

Request for the administration of Expert proceedings regarding the Final Review of the Limited Public Interest Objection against Ruby Pike, LLC's application for .HOSPITAL.

With this letter the Internet Corporation for Assigned Names and Numbers (ICANN) requests the International Centre for ADR (the Centre) of the International Chamber of Commerce (ICC) to appoint a panel of experts (the Panel) and administer the Expert proceedings in accordance with the ICC Expert Rules for Administration of Expert Proceedings (the Rules).

Given the specificities of this Request the attention of the Centre and the Panel is drawn to Article 14(4) of the Rules.

The task of the Panel will be to review (Final Review) and possibly render a decision (Final Expert Determination) in accordance with the instructions provided herewith. The Final Expert Determination will be used by ICANN as part of the evaluation process for the new gTLD application for the .HOSPITAL string.

ICANN requests that the Centre ensures through the administration of these proceedings that the conduct of the procedure and the Final Expert Determination rendered in these proceedings will be impartial and entirely independent from ICANN.

This Request is submitted to the Centre on the basis of the ICANN Board's Resolutions 2016.02.03.12 – 2016.02.03.13 (the 3 February 2016 Board Resolution). (*See* <https://www.icann.org/resources/board-material/resolutions-2016-02-03-en#2.c>.)

I. The Party

The sole party in these proceedings is:

Internet Corporation for Assigned Names and Numbers (ICANN)
12025 Waterfront Drive, Suite 300,
Los Angeles, CA 90094

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II. Related Entities and Persons

The following entities and persons are related to these proceedings:

- 1) Prof. Alain Pellet (France);
- 2) RUBY PIKE, LLC (USA);

- 3) DOZEN DONUTS, LLC
- 4) DONUTS, INC
- 5) Mr. Daniel Schindler (USA);
- 6) Mr. Jon Nevett (USA);
- 7) Ms. Héloïse Bajer-Pellet (France);
- 8) Mr. Daniel Müller (France);
- 9) Law firm VAN DEN BIESEN KLOOSTRA ADVOCATEN (The Netherlands);
- 10) Mr. Sam Wordsworth from ESSEX COURT (UK);
- 11) Law firm THE IP & TECHNOLOGY LEGAL GROUP, P.C. (USA);
- 12) Mr. Piotr Nowaczyk (Poland);
- 13) DENTONS (Poland);
- 14) Mr. August Reinisch (Austria);
- 15) University of Vienna (Austria);
- 16) Mr. Ike Ehiribe (UK, Nigeria).

III. Rules Applicable to the Proceedings

These proceedings will be conducted pursuant to the Rules.

Given that ICANN is the only party to these proceedings, ICANN recognizes that the Rules might need to be adapted to accommodate one-party proceedings only. In the event that such modifications to the Rules are necessary, ICANN expressly agrees and requests that the Centre carry them out in the spirit of the Rules as provided for in Article 14(4) of the Rules and without contacting ICANN.

Moreover, ICANN waves its right to be informed of the procedural considerations under the Rules (such as appointment of the Experts and possible replacements, transfer of the file or extensions of the time limits) and to comment on the procedural steps under the Rules (such as Experts' hourly rate and possible disclosures of the Experts). However, should the Centre deem it is necessary to seek ICANN's comments, it can do so.

IV. Background

In the framework of the New Generic Top Level Domain (New gTLD) Program, ICANN invited applications for the new registries of the top level domain names. In

order to protect certain existing interests and rights, ICANN put in place a dispute resolution procedure. The procedure provided a path for formal objections during the application evaluation process and allowed a party with standing to have its objection considered before a panel of qualified experts. This procedure is governed by the New gTLD Applicant Guidebook, Module 3 (Guidebook), and its attachment, New gTLD Dispute Resolution Procedure (Procedure), as well as by the relevant rules of the dispute resolution service providers. In cases where ICC was such a provider, ICC Expertise Rules were applicable.

All the mentioned rules and procedures are accessible at the following website:
<http://www.iccwbo.org/products-and-services/arbitration-and-adr/icann-new-gtld-dispute-resolution/documents/>.

