

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

CASE No. EXP/471/ICANN/88

SPORTACCORD

(SWITZERLAND)

vs/

DOT SPORT LIMITED

(GIBRALTAR)

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.

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

**SPORTACCORD  
(Switzerland)**

**v.**

**DOT SPORT LIMITED  
(Gibraltar)**

**EXP/471/ICANN/88**

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**EXPERT DETERMINATION**

By

Prof. Dr. Guido Santiago Tawil

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This document is an original of the Expert Determination rendered in conformity with Article 21 of the ICANN New gTLD Dispute Resolution Procedure

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## **TABLE OF ABBREVIATIONS**

Applicant	dot Sport Limited
Appointed Expert	The Appointed Expert as defined in Section II of this Expert Determination
DRSP	Dispute Resolution Service Provider
GNSO	ICANN Generic Names Supporting Organization
gTLD	generic Top-Level Domain
ICANN	The Internet Corporation for Assigned Names and Numbers
ICANN Guidebook	Module 3 of the ICANN's gTLD Applicant Guidebook, version dated June 4, 2012.
ICC	The International Chamber of Commerce
ICC Centre	The International Centre for Expertise of the International Chamber of Commerce
ICC Practice Note	ICC Practice Note on the Administration of Cases
ICC Rules for Expertise	The Rules for Expertise of the International Chamber of Commerce in force as from January 1 <sup>st</sup> , 2003
Objector	SportAccord
Parties	SportAccord and dot Sport Limited
Rules of Procedure	The ICANN's Attachment to Module 3 – New gTLD Dispute Resolution Procedure

## **EXPERT DETERMINATION**

1. In accordance with Article 21 of the New gTLD Dispute Resolution Procedure (“Rules of Procedure”), the Appointed Expert renders this Expert Determination.

### **I. The Parties**

#### **A. Objector**

2. Objector in these proceedings is SPORTACCORD (“SportAccord” or “Objector”), an association established according to the laws of Switzerland, domiciled at

Avenue de Rhodanie, 54  
Lausanne CH 1007  
Switzerland

3. In these proceedings, Objector is represented by:

Mr. Pierre Germeau  
SportAccord  
Avenue de Rhodanie, 54  
Lausanne 1007  
Switzerland  
Tel.: + 41 21 612 30 70  
E-mail: [pierre.germeau@sportaccord.com](mailto:pierre.germeau@sportaccord.com)

4. Notifications and communications arising in the course of these proceedings were made to the aforementioned e-mail address.

#### **B. Applicant**

5. Applicant in these proceedings is DOT SPORT LIMITED (“dot Sport Limited” or “Applicant”), a company established according to the laws of Gibraltar, domiciled at :

6A Queensway  
Gibraltar, GX11 1AA  
Gibraltar

6. In these proceedings, Applicant is represented by:

Mr. Peter Young  
Famous Four Media Limited  
Suite 2-4 Leisure Island Business Centre,  
Ocean Village, GX11 1AA

Gibraltar  
Tel.: + 350 216 50000  
E-mail: [pyoung@famousfourmedia.com](mailto:pyoung@famousfourmedia.com)

7. Notifications and communications arising in the course of these proceedings were made to the aforementioned e-mail address.

## **II. The Appointed Expert**

8. On July 29, 2013, the Chairman of the Standing Committee of the International Centre for Expertise of the International Chamber of Commerce (the “ICC Centre”) appointed Prof. Dr. Guido Santiago Tawil as Expert in accordance with Articles 7 and 11(5) of the the Rules for Expertise of the International Chamber of Commerce in force as from January 1<sup>st</sup>, 2003 (the “ICC Rules for Expertise”). The Appointed Expert contact details are:

Guido Santiago Tawil  
M. & M. Bomchil  
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Tel.: + 54 11 4321 7500  
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9. Managers of the ICC Centre who are in charge of the file are:

Hannah Tümpel (Manager)  
Spela Kosak (Deputy Manager)  
ICC International Centre for Expertise  
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75008, Paris  
France  
Tel.: +33 1 49 53 30 52  
Fax: +33 1 49 53 30 49  
E-mail: [expertise@iccwbo.org](mailto:expertise@iccwbo.org)

## **III. Summary of the Procedural History**

10. On March 13, 2013, SportAccord filed an Objection pursuant to Module 3 of the gTLD Applicant Guidebook, version dated June 4, 2012 (“ICANN Guidebook”), the Attachment to Module 3 – New gTLD Dispute Resolution Procedure (“Rules of Procedure”) and the Rules for Expertise of the International Chamber of Commerce in force as from January 1<sup>st</sup>, 2003 (“ICC Rules for Expertise”) supplemented by the ICC Practice Note on the Administration of Cases (“ICC Practice

Note”).

