidebook. In addition, the final portion of the quoted passage – “but are not limited to” – opens the door to other factors not expressly listed in the Guidebook. This conclusion is also supported by the last paragraph of Article 3.2.2.4 of the Guidebook, which states that the Expert “will perform a balancing of the factors listed above, as well as other relevant information, in making its determination”.<sup>32</sup> The reference to “other relevant information” eliminates any doubt as to the orientative nature of the factors contained in the Guidebook.

36. All the above is consistent with the last phrase of Article 3.2.2.4 of the Guidebook, which provides that “[i]t is not expected that an objector must demonstrate satisfaction of each and every factor considered in order to satisfy the standing requirements”.

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<sup>29</sup> Guidebook, Article 3.2.2.4 (emphasis added).

<sup>30</sup> *Id.* (emphasis added).

<sup>31</sup> *Id.*

<sup>32</sup> Emphasis added.

**(b) Analysis**

37. As advanced, according to Article 3.2.2.4 of the Guidebook, only “[e]stablished institutions associated with clearly delineated communities are eligible to file a community objection”.

38. In relation to the question of whether the Objector is an established institution, the Expert will take into consideration several factors. First, the orientative factors outlined in Article 3.2.2.4 of the Guidebook include “validation by a government” of the objector. In this case, the Objector was incorporated under Article 6 of the Telecom Law, which states as follows:

It is hereby established an independent public authority, called the “General Authority for Regulating the Telecommunication Sector” for the purpose of performing the functions and implementing the duties given to it under this Federal Law by Decree and its Executive Order.<sup>33</sup>

39. Furthermore, it is worthwhile noting that the Telecom Law was signed by Mr. Zayed bin Sultan Al Nahyan, the UAE’s President at the time.<sup>34</sup>

40. According to the Telecom Law, the Objector “shall have an independent legal personality and shall have full capacity to act accordingly and to perform legal actions in accordance with this Federal Law by Decree, including the capacity to enter into contracts of all types and to own and lease movable and immovable assets of all types and the capacity to sue”.<sup>35</sup> Therefore, the Objector has an independent legal personality under UAE’s law and the capacity to sue, which most certainly includes the capacity to file the Objection.

41. Second, the Telecom Law was enacted in 2003, which is almost a decade ago. In the Expert’s view, this period of time is sufficient to consolidate a governmental agency. More importantly, this evidences that the Objector was not “established solely in conjunction with the gTLD application process”.<sup>36</sup>

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<sup>33</sup> Telecom Law, Article 6.

<sup>34</sup> *Id.*, p. 34.

<sup>35</sup> *Id.*, Article 7.

<sup>36</sup> Guidebook, Article 3.2.2.4.

42. For the foregoing reasons, the Expert finds that the Objector is an established institution for the purposes of filing the Objection.

43. The Expert will now turn to analyze whether the Objector is “associated with clearly delineated communities” or, in other words, whether it “has an ongoing relationship with a clearly delineated community”, such as the Halal or the Muslim communities.<sup>37</sup> The Expert notes that, as opposed to Article 3.5.4 of the Guidebook, the word association in Article 3.2.2.4 is not preceded by the adjective “strong”.<sup>38</sup> As a consequence, in the Expert’s opinion, the threshold is lower for the purposes of Article 3.2.2.4 than for Article 3.5.4 of the Guidebook.

44. The question of whether the Halal or Muslim communities are “clearly delineated” will be dealt with in section V.B below. For the time being and for the sake of argument, the Expert will assume that they are clearly delineated communities, an assumption that will be confirmed below (see ¶¶ 63-76 below).

45. Each Party places a great deal of emphasis on its association or relationship with the relevant community. In a few words, the Objector claims to represent a number of Muslim countries and to have been invited by the OIC to file the Objection whereas the Respondent sustains that the Objector is acting solely on behalf of the Muslims of the UAE and that, on the contrary, the Respondent’s position is the one endorsed by the OIC though one of its affiliates (*i.e.*, ICRC). Additionally, the Respondent asserts that the Objector provides domestic technical functions with no relevance whatsoever to the relevant community.

46. In the Expert’s view, the threshold requires a “relationship” or an “association” with a clearly delineated community but does not require an objector – for the purpose of establishing standing – to represent a substantial portion, not to mention the majority, of the members of such community. Therefore, the discussion regarding whether the Objector represents a wider Muslim or Halal community than the one circumscribed to the UAE is irrelevant for the purpose of analyzing the Objector’s standing. The important question is

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<sup>37</sup> *Id.*

<sup>38</sup> According to Article 3.5.4 of the Guidebook, there should be “a strong association between the community invoked and the applied-for gTLD string”. Emphasis added.



whether the “relationship” or “association” between the Objector and UAE’s Halal or Muslim community in fact exists.

47. A few issues should be taken into consideration. First, under public international law, the government of a nation is entitled to represent the interests of its constituents. Second, it has been established that the Objector is a governmental entity with certain functions and powers.<sup>39</sup> Among these functions and powers, the Objector has been charged with registering and managing the UAE’s country code top-level domains (ccTLD).<sup>40</sup> For these reasons, the Objector is undoubtedly a relevant governmental agency to represent the people of the UAE in proceedings dealing with the registration of domain names, including the String.

48. Indeed, the Objector provides services to the people of the UAE, a country with a population of 4.7 million (as of 2010).<sup>41</sup> There is no doubt that the UAE is a Muslim country. This is evidenced by its membership to the OIC and Article 7 of the UAE’s Constitution:

Islam is the official religion of the Union. The Islamic Shari’ah shall be a main source of legislation in the Union. The official language of the Union is Arabic.<sup>42</sup>

49. The telecommunication services provided by the Objector in the UAE certainly benefit the people of the UAE, including its Muslim community. For this reason, the Expert is of the view that there is a relationship with the Muslim community. As a result, in the Expert’s opinion, two of the factors listed in the relevant subsection of Article 3.2.2.4 of the Guidebook are satisfied:

- “Institutional purpose related to the benefit of the associated community”;  
and
- “Performance of regular activities that benefit the associated community”.

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<sup>39</sup> See ¶¶ 38-42, *supra*. See also Telecom Law, Article 13.

<sup>40</sup> Annex 1 to the Response.

<sup>41</sup> Annex 3 to the Response.

<sup>42</sup> See Constitution of the UAE at <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=category&category=LEGAL&publisher=&type=&coi=ARE&docid=48eca8132&skip=0>. See also Annex 4 to the Response (map showing demographics of Islam at p. 19) and Annex 1 to the Rejoinder.

50. In addition, the Expert is convinced that the Objector takes a leadership role in matters related to domain names within the territory of the UAE, which is part of another factor listed in the same subsection of the Guidebook.<sup>43</sup> Hence, the Expert finds that three out of four factors of the relevant subsection of Article 3.2.2.4 of the Guidebook favor the Objector's position.

51. In sum, in the Expert's view, the Objector can be considered an established institution with an ongoing relationship with the Muslim community in the UAE. In section V.B below, the Expert will analyze whether the relevant community is "clearly delineated" for the purpose of this community objection.

## **V. SUBSTANCE OF THE OBJECTION**

52. In this section, the Expert will consider the substance of the Objector's community objection. First, the Expert will set the applicable standard. Thereafter, the Expert will analyze the Parties' submissions point by point and will reach a number of conclusions.

### **A. Standard**

53. Article 3.5.4 of the Guidebook establishes the four tests that enable the Expert to "determine whether there is substantial opposition from a significant portion of the community to which the string may be targeted". Article 3.5.4 expresses the four tests as follows:

For an objection to be successful, the objector must prove that:

- The community invoked by the objector is a clearly delineated community; and
- Community opposition to the application is substantial; and
- There is a strong association between the community invoked and the applied-for gTLD string; and

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<sup>43</sup> Guidebook, Article 3.2.2.4 ("The presence of mechanisms for participation in activities, membership, and leadership").

- The application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. Each of these tests is described in further detail below.<sup>44</sup>

54. The Expert notes that each one of the four tests transcribed is separated by the term “and”, which implies that each one of them must be met in order to sustain an objection. This is further confirmed by the last sentence of Article 3.5.4 of the Guidebook, which states that “[t]he objector must meet all four tests in the standard for the objection to prevail”. This leaves no room for interpretation and evidences the high threshold that a community objection must satisfy.