ICANN also established a figure of the Independent Objector (the IO) in order to ensure that the best interest of the public using the global Internet is preserved. The IO's role was to file objections on behalf of the Internet community independently from ICANN. Prof. Alain Pellet acted as the IO during the objection period.

Among other objections, the IO filed nine limited public interest (LPI) objections (Article 2(e) of the Procedure) against health related applications. The 3 February 2016 Board Resolution and the subject of the Final Review relates to a LPI objection filed by the IO against the application for the gTLD string .HOSPITAL applied for by Ruby Pike, LLC (Application ID: 1-1505-15195) (.HOSPITAL LPI Objection).

This objection was filed on 12 March 2013. The dispute resolution service provider of the LPI objection procedure in this case was ICC. The ICC case number of this proceeding was EXP/412/ICANN/29.

In the framework of the objection procedure and in accordance with the Guidebook and the Procedure, Ruby Pike, LLC (Applicant) submitted its reply to the .HOSPITAL LPI Objection on 16 May 2013 (Article 11 of the Procedure) (Reply). The parties also submitted additional briefings at the approval of the Panel.

ICC appointed a three-member panel on 14 June 2013. This panel rendered its expert determination (.HOSPITAL Expert Determination) in accordance with Article 21 of the Procedure. The majority decision provided that the Objection was successful. Moreover, a Dissenting Opinion was rendered by one of the co-Experts.

Following the issuance of the expert determination in .HOSPITAL LPI Objection, the Applicant challenged the reasonableness of the underlying expert determination as part of the application process. Specifically, the Applicant contends that the .HOSPITAL Expert Determination deviates from all other health-related LPI expert determinations and that the result is inconsistent and unreasonable; that the materials submitted by the IO and the applicants to the expert panels in the nine LPI health related objection proceedings were very similar and, in some instances, nearly identical but that the .HOSPITAL Expert Determination is the only LPI objection where the expert determination was in favor of the objector rather than the applicant. The Applicant further argues the underlying .HOSPITAL LPI Objection expert panel was the only health related LPI objection expert panel that evaluated the sufficiency of certain

protections and safeguards while other expert panels deferred to ICANN to implement and enforce such safeguards as necessary. In its 3 February 2016 Board Resolution, the ICANN Board found that the underlying .HOSPITAL Expert Determination is seemingly inconsistent with the expert determinations resulting from all other health related LPI objections thereby rendering it potentially unreasonable, and thus warranted re-evaluation. (See 3 February 2016 Board Resolution *available at* <https://www.icann.org/resources/board-material/resolutions-2016-02-03-en#2.c>.)

The 3 February 2016 Board Resolution directing re-evaluation of the .HOSPITAL LPI Objection states that, as part of its evaluation, the Panel should also review as background the eight health-related limited public interest objection expert determinations that are listed in Annex A (the Related LPI Expert Determinations).

V. Language of the Proceedings

ICANN requests that the language of these proceedings is English.

VI. Place of the Proceedings

There shall be no meetings, site visits nor hearings in this matter.

The place of the present proceedings shall be Paris, France.

VII. Timing of the Proceedings

The draft Expert Determination shall be rendered within 45 days from the transfer of the file to the Panel.

ICC will take the necessary measures to monitor the above-mentioned time-limit.

In exceptional circumstances in which the Panel would ask for an extension of this time limit, it will be in the Centre's discretion whether to grant it.

VIII. Panel

The Panel shall consist of three experts. One member shall act as the Chair of the Panel.

IX. Appointment of the Panel

The Centre shall appoint the Panel in accordance with Article 3 of the Rules.

As noted above, ICANN waives its right to comment on any aspects of the appointment process, including a disclosure and replacement procedure. In case of any disclosures the Centre has the authority and full discretion to make the decision as to whether the panelist(s) shall serve or whether another panelist(s) shall be appointed by the Centre. The Centre is authorized to appoint another panelist(s) if the appointed panelist(s) is unable to serve promptly.

If a member of the Panel shall become unwilling or unable to serve, the Centre shall administratively appoint a substitute panelist and a new Chair, if applicable.