11. On March 16, 2013, the ICC Centre acknowledged receipt of the Objection and conducted the administrative review of it in accordance with Article 9 of the Rules of Procedure for the purpose of verifying compliance with the requirements set forth in Articles 5 to 8 of the Rules of Procedure.

12. On April 5, 2013, the ICC Centre informed the Parties that the Objection was in compliance with Articles 5 to 8 of the Rules of Procedure. Accordingly, the Objection was registered for processing.

13. On April 12, 2013, the Internet Corporation for Assigned Names and Numbers (“ICANN”) published its Dispute Announcement pursuant to Article 10(a) of the Rules of Procedure.

14. On the same date, the ICC Centre informed the Parties that it was considering the consolidation of the present case with the case No. EXP/486/ICANN/103 (SportAccord v. Steel Edge LLC; gTLD: “.sports”) in accordance with Article 12 of the Rules of Procedure. Therefore, the ICC Centre invited the Parties to provide their comments regarding the possible consolidation no later than April 16, 2013.

15. On April 15, 2013, Applicant filed its comments on the possible consolidation by e-mail to the ICC Centre, a copy of which was sent directly to Objector.

16. On April 16, 2013, Objector filed its comments on the possible consolidation by e-mail to the ICC Centre, a copy of which was sent directly to Applicant.

17. On April 22, 2013, the ICC Centre informed the Parties that it decided not to proceed with the consolidation. It further invited Applicant to file a Response to the Objection within 30 days of the ICC Centre’s transmission of such letter in accordance with Article 11(b) of the Rules of Procedure.

18. On May 21, 2013, dot Sport Limited filed its Response to SportAccord’s Objection.

19. On May 22, 2013, the ICC Centre acknowledged receipt of Applicant’s Response. It further informed the Parties that the Response was in compliance with the Rules of Procedure.

20. On June 21, 2013, the ICC Centre appointed Mr. Jonathan P. Taylor as expert in accordance with Article 13 of the Rules of Procedure and Article 9(5)(d) of the Rules for Expertise.

21. On July 16, 2013, the ICC Centre acknowledged receipt of Applicant’s objection to Mr. Taylor’s appointment.

22. On July 25, 2013, the ICC Centre informed the Parties that it had decided not to confirm the appointment of Mr. Taylor as Expert in the present case and, there-

fore, it would proceed with the appointment of another Expert.

23. On July 29, 2013, the Chairman of the Standing Committee of the ICC Centre appointed Prof. Dr. Guido Santiago Tawil as Expert in accordance with Article 7 of the ICC Rules for Expertise and Article 3(3) of its Appendix I. On July 30, 2013, the ICC Centre notified the Parties of the Expert's appointment. It further sent the Parties the Expert's *curriculum vitae* as well as his Declaration of Acceptance and Availability, Statement of Impartiality and Independence.

24. On August 2, 2013, the ICC Centre reminded the Parties that the estimated costs had been paid in full by each party and confirmed the constitution of the expert panel.

25. On the same day, the electronic file was transferred by the ICC Centre to the Appointed Expert.

26. On August 5, 2013, the Appointed Expert issued Communication E-1 by means of which it informed the Parties that (i) based on their submissions and pursuant to Article 21 of the Rules of Procedure, it would render its Expert Determination, and (ii) at that stage, it did not consider necessary to request the Parties to submit any written statement in addition to the Objection and the Response, including their respective exhibits.

27. In accordance with point 6 of the ICC Practice Note on the Administration of Cases ("ICC Practice Note"), the requirement for the Expert Mission contained in Article 12(1) of the ICC Rules for Expertise has been waived.

28. Pursuant to Article 21(a) of the Rules of Procedure, the time-limit for rendering this Expert Determination expires on September 16, 2013.

29. The Expert Determination was submitted in draft form to the ICC Centre on August 23, 2013, within the 45 day time limit in accordance with Article 21(a) of the Procedure.