55. The Expert observes that the Guidebook provides some explanation of the above-transcribed four tests. For each test, the Guidebook lists some “factors” to steer the Expert’s judgment. However, as with the factors relating to the standing discussed in ¶¶ 35-36 above, the language of the factors relating to each of the four tests is open. In particular, all factors set forth in Article 3.5.4 of the Guidebook are introduced with an optional language, such as “a panel could balance a number of factors to determine this” or “[f]actors that could be balanced by a panel to determine this include”. Once again, this proves the mere orientative nature of these factors.

56. Additionally, in all instances the Guidebook mentions that the factors included therein are not exhaustive (*i.e.*, the Guidebook uses language in the fashion of “including but limited to” or “include but are not limited to”). Therefore, the Expert may weigh other factors if considered appropriate.

## **B. Is the Community Invoked by the Objector Clearly Defined?**

### **(a) Objector’s Position**

57. The Objector sustains that the “notion of ‘community’ is wide and broad, and is not precisely defined by ICANN’s guidebook for the new gTLD program”.<sup>45</sup> For the Objector, such notion “can include a community of interests, as well as a particular ethical,

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<sup>44</sup> *Id.*, Article 3.5.4 (emphasis added).

<sup>45</sup> Objection, p. 6.

religious, linguistic or similar community”.<sup>46</sup> In short, the Objector argues that a “community is a group of individuals who have something in common . . . or share common values. . . .”<sup>47</sup>

58. Hence, the notion of community includes the world’s total number of Muslims, which the Objector claims to be 1.4 to 1.6 billion people.<sup>48</sup> For the Objector, these Muslims are adherent to Islam and share common religious values and interests.<sup>49</sup> As a result, they form a clearly delineated community.

**(b) Respondent’s Position**

59. The Respondent’s argument begins with the following caveat:

While Applicant would concede that the .Halal TLD is targeted generally to persons striving to live a Halal lifestyle, product manufacturers and product certification agencies throughout the globe, it will prove that there is no delineated community of global Halal individuals, there is no substantial opposition to the applications, and there is no likelihood of material detriment to anyone.<sup>50</sup>

60. The Respondent quotes the factors set forth in Article 3.5.4 of the Guidebook (“Community” subsection) to support the position that “[t]here are no formal boundaries around who can claim faith in Islam or strive to live a Halal lifestyle” and adds that “Islam is a religion open to anyone”.<sup>51</sup>

61. The Respondent then draws a distinction between Catholicism and Islam in an attempt to evidence that there is no global hierarchy in Islam, mainly because there are different branches of Islam.<sup>52</sup> Additionally, the Respondent points out that nobody “can

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Response, p. 7.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*, pp. 7-8.

claim to speak for all Muslims, or all Halal individuals, or even a majority of them, particularly on such a topic as new gTLD applications”.<sup>53</sup>

62. For these reasons, the Respondent concludes that the global Halal community is not “clearly delineated”.<sup>54</sup>

**(c) Expert’s Conclusion**

63. The subsection of Article 3.5.4 of the Guidebook regulating the issue at bar provides that “[t]he objector must prove that the community expressing opposition can be regarded as a clearly delineated community”. The same subsection expresses that “[i]f opposition by a number of people/entities is found, but the group represented by the objector is not determined to be a clearly delineated community, the objection will fail”. Therefore, the threshold for this test is not whether a great number of people or entities oppose, as the Objector appears to suggest, but rather whether the community may in fact be clearly delineated.

64. Both the Objector and the Respondent concede that the world’s total population of Muslims is around 1.6 billion.<sup>55</sup> This figure is confirmed by the Wikipedia articles submitted by Respondent.<sup>56</sup>

65. The Expert finds that Muslims in general – regardless of the different branches of Islam – form a large group of individuals which share at least certain core values. Support for this consensus is found in a document submitted by Respondent, which evidences that all Muslims share at least the Five Pillars of Islam:

The Pillars of Islam (*arkan al-Islam*; also *arkan ad-din*, “pillars of religion”) are five basic acts in Islam, considered obligatory for all believers. The Quran presents them as a framework for worship and a sign of commitment to the faith. They are (1) the shahadah (creed), (2) daily prayers (salat), (3) almsgiving (zakah), (4) fasting during Ramadan

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<sup>53</sup> *Id.*, p. 8.

<sup>54</sup> *Id.*

<sup>55</sup> Objection, p. 6 (“All over the world there are approximately 50 countries having Muslim-majority. With over 1.4 to 1.6 billion followers amounting to approximately 25% of the earth’s population, Islam is the second-largest and one of the fastest-growing religions in the world.”); Response, p. 5 (“Whereas there were an estimated 1.57 billion Muslims in the world as of 2009. (Annex 4, Wikipedia article, p. 19.)”).

<sup>56</sup> Annex 4 to the Response, p. 1; Annex 1 to the Rejoinder, p. 1.

and (5) the pilgrimage to Mecca (hajj) at least once in a lifetime. The Shia and Sunni sects both agree on the essential details for the performance of these acts.<sup>57</sup>

66. The Respondent agrees with the Expert in this regard, as evidenced in its application for the String (“[Muslims] are a disparate group, yet they are united through their core belief”).<sup>58</sup> The Objector has also recognized that all branches of Islam share certain common beliefs.<sup>59</sup> In view of the above, the Expert has no hesitation in finding that all Muslims, regardless of the branch of their faith, form a large, clearly delineated community of approximately 1.6 billion people.

67. The Objector argues that the word “Halal” is a “term designating any object or an action which is permissible to use or engage in, according to Islamic law”.<sup>60</sup> The Objector adds that “[t]he term is used to designate food or actions deemed permissible according to Islamic law”, as well as “certain procedures [that] need[ ] to be followed for certain types of food to be permissible to be eaten (i.e. halal food)”.<sup>61</sup> Notably, the Respondent used the same language in its application for the String.<sup>62</sup> Although neither Party provided the source of their meaning of Halal, the Expert has found that the wording is strikingly similar to the language used in a Wikipedia article regarding Halal.<sup>63</sup> The following chart compares the wording in Respondent’s application with both the Objection and the aforementioned Wikipedia article:

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<sup>57</sup> Annex 4 to the Response, p. 6 (emphasis added, footnotes omitted).

<sup>58</sup> Annex 13 to the Response, section 18(a).

<sup>59</sup> Reply, p. 1 (“Though all the Islamic groups share main common beliefs such as the reality of one God (Allah) and the existence of angels of Allah ... etc.”).

<sup>60</sup> Objection, p. 5.

<sup>61</sup> *Id.*

<sup>62</sup> Annex 13 to the Response, section 18(a).

<sup>63</sup> Wikipedia, “Halal” (not submitted by the Parties) (available at <http://en.wikipedia.org/wiki/Halal>).

Application	Objection	Wikipedia Article Re. "Halal"
<p>"Halal (Arabic: حلال <i>ḥalāl</i>, 'lawful') is a term designating any object or an action which is permissible to use or engage in, according to Islamic law. The term is used to designate food seen as permissible according to Islamic law.</p> <p>The terms Halal [<i>sic</i>] is also applied to many other facets of life; and one of the most common uses of these term is in reference to meat products, food contact materials, and pharmaceuticals. In Islam there are many things that must clearly be defined as halal".<sup>64</sup></p>	<p>"The word Halal (Arabic: حلال <i>ḥalāl</i>, 'permissible') is a term designating any object or an action which is permissible to use or engage in, according to Islamic law. The term is used to designate food or actions deemed permissible according to Islamic law. The opposite of this word is haraam (forbidden).</p> <p>According to Islam, there are certain food types that are not permissible to be eaten. Further, certain procedures needs [<i>sic</i>] to be followed for certain types of food to be permissible to be eaten (i.e. halal food)".<sup>65</sup></p>	<p>"Ḥalāl (Arabic: حلال <i>ḥalāl</i>, 'permissible') is a term designating any object or an action which is permissible to use or engage in, according to Islamic law. The term is used to designate food seen as permissible according to Islamic law. The opposite of this word is haraam.</p> <p>Halal foods are foods that Muslims are allowed to eat under Islamic Shari'ah. The criteria specify both what foods are allowed, and how the food must be prepared. The foods addressed are mostly types of meat and animal tissue".<sup>66</sup></p>

68. Therefore, both the Objector and the Respondent are in agreement that Halal is a key aspect of a Muslim's behavior.

69. The same conclusion is supported by other materials in the record. For instance, the Respondent expressly states in its Response that "ICRIC operates the only Halal certification body to be recognised by all Islamic countries, HalalWorld. . . ."<sup>67</sup> In the description of HalalWorld submitted by Respondent, such organization describes the Halal lifestyle as follows:

As Islam has programs for controlling human being social life in the political, economic and intellectual arena; it has considered a number of plans and programs for his personal life which is to observe the criteria of "Halal", including eating, drinking, dressing, job functions and applied means and tools in his life. Each should be secured by the seal of Halal on the basis of Islamic Shariah.