X. Attributes of the Experts

The Experts shall be recognized as eminent jurists of international reputation, at least one of the Experts should have knowledge of ICANN or the Domain Name System.

They shall not be of French or US nationality.

All Experts shall be impartial and independent from the parties and the related entities.

The Experts shall not be the same as panelists who acted in the proceedings EXP/412/ICANN/29.

XI. Expert Mission and Form of the Panel's Work

The Panel shall render a written and reasoned decision (Final Expert Determination). The purpose of the Final Expert Determination is to establish whether the underlying expert determination rendered in the above-mentioned proceedings EXP/412/ICANN/29 was reasonable through an appropriate application of the standard of review as set forth in Module 3 of the Applicant Guidebook.

Accordingly, the Expert mission is to either:

- Conclude that the underlying expert determination rendered in the proceedings EXP/412/ICANN/29 is supported by the standard of review and reference to the Related LPI Expert Determinations and adopt the underlying expert determination as the Final Expert Determination; or
- Reverse the underlying expert determination rendered in the proceedings EXP/412/ICANN/29 and render a new Final Expert Determination that shall replace and supersede the underlying expert determination.
- The Panel may not order a new LPI objection proceeding or send the matter back to the original panelists for consideration or further review.

a) Standard for deciding on whether the underlying expert determination rendered in the proceedings EXP/412/ICANN/29 was reasonable

The Panel will make its decision on whether the underlying expert determination rendered in the proceedings EXP/412/ICANN/29 was reasonable in deciding on whether the expert panel could have reasonably come to the decision reached on the underlying limited public interest objection through an appropriate application of the standard of review as set forth in the Applicant Guidebook. As directed by the 3 February 2016 Board Resolution, the Panel should also review as background the eight Related LPI Expert Determinations identified in Annex A.

b) Standard for deciding on the merits of the Objection (if applicable)

The Panel will render (if applicable) the Final Expert Determination upon the merits of the IO's Objection in applying the standards as identified by ICANN in the gTLD Applicant Guidebook Module 3 (version of 4 June 2012) relevant to the Limited Public Interest Objection.

c) Records for the Final Expert Determination

Pursuant to the 3 February 2016 Board Resolution, the Panel shall make its decision taking into account the following documents, all of which are attached to this letter:

- IO's Objection filed in the proceedings EXP/412/ICANN/29, dated 12 March 2013;
- Applicant's Reply filed in the proceedings EXP/412/ICANN/29, dated 15 May 2013;
- Request from the IO to the panel to allow additional submissions filed in the proceedings EXP/412/ICANN/29, dated 2 August 2013;
- Procedural Order No. 1 issued in the proceedings EXP/412/ICANN/29, dated 5 August 2013;
- Procedural Order No. 2 issued in the proceedings EXP/412/ICANN/29, dated 9 August 2013;
- IO's Additional Submission filed in the proceedings EXP/412/ICANN/29, dated 12 August 2013;
- Procedural Order No. 3 issued in the proceedings EXP/412/ICANN/29, dated 13 August 2013;
- Applicant's Additional Submission filed in the proceedings EXP/412/ICANN/29, dated 20 August 2013;
- Procedural Order No. 4 issued in the proceedings EXP/412/ICANN/29, dated 28 August 2013;
- Expert Determination rendered in the proceedings EXP/412/ICANN/29, dated 11 December 2013;
- Dissenting Opinion rendered in the proceedings EXP/412/ICANN/29, dated 12 December 2013; and
- The Related LPI Expert Determinations identified in Annex A.

No party in the proceedings EXP/412/ICANN/29 or any third party shall be entitled to submit any additional materials for consideration during these proceedings.

In addition, for rendering the Final Expert Determination (if applicable) the Panel may apply any rules or principles that it determines to be applicable.