#### **IV. Procedural Issues and Applicable Rules**

30. SportAccord filed a "Community Objection", defined as "*a substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted*" according to Article 3.2.1. of the ICANN Guidebook, against dot Sport Limited's application for the gTLD ".sport".

31. Pursuant to Article 5(a) of the Rules of Procedure, all submissions –including this Expert Determination– have been made in English. Further, all submissions and communications between the Parties, the Appointed Expert and the ICC Centre were filed electronically as stated in Article 6(a) of the Rules of Procedure.

32. In accordance with Article 4(d) of the Rules of Procedure, the seat of these proceedings is the location of the ICC Centre in Paris, France.

33. For the purpose of rendering this Expert Determination, the applicable rules are: the ICC Rules for Expertise, supplemented by the ICC Practice Note, the ICANN Guidebook and the Rules of Procedure.

## **V. Summary of the Parties' Positions**

34. The issues to be addressed by the Appointed Expert shall be those resulting from the Parties' submissions and those which the Appointed Expert considers to be relevant to make a determination on the Parties' respective positions.

35. Based on the Parties' written submissions (SportAccord's Objection, dot Sport Limited Response and their respective exhibits), the main issues and claims under determination can be summarised as follows.

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

36. SportAccord claims that it has standing to object to applications for the gTLD ".sport" on the grounds that it is an established international representative institution of the Sport Community,<sup>1</sup> which has been impacted by such gTLD application. Further, Objector states that it is a not-for-profit association constituted in accordance with the Swiss Civil Code and comprises several autonomous and independent international sports federations and other international organizations<sup>2</sup> which contribute to sport in various fields.<sup>3</sup>

37. Regarding the description of the basis for the Objection as established in Article 3.3.1 of the ICANN Guidebook, SportAccord states that the Sport Community

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<sup>1</sup> According to Objector, the Sport Community is organized on local, national and international levels and is clearly delineated by way of its organizational structures and its values. See: Objection, page 6.

<sup>2</sup> SportAccord has 91 full members: international sports federations governing specific sports worldwide and 16 associate members: organizations which conduct activities related to the international sports federations. See: Exhibit Ap-2.

<sup>3</sup> Indeed, Objector claimed that "*SportAccord is the umbrella organisation for both Olympic and non-Olympic international sports federations as well as organisers of international sporting events*". See: Objection, page 6. Article 2 of SportAccord Statutes establishes several purposes of this association which, among others, include: "*a) to promote sport at all levels, as a means to contribute to the positive development of society; b) to assist its Full Members in strengthening their position as world leaders in their respective sports... d) to increase the level of recognition of SportAccord and its Members by the Olympic Movement stakeholders as well as by other entities involved in sport... j) to coordinate and protect the common interests of its Members... k) to collaborate with organisations having as their objective the promotion of sport on a world-wide basis*". See: Exhibit Ap-1. Objector states that its programs include, among others, "*International Federation (IF) recognition, IF relations, doping-free sport, fighting illegal betting, governance, sports' social responsibility, multi-sports games, the '.sport' initiative, the sports hub, the annual SportAccord Convention and the annual IF Forum*". See: Objection, page 7.

is organized, delineated, of long-standing establishment and impacted by sport-related domain names. In light of this statement, Objector expresses its substantial opposition to the application, claiming representation of a significant portion of the Sport Community. It further argues that there is no evidence of community support for any of the non-community-based applications.<sup>4</sup>

38. According to SportAccord, the Sport Community is both targeted implicitly and explicitly by the application for the “.sport” gTLD.<sup>5</sup>

39. Finally, Objector elaborates on the material “*detriment*” to the rights and legitimate interests of the Sport Community –and to users in general– if dot Sport Limited’s application is allowed to proceed or even finally approved.<sup>6</sup>

40. Based on these allegations, Objector requests that the Appointed Expert acknowledges that (i) the “.sport” gTLD string targets the Sport Community, (ii) there is a substantial opposition to such application from a significant portion of the Sport Community, and (iii) therefore, the application for the “.sport” gTLD is to be rejected.