<sup>64</sup> Annex 13 to the Response, section 18(a).

<sup>65</sup> Objection, p. 5.

<sup>66</sup> Wikipedia, "Halal" (not submitted by the Parties) (*available at* <http://en.wikipedia.org/wiki/Halal>).

<sup>67</sup> Response, p. 6 (*citing* Annex 7 to the Response).

Islamic community has safeguarded such independent system and regulated a special life according to such principles which is rooted in the divine inspiration within the human community during 15 centuries. . . .<sup>68</sup>

70. In Annex 7 to the Response, there is a brochure entitled “The Guideline of the Principles of OIC Halal Services” referring to many different areas, which evidences that the Halal lifestyle is beyond dietary restrictions and covers all areas of a Muslim’s behavior:<sup>69</sup> (i) the Principles of the Halal Standard in Hotels; (ii) the Principles of Halal Standard in Banks and Financial Organizations; (iii) the Principles of Halal Standard in Transportation Services; (iv) the Principles of Halal Standard in IT Services and Media; (v) the Principles of Halal Standard for Tourism; (vi) the Principles of Halal Standard in Public Trade and Business; (vii) the Principles of Halal Standard in Clothes; (viii) the Principles of Halal Standard for Sport and Amusement Services. The Respondent is consistent with this in its application for the String: “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”.<sup>70</sup>

71. Yet, in another document submitted by the Respondent, it is evidenced that the objectives of ICRIC include “[t]o research, develop and collect information about the Halal issues in Muslim and non-Muslim countries and supporting and cooperating with the Halal centers in the world”.<sup>71</sup> In this report, ICRIC describes the size of the market in which Halal products trade as follows:

Around 2 billion of the Muslim populations who live in the world whether concentrated or dispersed have created economic exigencies including “trading Halal products and services “whose global annual volume is estimated around US \$ 200 billion. The vast market of food stuff has required the producers to stamp their products with Halal

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<sup>68</sup> Annex 7 to the Response, HALALWORLD, About Us (emphasis added) (available at [www.halalworld.ca/about-us](http://www.halalworld.ca/about-us)).

<sup>69</sup> Annex 7 to the Response, *The Guideline of the Principles of OIC Halal Services*, 9 ISLAMIC CHAMBER RESEARCH & INFORMATION CENTER BULLETIN 25, pp. 25-28.

<sup>70</sup> Annex 13 to Response, section 18(a).

<sup>71</sup> Annex 6 to the Response, *The Report of Activities: Islamic Chamber Research and Information Center*, 11 ISLAMIC CHAMBER RESEARCH & INFORMATION CENTER BULLETIN 51 (2011), p. 52.



Certificate in order to distinguish their goods among other products in the market. . . .<sup>72</sup>

72. Notably, ICRIC makes no distinction as to the branches of Islam and includes all Muslims within the potential market of Halal products. Additionally, ICRIC makes reference to a “Halal magazine” and “Halal forums” – which clearly are targeted at Muslims following the Halal lifestyle – and even describes some sort of “Muslim tourism” which “is under the influence of certain cultural aspects such as Halal food in hotels and restaurants”.<sup>73</sup>

73. The Expert has found no evidence in the Parties’ submissions that the Halal lifestyle is followed outside Islam. In fact, the Respondent said quite the opposite in its application for the String: “The common understanding of Halal is still limited to religious needs and only applicable to Muslims”.<sup>74</sup> For this reason, the Respondent expressly recognized that the String will be “targeted” to the “global Muslim community”.<sup>75</sup> Therefore, even the Respondent acknowledges that the String will affect the Muslim community exclusively.

74. In light of the foregoing, the Expert finds that the Halal lifestyle is deeply-rooted in Islam and consists of a pattern of behavior that any Muslim should observe. It follows that Halal lifestyle is not limited to dietary restrictions and, on the contrary, applies to many facets of a Muslim’s daily life. Though presumably not all Muslims strictly follow the Halal lifestyle, in the Expert opinion, it would be wrong to divorce the Halal community from the Muslim community. In ¶ 66 above, the Expert found that the Muslim community is clearly delineated.

75. As a final check, the above discussion supports the conclusion that all factors included in Article 3.5.4 of Guidebook (“Community” subsection) are fulfilled:

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<sup>72</sup> *Id.*

<sup>73</sup> *Id.*, pp. 52-53.

<sup>74</sup> Annex 13 to the Response, section 18(a) (emphasis added).

<sup>75</sup> Response, p. 5.

Factor	Compliance with Factor
The level of public recognition of the group as a community at a local and/or global level.	Yes. Islam enjoys global recognition and is the second-largest religion in the world. <sup>76</sup>
The level of formal boundaries around the community and what persons or entities are considered to form the community.	Yes. Although there are different branches of Islam, all branches share the same core principles. <sup>77</sup>
The length of time the community has been in existence.	Yes. Islam was founded around approximately 1400 years ago. <sup>78</sup>
The global distribution of the community (this may not apply if the community is territorial).	Yes. Islam is widespread across the world, with special emphasis in certain areas of the globe. <sup>79</sup>
The number of people or entities that make up the community.	Yes. The community is formed of approximately 1.6 billion individuals, <sup>80</sup> of which most appear to follow the Halal lifestyle to some extent.

76. In light of the foregoing, the Expert concludes that the community invoked by the Objector is clearly delineated.

**C. Is the Community Opposition to the Application Substantial?**

**(a) Objector’s Position**

77. The Objector sustains that “[a] substantial portion of the Muslim community is opposing the string .HALAL”.<sup>81</sup> Without providing documentary evidence in the Objection, the Objector mentions that most of the nearly seventy comments regarding Respondent’s application for the String are against its registration.<sup>82</sup> In addition, the Objector states that there have been early warnings from the UAE and India, together with expressions of concern by the Communications and Information Technology Commission (CITC) of the

<sup>76</sup> Annex 4 to the Response, p. 1.

<sup>77</sup> *Id.*, p. 6.

<sup>78</sup> See Annex 4 to the Response, p. 11; Annex 13 to the Response, section 18(a).

<sup>79</sup> Annex 4 to the Response, p. 19.

<sup>80</sup> *Id.*, p. 1; Annex 1 to the Rejoinder, p. 1.

<sup>81</sup> Objection, p. 6 (emphasis omitted).

<sup>82</sup> *Id.*, pp. 6-7.

Kingdom of Saudi Arabia.<sup>83</sup> The Objector does not provide any evidence in support of such allegations.

78. Furthermore, as mentioned earlier, the Objector submitted together with the Reply letters of support from governmental agencies of Bahrain, Qatar, Kuwait, Egypt, Oman and Turkey, as well as from the Gulf Cooperation Council.<sup>84</sup>

79. The Objector also claims to have the support of the OIC. In this regard, the Objector heavily relies on the OIC's Letter, which claims to be an "invitation" from the OIC urging all its members to oppose and act against the registration of the String.<sup>85</sup> For the Objector, the OIC "is the collective voice of the Muslim world and ensur[es] to safeguard and protect the interests of the Muslim world in the spirit of promoting international peace and harmony among various people of the world".<sup>86</sup>

80. In addition, the Objector submitted with the Reply a draft resolution of the OIC (to be voted in November 2013) pursuant to which the OIC will presumably oppose the registration of the String by the Respondent.<sup>87</sup>

81. Per the Expert's request in Procedural Order No. 2, the Objector explained in the Reply the relation between the OIC and both ICRIC and HalalWorld (because, as discussed below, the Respondent claims that the latter two institutions support its position). As to ICRIC, the Objector sustains that "no 'subsidiary' or even 'affiliation' relation ever existed between OIC and ICRIC".<sup>88</sup> The Objector mentions that ICRIC neither appears listed as a subsidiary or affiliate of the OIC in the latter's official website nor is there a link to ICRIC included in the section "OIC Organs and Institutions" of such webpage.<sup>89</sup> Further, the Objector sustains that ICRIC's website does not introduce the organization as an affiliate of the OIC, but rather merely mentions that ICRIC was "established through a

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<sup>83</sup> *Id.*, p. 7.