The decision shall be made by the majority of the Experts.

d) Form of the Final Expert Determination

The Panel shall render a written Final Expert Determination. The Panel shall state the reasons for its decision.

e) Expert Mission and Procedural Timetable

ICANN, the only party in these proceedings, waives the obligation of the Panel to prepare an Expert Mission in accordance with Article 6 of the Rules as well as the Procedural Timetable in accordance with Article 7 of the Rules.

f) Procedural Issues During the Proceedings

The Panel will not contact ICANN, IO or the Applicant. All guidance and decisions on procedural questions will be taken either by the Panel or the Centre on the basis of the Rules.

g) Scrutiny

The Panel shall submit its Expert Determination in draft form to the Centre for scrutiny in accordance with Article 9 of the Proceedings.

XII. Notification of the Final Expert Determination

Upon completing the Scrutiny procedure and finalization of the Expert Determination, the Centre shall promptly notify the Final Expert Determination to ICANN to the above-mentioned email address in the electronic form only.

Further, the Centre will publish the Final Expert Determination on its website dedicated to ICANN procedures.

XIII. Costs

ICANN will bear the total of the costs of the proceedings.

XIV. Filing Fee

The proof of payment of the filing fee of USD 9,000 is attached herewith.

Date 30 March 2016

Signature Amy Stalder, ICANN
Deputy General Counsel

Attachments:

1. IO's Objection filed in the proceedings EXP/412/ICANN/29, dated 12 March 2013;
2. Applicant's Reply filed in the proceedings EXP/412/ICANN/29, dated 15 May 2013;
3. Request from the IO to the panel to allow additional submissions filed in the proceedings EXP/412/ICANN/29, dated 2 August 2013;
4. Procedural Order No. 1 issued in the proceedings EXP/412/ICANN/29, dated 5 August 2013;

5. Procedural Order No. 2 issued in the proceedings EXP/412/ICANN/29, dated 9 August 2013;
6. IO's Additional Submission filed in the proceedings EXP/412/ICANN/29, dated 12 August 2013;
7. Procedural Order No. 3 issued in the proceedings EXP/412/ICANN/29, dated 13 August 2013;
8. Applicant's Additional Submission filed in the proceedings EXP/412/ICANN/29, dated 20 August 2013;
9. Procedural Order No. 4 issued in the proceedings EXP/412/ICANN/29, dated 28 August 2013;
10. Expert Determination rendered in the proceedings EXP/412/ICANN/29, dated 11 December 2013;
11. Dissenting Opinion rendered in the proceedings EXP/412/ICANN/29, dated 12 December 2013;
12. Expert Determination rendered in the proceedings EXP/416/ICANN/33, dated 16 December 2013.
13. Expert Determination rendered in the proceedings EXP/417/ICANN/34, dated 16 December 2013.
14. Expert Determination rendered in the proceedings EXP/409/ICANN/26, dated 6 November 2013.
15. Expert Determination rendered in the proceedings EXP/411/ICANN/28, dated 26 November 2013.
16. Expert Determination rendered in the proceedings EXP/410/ICANN/27, dated 19 December 2013.
17. Expert Determination rendered in the proceedings EXP/414/ICANN/31, dated 19 December 2013.
18. Expert Determination rendered in the proceedings EXP/415/ICANN/32, dated 19 December 2013.
19. Expert Determination rendered in the proceedings EXP/413/ICANN/30, dated 2 January 2014.
20. Proof of payment of filing fee.

ANNEX A: RELATED LPI EXPERT DETERMINATIONS

Related LPI Expert Determinations	String
Independent Objector v. DotHealth, LLC , Case No. EXP/416/ICANN/33	.HEALTH
Independent Objector v. Goose Fest, LLC , Case No. EXP/417/ICANN/34	.HEALTH
Independent Objector v. Afilias Limited , Case No. EXP/409/ICANN/26	.HEALTH
Independent Objector v. Silver Glen, LLC , Case No. EXP/411/ICANN/28	.HEALTHCARE
Independent Objector v. HEXAP SAS , Case No. EXP/410/ICANN/27	.MED
Independent Objector v. Medistry LLC , Case No. EXP/414/ICANN/31	.MED
Independent Objector v. Charleston Road Registry Inc. , Case No. EXP/415/ICANN/32	.MED
Independent Objector v. Steel Hill, LLC , Case No. EXP/413/ICANN/30	.MEDICAL