#### B. Applicant’s Position

41. Applicant rejects SportAccord’s Objection. From the outset of its Response, Applicant alleges that the “.sport” gTLD is intended and designed to increase availability and access to create, produce and disseminate informative, creative and innovative sport-related content. It further alleges that mechanisms have been established to ensure that the gTLD “*operates and grows in a manner that is responsible, protects consumers and promotes consumer and industry trust and confidence*”.<sup>7</sup>

42. In addition, dot Sport Limited alleges that SportAccord has no standing to object on the ground that it fails to prove that it has “*an on-going relationship*” with a clearly delineated Sport Community as a whole.<sup>8</sup>

43. In relation to the “Community” argument, dot Sport Limited explains that the Sport Community is not “*clearly delineated*” because it is comprised of a significant number of stakeholders who do not necessarily share similar goals, values or interests. It also emphasizes that such “Community” lacks formal boundaries, which is also proved by the fact that there is a disagreement about the entities that make up such “Community”.<sup>9</sup>

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<sup>4</sup> See: Objection, page 8.

<sup>5</sup> See: Objection, page 10.

<sup>6</sup> See: Objection, page 11.

<sup>7</sup> See: Response, page 4. In particular, Applicant claims that the objection process “*is not a substitute for Community Evaluation and was not envisaged to be a mechanism by which one applicant could gain a competitive advantage over another*”.

<sup>8</sup> See: Response, pages 4 and 5.

<sup>9</sup> See: Response, page 5.

44. Further, Applicant rejects Objector's argument that the substantial opposition to the application comes from a significant portion of the Sport Community. Indeed, it is Applicant's position that Objector represents a subset of the alleged Community and does not represent the interests, goals, or values of numerous stakeholders in such "Community".<sup>10</sup>

45. In any event, dot Sport Limited states that *"there is not a strong association between the "Community" represented by Objector and the applied for ".sport" TLD" string.*<sup>11</sup>

46. Finally, concerning the material *"detriment"* to the rights and legitimate interests of the Sport Community –as alleged by Objector–, Applicant argues that SportAccord failed to prove a likelihood of material detriment. It further states that the damages alleged by SportAccord are speculative in nature and there is no evidence that such alleged detrimental outcomes would occur.<sup>12</sup>

47. Based on these arguments, dot Sport Limited requests the Appointed Expert to hold that SportAccord's objection is invalid and, therefore, deny the Objection.

## **VI. Findings of the Appointed Expert**

48. In order to make its determination, the Appointed Expert will address the following issues, in accordance with the criteria listed in the ICANN Guidebook :

(1) *Does SportAccord have standing to put forward a Community Objection against the application made by dot Sport Limited?*

(2) *Is the Sport Community clearly delineated?*

(3) *Is there a substantial opposition to the application ".sport" gTLD on behalf of a significant part of the Sport Community?*

(4) *Is the Sport Community explicitly or implicitly targeted by the application ".sport" gTLD?*

(5) *Is there any material detriment to the rights or legitimate interests of the Sport Community if the application ".sport" gTLD is allowed to proceed?*

49. In the following Sections, the Appointed Expert sets out and summarises his understanding of the Parties' positions concerning each of these issues, as elaborated by the Parties in their written pleadings, followed by the Appointed Expert's own analysis and determination concerning such issues.

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<sup>10</sup> See: Response, page 8.

<sup>11</sup> See: Response, page 10.

<sup>12</sup> See: Response, page 11.

A. Objector's Standing

(1) *Does SportAccord have standing to put forward a Community Objection against the application made by dot Sport Limited?*

50. The Appointed Expert is of the view that prior to considering the grounds of the Objection, it is necessary to address this preliminary issue, namely the question of whether SportAccord has standing to put forward a "Community Objection" against the application ".sport" gTLD made by dot Sport Limited.

51. The Appointed Expert will start by deciding this preliminary question in the understanding that if the Appointed Expert finds that the Objector lacks *ius standi* to object, it will become unnecessary to enter into the analysis of the grounds of the Objection.

(i) *Positions of the Parties*

52. Applicant has challenged Objector's standing to file an objection against the application for the ".sport" gTLD. In its Response, Applicant argues that Objector failed to prove that it has "*an on-going relationship*" with a "*clearly delineated Sport Community*" as a whole, failing to meet the standard established in Article 3.2.2.4 of the ICANN Guidebook.<sup>13</sup>

53. While dot Sport Limited recognizes that Objector is an "established institution", it affirms that SportAccord only has an on-going relationship "*with a particular subset of stakeholders*".<sup>14</sup>

54. Applicant goes further and states that, in fact, there is no Sport Community since there are so many activities which can be legitimately identified as "sports". Based on this statement, dot Sport Limited reaffirms its position by stating that the alleged Sport Community is not "*clearly delineated*", because "*just about anyone could claim to have an interest in sport*".<sup>15</sup> Additionally, Applicant criticizes Objector's policies for creating obstacles to free and open participation in its activities, membership and leadership.