<sup>84</sup> Reply, p. 1. See also Annexes 1-7 and 9 to the Reply. The letter of support from Kuwait is duplicated (see Annexes 3 and 9 to the Reply).

<sup>85</sup> Objection, pp. 4, 7. As noted, this "invitation" has been provided as Annex 1 to the Objection (in English) and as Annex (without number) to the Rejoinder (in both French and Arabic).

<sup>86</sup> Objection, p. 4.

<sup>87</sup> Annex 8 to the Reply.

<sup>88</sup> Reply, p. 1.

<sup>89</sup> *Id.* See Annexes 10-12 to the Reply.

Memorandum of Understanding between [the Islamic Chamber of Commerce, Industry and Agriculture (ICCIA)] and the Iran Chamber of Commerce, Industries and Mines. . . .”<sup>90</sup> The Objector recognizes that ICCIA “is an affiliate organ of the OIC and represents the private sector of 57 member countries”.<sup>91</sup> For the Objector, the fact that ICRIC was established through a Memorandum of Understanding between an affiliate of the OIC and a national chamber of commerce does not make ICRIC an affiliate of OIC and does not place ICRIC under OIC’s umbrella.<sup>92</sup> On the contrary, for the Objector, ICRIC is an organization closely related to Iran.<sup>93</sup>

82. As to HalalWorld, the Objector sustains that it is nothing more than an affiliate of ICRIC with no connection with OIC.<sup>94</sup> For the Objector, neither the OIC nor the Islamic countries have entrusted HalalWorld with the task of issuing Halal certifications.<sup>95</sup> Instead, there are many Halal certification bodies and the requirements for Halal food labeling vary from one country to another (which may differ from HalalWorld’s standards).<sup>96</sup>

83. For these reasons, the Objector claims to represent a substantial portion of the relevant community.

**(b) Respondent’s Position**

84. The Respondent, on its part, relies on the language of the Guidebook to support its position.<sup>97</sup> First, the Respondent alleges to have presented “voluminous evidence and documented support from many community leaders and leadership organizations”, as well as a letter from the Ministry of ICT of Iran (Information Technology Organization), in support of its application for the String.<sup>98</sup> These documents have been provided as Annexes 6 through 9 to the Response and Annexes 2 through 4 to the

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<sup>90</sup> Reply, p. 2 (emphasis omitted). See Annex 14 to the Reply. ICCA was formerly known as “ICCI”. Both Parties agree on this point. See Reply p. 2 and Rejoinder, p. 2.

<sup>91</sup> Reply, p. 2.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* See Annex 17 to the Reply.

<sup>96</sup> Reply, p. 2.

<sup>97</sup> Response, p. 8.

<sup>98</sup> *Id.*; Annex 4 to the Rejoinder.

Rejoinder. The Respondent argues that support for its application generally comes from the following categories of entities:

1. Major Organizations / Associations / Leaders representing Muslim populations throughout the world -- from Belarus to Brazil, such as the ICRIC, HalaWorld, The Management Center for Islamic Schools of Thought, and the ECO Cultural Institute.
2. Islamic Institutes / NGOs in Muslim Countries -- some 17 of them, such as Islamic Unity Magazine, and The Association of Development, Promotion, Production and Trade of Halal, and Brasil Halal Foods.
3. Famous Muslim Researchers / Academic people -- three well-respected academics.
4. Newspapers / Media / Publications – eleven different popular media outlets.<sup>99</sup>

85. Among the letters of support, the Respondent argues that the most relevant entity within the OIC – ICRIC – has fully endorsed the Respondent’s new gTLD application.<sup>100</sup> In this regard, the Respondent has furnished a letter of support to its application signed by ICRIC’s President.<sup>101</sup> Therefore, “by logical extension, the [Objector] effectively admits that a majority of the global Halal community supports the Applicant”.<sup>102</sup> In addition, the Respondent claims to have furnished a positive letter from HalaWorld, a widespread Halal certification body operated by ICRIC.<sup>103</sup>

86. Pursuant to the Expert’s instructions in Procedural Order No. 2, the Respondent further explained in the Rejoinder the relation between the OIC and both ICRIC and HalaWorld. The Respondent places emphasis on the fact that ICRIC was established via a Memorandum of Understanding between ICCIA – an affiliate of OIC – and a local chamber of commerce in order to evidence ICRIC’s affiliation with the OIC.<sup>104</sup> In addition, the Respondent points out that ICCIA’s Secretary General is a Vice Chairman of

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<sup>99</sup> Response, p. 6.

<sup>100</sup> *Id.*, pp. 6, 8.

<sup>101</sup> Annex 6 to the Response.

<sup>102</sup> Response, p. 8.

<sup>103</sup> *Id.*, p. 6. The letter of support from HalaWorld is included in Annex 7 to the Response.

<sup>104</sup> Rejoinder, p. 2. As mentioned earlier, ICCA was formerly known as “ICCI”. Both Parties agree on this point. See *id.* and Reply p. 2.

ICRIC and that ICRIC's Board Members are appointed by ICCIA.<sup>105</sup> As to HalalWorld, the Respondent first mentions that ICRIC operates HalalWorld.<sup>106</sup> Then, citing Annex 17 to the Reply, the Respondent claims that HalalWorld's "mandate stems from the OIC adoption of Halal Food Standards".<sup>107</sup>

87. Second, for the Respondent, the Objector refers in its Objection to nearly seventy "unspecified public comments", which are "unsupported with evidence of [the] same".<sup>108</sup> For this reason, the Respondent argues that the Expert should disregard such comments.<sup>109</sup>

88. Third, the Respondent points out that neither India nor the Kingdom of Saudi Arabia – or anyone else besides the Objector – has filed objections to Respondent's application.<sup>110</sup> The Respondent adds that only one of the 57 members of the OIC – namely, the UAE – has formally filed a community objection through the Objector, which would clearly indicate the lack of support for the Objection from the OIC.<sup>111</sup>

89. In the Rejoinder, the Respondent argues that Bahrain, Kuwait, Oman, Qatar, Turkey and the Gulf Cooperation Council, all of which have submitted letters of support to UAE's objection, amount to a "small fraction of the global Muslim population".<sup>112</sup> The Respondent argues that all these countries represent around 80 million Muslims, which cannot be deemed "substantial opposition".<sup>113</sup> Citing a Wikipedia article, the Respondent sustains that all these countries combined have around the population of Iran (a country

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<sup>105</sup> Rejoinder, p. 2 (*citing* Annex 6 to the Response, p. 7).

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* Notably, the Respondent does not attempt to evidence any direct relationship between HalalWorld and the OIC.

<sup>108</sup> Response, p. 9.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*, pp. 8-9.

<sup>111</sup> *Id.*, p. 9.

<sup>112</sup> Rejoinder, p. 1. Surprisingly, the Respondent omits that Egypt also filed a letter of support to the Objector's position (*see* Annex 1 to the Reply). However, the Expert considers this omission a *bona fide* error and not an attempt to mislead.

<sup>113</sup> *Id.* (*citing* Annex 1 to the Rejoinder).

allegedly supporting the Respondent's application).<sup>114</sup> In addition, for the Respondent, many Muslims live in non-OIC countries.<sup>115</sup>

90. Moreover, the Respondent points out that the OIC is composed of 57 members and these 6 countries only amount to 10% of the OIC member countries (or 5% of the Global Muslim population).<sup>116</sup>

91. Finally, as to the OIC's draft resolution submitted with the Reply, the Respondent elaborates a few arguments. For the Respondent, such draft is yet to be voted.<sup>117</sup> In this regard, the Respondent points out that the OIC will presumably not reach a consensus. For this reason, a vote will be taken with no guarantees that the draft resolution will eventually be approved.<sup>118</sup>

92. In sum, for the Respondent, the Objection should fail because the Objector has failed to evidence substantial opposition to Respondent's application.

### **(c) Expert's Conclusion**

93. According to Article 3.5.4 of the Guidebook ("Substantial Opposition" subsection), "[t]he objector must prove substantial opposition within the community it has identified itself as representing". The key element of this provision is "substantial opposition". For this reason, quite unsurprisingly, the Guidebook concludes the same subsection by stating that, "[i]f some opposition within the community is determined, but it does not meet the standard of substantial opposition, the objection will fail".

94. The Expert agrees with the Respondent in that the OIC is a political organization and not a religious one.<sup>119</sup> However, the OIC is the second largest international organization after the United Nations,<sup>120</sup> and among OIC's objectives is "[t]o disseminate, promote and preserve the Islamic teachings and values based on moderation

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<sup>114</sup> *Id.* (citing Annex 1 to the Rejoinder).