55. Although Objector has not dealt directly with these arguments, which were put forward once SportAccord had submitted its Objection, it claims that it has standing to object to the application for the ".sport" gTLD since it is an established international representative institution of the Sport Community, which has been impacted by the mentioned string application.

56. Objector states that it is a not-for-profit association established since 1967,

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<sup>13</sup> See: Response, page 4.

<sup>14</sup> See: Response, page 5. According to Applicant, "*Objector's mission statement clearly shows that Objector only represents a particular subset of the alleged community, organized sports, failing to represent other stakeholders such as: unorganized sports...; sports equipment manufacturers and retailers; media outlets such as newspapers, TV, bloggers... Objector cannot speak for them*".

<sup>15</sup> See: Response, page 5.

which has an ongoing relationship with the Sport Community due to the fact that it comprises autonomous and independent international sports federations and other international organizations.

57. In particular, SportAccord alleges that it has (i) 91 full members: international sports federations governing specific sports worldwide, and (ii) 16 associate members: organizations which conduct activities closely related to the international sports federations. In Objector's words, "*SportAccord is the umbrella organisation for both Olympic and non-Olympic international sports federations as well as organisers of international sporting events*".<sup>16</sup>

58. Finally, in the Objector's view, the Sport Community is highly organized on local, national and international levels and, thus it is clearly delineated by way of its organizational structures and values.

(ii) *Considerations of the Appointed Expert*

59. Pursuant to Article 3.2.2 of the ICANN Guidebook, it is for the Appointed Expert to determine whether the Objector has standing to object.

60. In accordance with the ICANN Guidebook, objectors must satisfy certain standing requirements to have their objections considered by the expert panel. In the case of a "Community Objection", "*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...*".<sup>17</sup>

61. Therefore, to qualify for standing for a "Community Objection", the Objector shall fulfill two conditions, namely that (i) it is an established institution, and (ii) it has an ongoing relationship with a clearly delineated community.

62. The ICANN Guidebook provides useful guidelines so as to determine whether these two requirements should be considered as satisfied by the Objector.

63. Regarding the first condition to be met (i.e.: "*established institution*"), Article 3.2.2.4 of the ICANN Guidebook lists some key factors which may be considered by the expert panel in making its determination. These factors are: (i) the level of global recognition of the institution, (ii) the length of time the institution has been in existence; and (iii) the public historical evidence of its existence, such as the presence of a formal charter or national or international registration, or validation by a government, inter-governmental organization, or treaty.

64. In order to evaluate its standing "*the institution must not have been estab-*

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<sup>16</sup> See: Objection, page 6.

<sup>17</sup> Article 3.2.2.4 of the ICANN Guidebook.

*lished solely in conjunction with the gTLD application process*".<sup>18</sup>

65. SportAccord (previously known as "GAISF", the General Association of International Sports Federations) is a not-for-profit association established in 1967.<sup>19</sup> The length of time that SportAccord has been in existence –almost half a century– is sufficient, in the Appointed Expert's view, to consider Objector as a long-established institution and clearly evidences that such association was not created with the sole intention to participate in the gTLD application process.

66. Additionally, the Appointed Expert notes that Objector also meets the standard of "global recognition", as mentioned in the ICANN Guidebook, since it has a very large membership, comprising of 91 international sports federations and 16 organizations related to sports. In the Appointed Expert's opinion, this is also indicative of Objector's public historical evidence of its existence.

67. Even though Applicant has relied on a survey according to which Objector is hardly known to the majority of the public surveyed,<sup>20</sup> it is the Appointed Expert's view that the level of global recognition of any institution should be analysed within the context of the community that such institution is claiming to be a part of, not the public in general.

68. Although the facts described above would be enough to confirm Objector's compliance with the first condition, the Appointed Expert notes that the very same Applicant has recognized that Objector is an "*established institution*";<sup>21</sup> focussing its challenge on the second condition required to file an objection (i.e.: an on-going relationship with a clearly delineated community).