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*, pp. 1-2.

<sup>119</sup> See Rejoinder, p. 2.

<sup>120</sup> Annex 2 to the Response, p. 1.

and tolerance, promote Islamic culture and safeguard Islamic heritage”.<sup>121</sup> Therefore, the Expert agrees with the Objector that the OIC is a valid speaker for the world’s Muslim population.<sup>122</sup>

95. The first question presented to the Expert is whether the OIC has urged its members to file an objection to Respondent’s application or has simply invited its members to review such application and act if necessary.

96. Article 38 of the Charter of the OIC states that the “[l]anguages of the Organisation shall be Arabic, English and French”.<sup>123</sup> This Article does not establish that any language should prevail over the others and thus all of them are equally valid. As a consequence, if the versions of the OIC’s Letter written in two official languages are identical, but differ from the one written in a third official language, the former versions should prevail over the latter one.

97. The Expert will now turn to analyze the versions of the OIC’s Letter written in the three official languages. At the outset, the Expert notes that the English and French versions of the OIC’s Letter are identical. As a result, regardless of the wording of the Arabic version, the language of the English and French versions must control the Expert’s findings. The English and French versions of OIC’s Letter say:

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<sup>121</sup> Annex 5 to the Response, Article 1(11).

<sup>122</sup> See Objection, p. 4 (“The [OIC] is the collective voice of the Muslim world and ensur[es] to safeguard and protect the interests of the Muslim world in the spirit of promoting international peace and harmony among various people of the world”).

<sup>123</sup> Annex 5 to the Response, Article 38.



English	French
<p>“[T]he OIC would like to draw the attention to the fact that new applications were already submitted for new gTLDs and these new applications are being evaluated according to the consensus-based mechanism determined by ICANN. The period for submitting any objections, if any, has been expanded until 13th March 2013 for any group and/or community that holds objection on religious or ethical values. <u>The OIC Member States may kindly like to avail of this opportunity to act quickly through their representation in the organs of the ICANN, to avoid any misuse and misrepresentation of gTLDs of concern to them, including the ones like .ISLAM or .HALAL</u>”<sup>124</sup></p>	<p>“[L]’OIC voudrait attirer l’attention sur le fait que de nouvelles demandes ont déjà été soumises pour les nouveaux gTLD et ces nouvelles demandes sont en cours d’évaluation selon mécanisme de consensus établi par l’ICANN. Le délai pour la présentation d’éventuelles objections a été étendu jusqu’au 13 Mars 2013 pour tous les groupes et / ou communautés qui ont une objection sur des valeurs religieuses ou éthiques. <u>Les Etats membres de l’OCI peuvent bien profiter de cette occasion pour agir rapidement à travers leur représentation dans les organes de l’ICANN, afin d’éviter toute utilisation abusive et fausse déclaration de gTLD qui les concernent, y compris celles comme : ISLAM ou HALAL</u>”<sup>125</sup></p>

98. After a careful review of the transcribed passage, the Expert concludes that the OIC directed its members to review Respondent’s application and, in case of concern, act through their representation in the organs of the ICANN. Ergo, the OIC neither endorsed nor opposed Respondent’s application and certainly did not openly instruct its members to file an objection thereto. Hence, the Expert is of the opinion that the OIC’s letter is not a statement of policy against Respondent’s application.

99. As a result of the above, there would be no need to analyze the Arabic version. However, for the sake of completeness, the Expert will briefly look into the Arabic version of the OIC’s Letter, which is slightly different to the other two. The literal translation into English of the relevant portion of the Arabic version is:

The OIC member States should seize this important opportunity to act quickly against any party that wishes to own the gTLDs that end with (.ISLAM) or (.HALAL). And encourages the member States to file within the time limit specified their objections, if any, to prevent any company or private institution from buying or registering the gTLD (.ISLAM) or (.HALAL) to avoid any complications that

<sup>124</sup> Emphasis added.

<sup>125</sup> Emphasis added.

could lead to any disputes or the misuse of these gTLDs.<sup>126</sup>

100. This language is clearly stronger than the English and French versions. However, by including the underlined words “if any”, the Expert finds that the OIC left to the member States the ultimate decision of filing an objection or not. Hence, the OIC anticipated that no objections may be filed by the member States should none of them chose to do so. This may be indicative of the intention behind this version of the letter, but the drafting could have easily been less ambiguous. In any case, a detailed discussion and analysis of this wording is irrelevant, as the Expert has already found that the English and French versions of the OIC Letter shall prevail.

101. As to OIC’s draft resolution submitted with the Reply, two points should be addressed in this Expert Determination. First, the Expert is of the opinion that it is a mere draft with no binding power. In this regard, the Expert agrees with the Respondent in that the approval of OIC’s draft resolution is yet to be seen.<sup>127</sup> The resolution may not be adopted by a unanimous vote because it may find the opposition of at least Iran.<sup>128</sup> Since the Objector has not furnished letters of support from the necessary majority of OIC’s members to pass such resolution, it has not evidenced with any certainty that such resolution will be passed. Second, OIC’s draft resolution refers to a report from OIC’s General Secretariat on the matter which has not been submitted to the Expert by either Party.<sup>129</sup> Without such report, the Expert cannot assess the recommendation of OIC’s General Secretariat to its member States on the position they should take when voting the OIC’s draft resolution. For these reasons, it remains unclear whether OIC’s draft resolution will finally be approved.

102. The Respondent has provided letters of support from ICRIC and HalalWorld.<sup>130</sup> The Parties disagree as to their relationship with the OIC but both Parties agree that ICRIC was established by a Memorandum of Understanding between ICCIA –

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<sup>126</sup> The Expert sought an independent translation of this passage from another member of his firm. Emphasis added.

<sup>127</sup> Rejoinder, p. 1.

<sup>128</sup> *Id.*; Annex 4 to the Rejoinder.

<sup>129</sup> Annex 8 to the Reply.

<sup>130</sup> Annexes 6 and 7 to the Response.

an affiliate of OIC – and a local chamber of commerce.<sup>131</sup> In the Expert’s opinion, the Respondent has failed to evidence that ICRIC is a subsidiary, an affiliate or is otherwise under the umbrella of the OIC. This is also confirmed by the fact that nowhere does the OIC refer to ICRIC as a subsidiary or an affiliate thereof. Nor does ICRIC hold itself out as a subsidiary or an affiliate of the OIC. On its part, HalalWorld is a mere affiliate of ICRIC and, for the same reasons, it cannot be considered as a subsidiary or an affiliate of the OIC.

103. In light of the foregoing, it has not been established whether the OIC favors or disfavors the Respondent’s application for the String. Consequently, the Expert is of the opinion that the OIC remains neutral as to the registration of the String by the Respondent.

104. Notably, the OIC itself has not filed an objection. Dr. Alain Pellet, the Independent Objector, expressed in a report discussed by both Parties that

In the present case, the [Independent Objector] 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.<sup>132</sup>

105. In our case, as it is plainly evident, the OIC did not deem it appropriate to file a community objection itself. In the Expert’s opinion, this is a confirmation of OIC’s neutrality in this matter.

106. On a separate note, the Respondent places great emphasis on the number of letters of support to its position from individuals and organizations. However, regardless of the level of endorsement to Respondent’s application, the ultimate test under the Guidebook is whether there is substantial opposition and not whether there is a substantial

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<sup>131</sup> At the time, ICCIA was known as ICCI.

<sup>132</sup> Annex 12 to the Response, last paragraph (emphasis added). Although this report relates to the “.Islam” string, the Expert agrees that some of its conclusions may be extended to the String. The Independent Objector may file objections against “highly objectionable” gTLD applications to which no objection has been filed. The Independent Objector is limited to filing two types of objections: (i) Limited Public Interest objections and (ii) Community objections. The Independent Objector acts solely in the best interests of the public who use the global Internet. See Article 3.2.5 of the Guidebook.

level of support. Therefore, the Expert will focus exclusively on the letters of support to the Objector's position.

107. The Expert observes that only the Objector has filed an objection against Respondent's application. No other individual, organization or country – whether member of the OIC or not – has opposed Respondent's application within ICANN's relevant channel.