69. Based on these reasons, the Appointed Expert concludes that Objector is an "*established institution*" in the terms of Article 3.2.2.4 of the ICANN Guidebook.

70. Having decided that Objector meets the first standard contained in the ICANN Guidebook, the Appointed Expert now turns to the issue of whether Objector has an on-going relationship with a clearly delineated community.

71. To make a determination on this issue, the Appointed Expert should take into account the guidelines provided in Article 3.2.2.4 of the ICANN Guidebook. To this end, such provision sets out the following elements to be considered: (i) the presence of mechanisms for participation in activities, membership, and leadership, (ii) the institutional purpose related to the benefit of the associated community, (iii) the performance of regular activities that benefit the associated community; and (iv) the level of formal boundaries around the community.

72. Referring to these factors, the ICANN Guidebook states that "*the panel will*

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<sup>18</sup> See: Article 3.2.2.4 of the ICANN Guidebook.

<sup>19</sup> See: Exhibit Ap-1.

<sup>20</sup> Response, page 8 and Annex A-1.

<sup>21</sup> Response, page 4.

*perform a balancing of the factors listed above, as well as other relevant information, in making its determination. It is not expected that an objector must demonstrate satisfaction of each and every factor considered in order to satisfy the standing requirements”.*<sup>22</sup>

73. Applicant has challenged Objector’s standing on the grounds that it only has an on-going relationship “*with a particular subset of stakeholders*” and not the community as a whole.<sup>23</sup>

74. In the Appointed Expert’s view, Applicant’s argument is not convincing. First, because even though Objector may not represent the “entire” Sport Community, it acts for a preponderant part of such community.

75. The ICANN Guidebook does not require that an “entire” community agree on an objection to an application. In fact, it would be almost impossible for an institution to represent any community as a whole. If such was the requirement, there would be no reason to provide for the possibility of community objections.

76. It is difficult to imagine which other association may claim representation of the Sport Community besides an institution that represents, as Objector does, more than a hundred well-known sports federations and institutions related to sports.

77. Furthermore, Objector’s declared purposes are closely associated with the benefits of the community members it represents<sup>24</sup> and its regular activities are naturally intended to benefit its members.

78. In addition, the Appointed Expert notes that Objector, as an institution that represents multiple sports federations, has explicitly foreseen –through its statutes– different mechanisms for participation in activities, membership and leadership among the sport federations and organizations. For instance, SportAccord’s statutes regulate in detail the procedure to become a member of the institution and participate accordingly.<sup>25</sup>

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<sup>22</sup> Article 3.2.2.4 of the ICANN Guidebook.

<sup>23</sup> Response, page 4.

<sup>24</sup> According to Objector’s statutes (See: Exhibit Ap-1): “*The objectives of SportAccord are: a) to promote sport at all levels, as a means to contribute to the positive development of society; b) to assist its Full Members in strengthening their position as world leaders in their respective sports; c) to develop specific services for its Members, and provide them with assistance, training and support; d) to increase the level of recognition of SportAccord and its Members by the Olympic Movement stakeholders as well as by other entities involved in sport; e) to organise multi-sports games and actively support the organisation of multi-sports games by its Members; f) to be a modern, flexible, transparent and accountable organisation; g) to organise, at least once a year, a gathering of all of its Members, and of other stakeholders of the sport movement, preferably on the occasion of its General Assembly; h) to recognise the autonomy of its Members and their authority within their respective sports and organisation; i) to promote closer links among its Members, and between its Members and any other sport organisation; j) to coordinate and protect the common interests of its Members; k) to collaborate with organisations having as their objective the promotion of sport on a world-wide basis; l) to collect, collate and circulate information to and among its Members”.*

<sup>25</sup> See: Exhibit Ap-1, SportAccord’s Statutes, Articles 5 to 15.

79. Regarding Applicant's argument that Objector's policies create obstacles to free and open participation in its activities, membership and leadership (for instance, by excluding some sports activities, such as card games), in the Appointed Expert's view such "obstacles" are simply the conditions that any organization has to meet to become a member of the institution, as occurs in any other field.<sup>26</sup>

80. In analysing Objector's statutes, membership is open to "*any sport organisation... which groups together the majority of the National Federations (or organisations) throughout the world practising its sport and regularly holding international competitions...*" and "*any sport organisation which groups together the activities of several members... for the purpose of organising competitions*";<sup>27</sup> which shows that membership, far from being closed and exclusive, is accessible to any organization which complies with these minimum standards.