108. Some countries – such as India and Saudi Arabia – inquired about Respondent's application and raised some early concerns in this regard.<sup>133</sup> However, since such countries neither filed a separate objection nor subscribed that of the Objector, the Expert can draw the conclusion that they finally did not officially back a community objection to Respondent's application. In fact, in Procedural Order No. 2 the Objector was instructed to submit additional letters of support but did not submit letters from these two countries. This is highly indicative of their lack of official support to the Objector's community objection.

109. The Objector filed with the Reply letters of support from governmental agencies of Bahrain, Qatar, Kuwait, Egypt, Oman and Turkey, as well as from the Gulf Cooperation Council.<sup>134</sup> The Gulf Cooperation Council is composed of the UAE, Bahrain, Saudi Arabia, Oman, Qatar and Kuwait.<sup>135</sup> Therefore, the Gulf Cooperation Council would only add to the list of supporting countries, at best, Saudi Arabia. However, the Expert has previously found in ¶ 108 above that the opposition of Saudi Arabia has not been evidenced. Consequently, the Objector has only evidenced support from 7 countries (including itself and excluding Saudi Arabia) out of a total of 57 which form the OIC.

110. Furthermore, the Objector has referred to nearly seventy comments to Respondent's application of which, allegedly, the majority are against such application. However, no evidence of such comments has been provided to the Expert and thus the Objector has failed to meet its burden of proof in this regard.

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<sup>133</sup> Objection, pp. 6-7; Annexes 10 and 11 to the Response.

<sup>134</sup> Reply, p. 1. See *also* Annexes 1-7 and 9 to the Reply.

<sup>135</sup> See [www.gcc-sg.org/eng/](http://www.gcc-sg.org/eng/). See *also* Annex 7 to the Reply.

111. In accordance with the foregoing, the Expert finds that the “[n]umber of expressions of opposition relative to the composition of the community”, which is the first factor in the “substantial opposition” subsection of Article 3.5.4 of the Guidebook, favors Respondent’s position.

112. The same is true for the second factor listed in the same subsection of the Guidebook. More precisely, the Guidebook finds relevant “[t]he representative nature of entities expressing opposition”. As has been evidenced, the Objector cannot speak for the OIC or any other member thereof. At best, the Objector could speak for the citizens of the UAE and the other 6 supporting countries only. There are around 1.6 billion Muslims worldwide,<sup>136</sup> but the total Muslim population of the 7 opposing countries is 165 million, representing roughly 10.3% of the Muslims of the world.<sup>137</sup> In the Expert’s opinion, this is not a substantial portion of the Muslims around the world for the purposes of sustaining a community objection. Therefore, the Expert finds that this factor favors the Respondent.

113. As to the “[l]evel of recognized stature or weight among sources of opposition”, which is the third factor listed in the Guidebook, the Expert wishes not to minimize the authority of the Objector. However, Article 13 of the Telecom Law generally circumscribes the Objector’s functions and power’s within the territory of the UAE. Therefore, the Expert finds that the Objector does not have sufficient international weight – without the support of a substantial number of Muslim countries or the OIC itself – to globally represent the interests of the Islamic community throughout the world. For the avoidance of doubt, for the reasons given in ¶ 112 above, the Expert is of the opinion that the other six supporting countries cannot be considered as a substantial number.

114. Finally, as to the factor related to costs incurred by the Objector in expressing opposition,<sup>138</sup> no other costs have been evidenced besides those related to the Centre’s filing fee and request for deposit of the estimated costs.<sup>139</sup> The Expert will also assume some costs related with the Objector’s legal representation in this proceeding. All these

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<sup>136</sup> Annex 4 to the Response, p. 1; Annex 1 to the Rejoinder, p. 1.

<sup>137</sup> Calculaton made using data from Annex 1 to the Rejoinder.

<sup>138</sup> Guidebook, Article 3.5.4 (“Costs incurred by objector in expressing opposition, including other channels the objector may have used to convey opposition”).

<sup>139</sup> See ¶ 13, *supra*.

costs do not appear to be excessive in relation to the potential impact of a decision affecting a community of around 1.6 billion people. Additionally, the Objector has furnished no evidence of pursuing any “other channels the objector may have used to convey opposition”.<sup>140</sup> Thus, this factor disfavors the Objector.

115. The Expert does not need to consider any other factors and is confident in reaching the conclusion that there is opposition to Respondent’s application to some extent, but such opposition is not substantial. Accordingly, the Objection must fail.

**D. Is there a Strong Association between the Applied-for gTLD and the Community Represented by the Objector?**

**(a) Objector’s Position**

116. The Objector sustains that the applied-for gTLD explicitly targets the Islamic community.<sup>141</sup> In this regard, the Objector quotes the following passage from the Respondent’s application:

There are hundreds of millions of Muslims worldwide, practicing their faith in a huge variety of different ways. They are a disparate group, yet they are united through their core beliefs. They are a group whose origins are found some 1400 years in the past, their ethnicity often inextricably linked with their faith. Hitherto, however, there has been no way to easily unify them and their common appreciation of Islam. The .HALAL gTLD will change this.<sup>142</sup>

117. For the Objector, the Respondent is a commercial entity which does not “represent the whole or even a majority of the worldwide Muslim community and is not an appropriate authority in Islamic law to give advice in relation to what is and what is not ‘Halal’ in accordance with Islamic law”.<sup>143</sup> In addition, the Objector argues that the letters of support furnished by Respondent:<sup>144</sup> (i) come from a minority of the Islamic population and represent less than 5% of the world’s total Muslims; (ii) do not include many of the

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<sup>140</sup> Guidebook, Article 3.5.4 (“Substantial Opposition” subsection).

<sup>141</sup> Objection, p. 7.

<sup>142</sup> *Id.* (quoting Annex 13 to Response, section 18(a)).

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

branches of Islam; and (iii) are not signed by current officials of governments or of International Organizations (such as the OIC).

**(b) Respondent’s Position**

118. In page 7 of the Response, the Respondent lists the four tests contained in Article 3.5.4 of the Guidebook and thereafter analyzes them one-by-one, except for the one that requires “a strong association between the community invoked and the applied-for gTLD string”.<sup>145</sup> The Expert takes note of this omission.

119. In addition, in the conclusion of the Response, the Respondent stresses that the Objector has failed to “prove standing or three of the four elements of a Community Objection”.<sup>146</sup> The omitted fourth element seems to be the association between the applied-for gTLD and the community represented by the Objector.

120. This is confirmed by the Respondent in another section of the Response, where it expressly acknowledges that the Objector “does not represent the global Muslim community to which the .Halal TLD will be targeted”.<sup>147</sup>

**(c) Expert’s Conclusion**

121. The Respondent appears not to dispute the association between the String and the community represented by the Objector. However, this does not prevent the Expert from analyzing the issue.

122. According to Article 3.5.4 of the Guidebook (“Targeting” subsection), “[t]he objector must prove a strong association between the applied-for gTLD string and the community represented by the objector”. The last sentence of such subsection stipulates that, “[i]f opposition by a community is determined, but there is no strong association between the community and the applied-for gTLD string, the objection will fail”.

123. In section V.B(c) above, the Expert found that the relevant community is clearly defined. The question now is whether the String has a “strong association” with such community. The first salient fact is the identity of the terms. Indeed, the String is

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<sup>145</sup> Response, pp. 7-12.

<sup>146</sup> *Id.*, p. 12 (emphasis added).

<sup>147</sup> *Id.*, p. 5 (emphasis added).

precisely the word “Halal”, which has been proven to be a Muslim lifestyle free of sin. It is patently clear that Muslims in general and, especially those that follow the Halal lifestyle, will be identified by the String.

124. According to the foregoing, the last factor listed in the corresponding subsection of the Guidebook is met (*i.e.*, “[a]ssociations by the public”). It is hard to imagine any Muslim – or even anyone familiar with Islam – who will not associate the String with Islam.

125. Moreover, according to the corresponding subsection of Article 3.5.4 of the Guidebook, another factor that the Expert may analyze is the “[s]tatements contained in application”. The statements contained in the application are very clarifying in this regard. In addition to the passage quoted at ¶ 116 above, Respondent’s application contains many other references that unequivocally result in that the targeted audience is the Islamic community. First and foremost, the Respondent has expressly recognized that “[t]he common understanding of Halal is still limited to religious needs and only applicable to Muslims”.<sup>148</sup> In other words, the Respondent does not hesitate to recognize that Halal is highly specific to the Islamic community. Second, the Respondent has recognized that it will implement a policy under which registrants for second-level domains must agree “that they are either of Muslim faith, or have a clear interest in ameliorating the community”.<sup>149</sup> Hence, all second level domain-holders will either be Muslim or will pledge to improve the Muslim community.

126. Other instances of statements in Respondent’s application that support the conclusion that there is a strong association between the String and the Muslim community are:

- “A robust gTLD has the power to bring together Muslims across national borders in a free-flowing exchange of information and commerce. There is not a .COM or .ORG equivalent of .HALAL--a domain that has universal appeal across a common religion”.<sup>150</sup>

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<sup>148</sup> Annex 13 to Response, section 18(a) (emphasis added).

<sup>149</sup> *Id.*, section 18(b).

<sup>150</sup> *Id.*, section 18(a).



- “The benefits of the .HALAL gTLD will be manifold, not just to registrants but also to tens of millions of Muslim internet users, as well as many others with an interest in or curiosity regarding Islam”.<sup>151</sup>
- “As it is rolled out, the .HALAL gTLD will rapidly develop as the gTLD of choice among Muslims in all countries. The demand for Islamic content from this group isn’t and won’t be satisfied by .COM or .ORG offerings within the current gTLDs and in fact has hampered collaboration and innovation. The Islamic people demand content that is tailored to their own unique needs and wants, under the umbrella of a dedicated gTLD”.<sup>152</sup>
- “The history of .COM will be of interest here, because .HALAL should grow quickly and face demand as high among the Muslim community as .COM has in the English-language online community”.<sup>153</sup>

127. Another factor contained in the “Targeting” subsection, namely the “[o]ther public statements by the applicant”, sheds light in this regard.<sup>154</sup> In the Response, the Respondent explicitly acknowledges that the String will specifically target the Muslim community:

The ICRIC has provided a letter of support to the Applicant with respect to both the .Halal and .Islam TLDs. (Annex 6.) ICRIC operates the only Halal certification body to be recognised by all Islamic countries, HalalWorld, which provided a separate letter of support. (Annex 7.) This is a strong sign of support from this TLD’s target community.<sup>155</sup>

128. Elsewhere in the Response, the Respondent makes a similar concession when it states that the Objector “does not represent the global Muslim community to which the .Halal TLD will be targeted”.<sup>156</sup> Additionally, the Respondent “concede[s] that the .Halal TLD is targeted generally to persons striving to live a Halal lifestyle”.<sup>157</sup>

129. The Respondent even provides letters of support from different Islamic organizations, including from organizations operating in the industry of Halal products

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<sup>151</sup> *Id.*, section 18(b).

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*, section 18(c).

<sup>154</sup> Guidebook, Article 3.5.4 (“Targeting” subsection).

<sup>155</sup> Response, p. 6.

<sup>156</sup> *Id.*, p. 5 (emphasis added).

<sup>157</sup> *Id.*, p. 7.

intended for Muslims.<sup>158</sup> Therefore, the Respondent has conceded that the String will have effects in the Muslim community.

130. In sum, the Expert finds that there is a strong association between the String and the community represented by the Objector, which is the Muslim community.

#### **E. Does the Application Create a Likelihood of Material Detriment?**

##### **(a) Objector's Position**

131. For the Objector, "there is clearly a level of certainty that [a] detrimental outcome[ ] will occur" because of the "obvious lack of community involvement and support" to Respondent's application.<sup>159</sup> The Objector explains that the obvious lack of support from the majority of the community will "most probably" result in that the String will "be dominated by a subgroup from the religion and will ignore the interests of the remaining majority".<sup>160</sup>

132. The Objector highlights that religion is an "extremely sensitive subject".<sup>161</sup> Since Islam includes different subgroups and sects, it would be very difficult to unite all of them under the same gTLD unless an organization that represents the community (or its majority) runs and supports said domain.<sup>162</sup> For the Objector, the Respondent's application fails to evidence any mechanisms that will effectively prevent abuses or misuses of the String, which is further exacerbated by the fact that the Respondent is not supported by the majority of the Muslim community.<sup>163</sup> The Objector concludes that all this will result in damage to the reputation of the Muslim community.<sup>164</sup>

##### **(b) Respondent's Position**

133. The Respondent relies on the factors included in Article 3.5.4 of the Guidebook ("Detriment" subsection).<sup>165</sup> For the Respondent, the Objector "wholly fails to

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<sup>158</sup> *Id.*, p. 5. See also Annexes 6-9 to the Response and Annexes 2-3 to the Rejoinder.

<sup>159</sup> Objection, p. 7.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*, p. 8.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> Response, p. 9.

provide any evidence by which the Applicant or the Panel could assess these factors”.<sup>166</sup> The Respondent argues that the Objector mistakenly places emphasis on the lack of support and that it merely speculates on a possible dominance by a religious subgroup, which is totally unsupported because (i) Respondent has furnished substantial community support to its application; and (ii) allowing a dominance by a subgroup will make no sense from a business perspective.<sup>167</sup>

134. Furthermore, the Respondent argues that it has repeatedly promised to operate the String “in the best interests of the community as a whole” and quotes its response to ICANN’s Government Advisory Committee’s Beijing Communiqué.<sup>168</sup> In such response, the Respondent pledged to implement measures “to limit second-level domain registrations to those of Muslim faith or with a positive interest in the Muslim community” and expressed that it “will not tolerate radical content or criticism of Islam and the Muslim faith”.<sup>169</sup> The Respondent “will take immediate and severe action” if necessary and will establish “safeguards, keyword alerts, name selection polices, all governed by an Acceptable Use Policy and post registration protections”.<sup>170</sup>

135. The Respondent points out that it has drafted a “Governance Model for its TLDs”,<sup>171</sup> which led the Indian Government to withdraw its concerns about the String.<sup>172</sup> In addition, the Respondent explains that, as mentioned in the String application, it “will endeavor to the utmost in order to minimize the social costs to registrants of a .HALAL second-level domain”.<sup>173</sup> The Respondent highlights the adoption of a policy matrix and other recommendations, as well as a complaint resolution service, all of which are geared towards minimizing harm in TLDs.<sup>174</sup>

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<sup>166</sup> *Id.* p. 10.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.* (attached to the Response as Annex 11).

<sup>169</sup> *Id.* (quoting Annex 11 to the Response).

<sup>170</sup> *Id.* (quoting Annex 11 to the Response).

<sup>171</sup> Annex 10 to the Response.

<sup>172</sup> Response, p. 10.

<sup>173</sup> *Id.*, p. 11 (quoting Annex 13, section 18(c)).

<sup>174</sup> *Id.*

136. The Respondent also explains that it has made a binding public interest commitment whereby certain requirements are imposed on the registry operator to foster transparency and to avoid misuses and abuses of the String.<sup>175</sup>

137. For the Respondent, all the above “documented efforts and intentions must outweigh [Objectors]’s rank speculation as to the applicant’s intentions”.<sup>176</sup>

138. On a separate note, the Respondent places strong emphasis on the fact that Dr. Alain Pellet, ICANN’s Independent Objector, “thoroughly reviewed the purported public opposition to the .Islam TLD, and found no basis for any objection”.<sup>177</sup> For the Objector, Dr. Pellet’s conclusions – which favored the registration of “.Islam” – apply by extension to the String.

139. Finally, the Respondent sustains that the “global Halal community is not dependent upon the DNS for its core activities”, which stands for “**Domain Name System**”, and that there “will be no damage to anyone, but instead the TLDs will operate to the benefit of the global Halal community”.<sup>178</sup>

### (c) Expert’s Conclusion

140. Article 3.5.4 of the Guidebook (“Detriment” subsection) requires that the “objector must prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted”. Notably, the Guidebook adds that “[a]n 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”.

141. The Guidebook sets a high bar in order for the Expert to find any detriment:

If opposition by a community is determined, but there is no likelihood of material detriment to the targeted community

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<sup>175</sup> *Id.*, pp. 11-12.

<sup>176</sup> *Id.*, p. 12.

<sup>177</sup> *Id.*, p. 10.

<sup>178</sup> *Id.*, p. 12.

resulting from the applicant's operation of the applied-for gTLD, the objection will fail.<sup>179</sup>

142. In this case, as discussed in section V.C(c) above, there is some opposition from the community but such opposition is not substantial. The question now presented is the likelihood of material detriment to the targeted community. To reach an answer, the Expert will analyze the factors included in the relevant subsection of Article 3.5.4 of the Guidebook.