81. Finally, although the issue of the existence of a "Sport Community" is related to the merits of the Objection –and will be analysed in section B–, the Appointed Expert is of the view that Objector's "community", which includes multiple organizations associated with sports, is "*clearly delineated*" for the purpose of objecting to the application for ".sport" gTLD made by dot Sport Limited.

82. Therefore, in the Appointed Expert's view, SportAccord is an established institution which has an ongoing relationship with a clearly delineated community and, consequently, has standing to object to Applicant's application in the present case.

#### B. The "Sport Community"

##### (2) *Is the Sport Community clearly delineated?*

83. Having decided that SportAccord has standing to object to the application for ".sport" gTLD made by dot Sport Limited, the Appointed Expert will now focus on the issue of whether the Sport Community is clearly delineated.

84. The Parties have discussed at length the independent existence of a "Sport Community" and diverging positions were advanced on this issue.

##### (i) *Positions of the Parties*

85. In its Objection, SportAccord defines the Sport Community as "*the community of individuals and organizations who associate themselves with Sport*".<sup>28</sup> According to Objector, Sport is an activity done by individuals or teams of individuals, aiming at healthy exertion, improvement in performance, perfection of skill, fair

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<sup>26</sup> It should be also noted that not all game cards –as claimed by Applicant– are excluded from Objector's membership. The World Bridge Federation is, for instance, a member of SportAccord.

<sup>27</sup> See: Exhibit Ap-1, SportAccord's Statutes, Article 6.

<sup>28</sup> See: Objection, page 8.

competition and desirable shared experience between practitioners as well as organizers, supporters and audience.

86. Objector's position is that the Sport Community "*is highly organized*" both at a local level (local clubs, etc.) and a higher level (Sport Community governance is exercised by regional, national, and international Sport Federations, which collaborate at the local, national and international levels in sport events or with event organizers, governments, the various bodies of the Olympic Movement, associations or federations).

87. Even though Objector states that it represents 107 International Sport Federations, individual practitioners of sport, sport spectators, sport fans and sport sponsors are also part of the Sport Community and share their values and objectives.<sup>29</sup>

88. Finally, Objector explains that the Sport Community "*is clearly delineated*" since it has formal lines of accountability on all levels. In Objector's view, the keyword "*delineated*" should not imply a focus on rigid edges of a community, like card-carrying membership organizations.<sup>30</sup>

89. Applicant rejects Objector's assertion that the Sport Community is "*clearly delineated*". Indeed, dot Sport Limited contends that the Sport Community lacks this characteristic since "*it is comprised of a significant number of stakeholders who do not necessarily share similar goals, values or interests, thus the community lacks formal boundaries, evidenced by disagreement as to which stakeholders are considered members of the Sport community*".<sup>31</sup>

90. According to Applicant, the alleged Sport Community is associated with a "generic" string (".sport") and, therefore, it cannot meet the "*clearly delineated*" criteria due to its broad definition and the nature of the generic term ("sport"), which is by definition used by a significant number of people, who do not necessarily share similar goals, values or interests.

91. Further, Applicant criticizes Objector's assertion that the Sport Community is "*highly organized*" when there is no organization, for instance, for viewers, the media or amateur sportspeople who play sport for fun in their spare time. In Applicant's view, "*there is therefore confusion as to who actually comprises the sport community. This is simply because there is no clearly delineated community*".<sup>32</sup>

92. In addition, dot Sport Limited states that, according to a survey undertaken by itself, there is a low level of public recognition of a Sport Community since 74% of participants surveyed did not see formal organization or registration as a requirement to participate in sports.<sup>33</sup>

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<sup>29</sup> See: Objection, page 9.

<sup>30</sup> See: Objection, page 9.

<sup>31</sup> See: Response, page 5.

<sup>32</sup> See: Response, page 6.

<sup>33</sup> See: Response, Annex 1.

93. Applicant also argues that there is no agreement among experts as to the definition of “sport”, giving examples of different accepted definitions. In analyzing Objector’s definition of “sport”, Applicant concludes that such concept fails to recognize other community stakeholders, for example, non-federation sport organizations (such as, community recreational leagues), media outlets that cover sports, equipment producers and retailers, video game industry, etc.