143. The first factor in the Guidebook is:

Nature and extent of damage to the reputation of the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string

144. The Expert finds particularly illustrating Dr. Pellet's report to address this point.<sup>180</sup> Although this report is intended for the ".Islam" application, some of his conclusions are applicable to the String. Dr. Pellet reviewed a number of binding and non-binding international instruments, both at global and regional levels, which deal with the freedom of religion.<sup>181</sup> The Expert notes that a common denominator of these instruments is the protection of freedom of religion and the freedom to manifest one's religion. Of particular relevance is the Universal Declaration of Human Rights, adopted by the United Nations General Assembly on 10 December 1948. Notably, the UAE has been a member of the United Nations since 1971.<sup>182</sup>

145. As Dr. Pellet correctly mentions, the Universal Declaration of Human Rights explicitly says:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest

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<sup>179</sup> Guidebook, Article 3.5.4 ("Detriment" subsection) (emphasis added).

<sup>180</sup> A copy of this report is attached to the Response as Annex 12.

<sup>181</sup> Annex 12 to the Response (Limited Public Interest Objection section, ¶¶ 5-10).

<sup>182</sup> See [www.un.org/en/members/](http://www.un.org/en/members/).

his religion or belief in teaching, practice, worship and observance.<sup>183</sup>

146. For the Expert, the registration of the String will contribute to promoting this objective, as it will become a vehicle for Muslims to express themselves and expand their faith across the world.

147. The possible damages asserted by the Objector, which have not been sufficiently evidenced, are outweighed by the necessity of promoting human rights, such as the freedom of religion and the opportunity for every individual to manifest its own religion. Therefore, this factor favors the Respondent.

148. The second factor in the Guidebook is:

Evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely, including evidence that the applicant has not proposed or does not intend to institute effective security protection for user interests

149. The Objector has certainly not provided any evidence that the Respondent is not acting or does not intend to act in accordance with the interests of the Muslim community. On the contrary, the Respondent has promised to operate the String in a manner that will prevent “radical content or criticism of Islam and the Muslim faith”, and the Respondent “will take immediate and severe action against this should it occur”.<sup>184</sup>

150. It has been evidenced that the Respondent intends to implement security measures to avoid the misuse or abuse of the String.<sup>185</sup> In this regard, the Guidebook does

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<sup>183</sup> Universal Declaration of Human Rights, Article 18 (emphasis added) (*quoted* in Dr. Pellet’s report at Limited Public Interest Objection section, ¶ 6).

<sup>184</sup> Annex 11 to the Response, p. 2. *See also* Annex 13 to the Response, section 18(b) (“Equally, AGITSys will not tolerate radical content, nor will it tolerate content that criticizes Islam and the Muslim faith. Immediate and severe action will be taken against registrants promulgating either, and a black list will be created in an attempt to pre-empt any such attempts.”).

<sup>185</sup> Annex 10 to the Response, pp. 13-18; Annex 2 to the Rejoinder, pp. 31-38; Annex 11 to the Response, p. 2; Annex 13 to the Response, section 18(b). Annex 10 to the Response relates to the “.Islam” string, but the Respondent states that the “.Halal” would virtually be the same. The Expert agrees that it would not be difficult to adapt this document to the “.Halal” string. Further, the Respondent has furnished a new version of this document as Annex 2 to the Rejoinder which combines both “.Halal” and “.Islam”. *See* Annex 2 to the Rejoinder.

not require that the measures be in place at this time, but rather that such measures be proposed (or an appearance of an intention to propose or implement them in the future).

151. Among these measures already proposed, the Respondent intends to:

- Design a multi stakeholder governing system (a/k/a “Policy Advisory Council), where Islamic governments, organizations and individuals will have representatives that will participate in the management of the String under direct supervision of a multinational Islamic organization or institute.<sup>186</sup>
- Implement a strict policy under which not everyone will be eligible to apply for a second-level “.Halal” domain, but only those who meet certain requirements.<sup>187</sup> Additionally, certain second-level domains will be restricted and all second-level domains will be subject to a policy of use.<sup>188</sup>
- Impose penalties and suspensions upon violators of the user’s policy.<sup>189</sup>
- Include one addendum to its Registry Agreement with ICANN whereby certain requirements will be imposed on the registry operator in order to promote transparency and avoid misuses or abuses.<sup>190</sup>

152. In accordance with the above, the second factor favors the Respondent.

153. The third factor in the Guidebook is:

Interference with the core activities of the community that would result from the applicant’s operation of the applied-for gTLD string

154. The key language in this factor is “core activities”. In ¶ 65 above the Expert transcribed the five pillars or core principles of Islam. The Expert is of the opinion that the operation of the String will not, on its face, interfere with any of them. Nonetheless, as discussed above, the Respondent intends to implement policies and mechanisms to ensure that the integrity of Islam is preserved. Consequently, this factor favors the Respondent.

155. The fourth factor in the Guidebook is:

Dependence of the community represented by the objector on the DNS for its core activities

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<sup>186</sup> Annex 10 to the Response, pp. 13-15; Annex 2 to the Rejoinder, pp. 31-33.

<sup>187</sup> Annex 10 to the Response, pp. 16-17; Annex 2 to the Rejoinder, pp. 36-37.

<sup>188</sup> Annex 10 to the Response, pp. 17-18; Annex 2 to the Rejoinder, p. 37.

<sup>189</sup> Annex 10 to the Response, p. 18; Annex 2 to the Rejoinder, p. 38. See also Annex 13 to Response, section 18(b).

<sup>190</sup> Response, pp. 11-12; Annex 14 to the Response.

156. The Respondent has stated that “[t]he global Halal community is not dependent upon the DNS for its core activities, namely practicing Islamic religion and living a Halal lifestyle”.<sup>191</sup> The Objector has remained silent in this regard.

157. Islam originated around 1400 years ago, long before Internet was created.<sup>192</sup> Therefore, the Islamic community is not dependent on the DNS. As a result, this factor favors the Respondent.

158. The fifth factor in the Guidebook is:

Nature and extent of concrete or economic damage to the community represented by the objector that would result from the applicant’s operation of the applied-for gTLD string

159. Neither of the Parties has argued a concrete or economic damage to the Islamic community. In fact, the Expert is of the opposite view. In line with ¶ 146 above, the Expert agrees with the Respondent in that the String may serve as a platform for the expansion of Halal products across the borders, which may be translated into increased profits for the participants in the Halal industry.<sup>193</sup>

160. The sixth factor in the Guidebook is:

Level of certainty that alleged detrimental outcomes would occur

161. The Objector has not evidenced any immediate or imminent detriment. Rather, the Objector has speculated with some possible outcomes. In light of the foregoing, the Expert finds that the likeliness of detriment to the Islamic or Halal communities, though possible, is remote. As a consequence, this factor favors the Respondent.

162. In sum, the Expert concludes that the Objector has failed to prove the likelihood of any material detriment to the rights or legitimate interests of a significant portion of the Islamic community. For this reason, the Objection must fail.

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<sup>191</sup> Response, p. 12.

<sup>192</sup> Annex 4 to the Response, p. 11.

<sup>193</sup> Annex 18 to the Response, section 18(b).



## **VI. COSTS**

163. In accordance with Article 14(e) of the Procedure, the Centre shall refund to the prevailing party its advance payment of costs.

## **VII. SUMMARY OF FINDINGS**

164. Within the 45 day time-limit set forth in Article 21(a) of the Procedure, the Expert concludes as follows:

- (i) the Objector has standing to file the Objection;
- (ii) the community invoked by the Objector is clearly defined;
- (iii) there is not substantial opposition from the community to Respondent's application;
- (iv) there is a strong association between the String and the community represented by the Objector;
- (v) 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;
- (vi) the Centre shall refund to the prevailing party its advance payment of costs; and
- (vii) this Expert Determination shall be published in full.

165. For these reasons, the prevailing party is the Respondent and thus the Objection shall be dismissed.

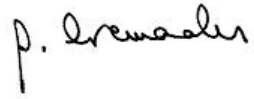
## **VIII. DECISION**

166. For the above reasons and according to Article 21(d) of the Procedure, I hereby render the following Expert Determination:

- (i) The Objection of the Telecommunications Regulatory Authority of the United Arab Emirates is dismissed;
- (ii) Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti. prevails; and
- (iii) Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti.'s advance payment of costs shall be refunded by the Centre to Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti.

\* \* \* \*

Date: 24/October/2013

A handwritten signature in black ink, appearing to read 'p. cremades', written in a cursive style.

Signature: \_\_\_\_\_  
Bernardo M. Cremades  
Expert