94. Finally, it is not Sport Limited’s position that the Sport Community is not clearly delineated because there is no agreement as to the entities that make up the alleged community. Applicant explains that, for instance, Objector’s membership criteria exclude legitimate sport activities from membership such as poker, electronic gaming and hunting.<sup>34</sup>

95. To conclude, Applicant states that Objector acknowledged that the Sport Community is comprised of “billions of members” and, consequently, a community comprising the majority of the human race is not clearly, or even slightly, delineated.<sup>35</sup>

(ii) *Considerations of the Appointed Expert*

96. The Appointed Expert has to decide whether the “Sport Community” is clearly delineated.

97. In accordance with Article 3.5.4 of the ICANN Guidebook, “...for an objection to be successful... the objector must prove that the community expressing opposition can be regarded as a clearly delineated community”.

98. As mentioned before, the ICANN Guidebook offers useful guidelines in order to determine whether a community is clearly delineated. “A panel could balance a number of factors to determine this, including but not limited to: (i) the level of public recognition of the group as a community at a local and/or global level; (ii) the level of formal boundaries around the community and what persons or entities are considered to form the community; (iii) the length of time the community has been in existence; (iv) the global distribution of the community (this may not apply if the community is territorial); and (v) the number of people or entities that make up the community”.<sup>36</sup>

99. Having set out the factors to be considered, the ICANN Guidebook further provides that “...if 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”.

100. The concept of “community” is not defined by the ICANN Guidebook. The

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<sup>34</sup> See: Response, page 7.

<sup>35</sup> See: Response, page 7.

<sup>36</sup> Article 3.5.4 of the ICANN Guidebook.

word “community” is broad and allows more than one interpretation. Besides the political (nationality), religious or ethnic meanings or implications that the term may have, it generally refers to a “group of people” that may be considered as a “unit” that share similar interests, goals or values.<sup>37</sup>

101. Furthermore, the word “sport” is also a generic term. If someone mentions the word “sport” without any specificity, it is highly probable that different listeners will imagine different aspects, ideas or own preconceptions about what the speaker does want to refer. The same occurs with other generic terms such as “health”, “law”, “government”, “commercial”, etc.

102. Nevertheless, the generic nature of these words does not constitute an obstacle for a community to identify itself with them. For instance, the word “lawyer” (or, more precisely, the “.lawyer” gTLD) may identify the community of lawyers around the world, even though it would be difficult (or impossible) to find that all lawyers share the same goals, values or interests.

103. In the case at hand, it is the Appointed Expert’s view that the community represented by Objector (international sports federations and organization) enjoys a high level of public recognition in its field and has existed for decades. Further, since it was established in 1947, it has succeeded in increasing the number of its members, rather than becoming smaller or less representative.

104. Further, regarding the “*number of... entities that make up the community*”, an aspect that the ICANN Guidebook highlights as relevant, the Appointed Expert notes that Objector is comprised of 91 well-known international sports federations and 16 organizations related to sports. If SportAccord had not obtained a high level of recognition in the sport field since it had been established, some of the well-known federations included in such association would not have remained part of it.

105. In any event, the Appointed Expert understands that this is not a case in which a single sport association or organization claims for the priority use of the “.sport” gTLD –irrespective of other federations or organization which could claim for the same right or interest–, but the whole community of sports federations and organization (or, at least, the most part of it) represented by Objector.

106. Finally, the Appointed Expert cannot accept Applicant’s argument that the Sport Community is not organized when Objector has proved that it has its own mechanism of participation, programs and organization through its statutes and government bodies. The fact that the media (which may constitute a different community) or viewers are unable to be part of this association is irrelevant to consider Objector as a delineated community. Otherwise, no community could be

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<sup>37</sup> According to the British English Dictionary, the word “community” has three different meanings “1) the people living in one particular area or people who are considered as a unit because of their common interests, social group, or nationality, 2) a group of animals or plants that live or grow together, 3) the general public”. See British English Dictionary, Cambridge Ed., 2013.

recognized under the ICANN gTLD proceedings since it would be easy for any Applicant to find secondary or not closed-related members outside of it.

107. The “Sport Community”, in the Appointed Expert’s view, is a community that clearly distinguishes itself from other communities by its characteristics, objectives and values.

108. Therefore, the Appointed Expert concludes that the Sport Community is clearly delineated for the purpose of these proceedings and, consequently, Applicant’s objections in this respect must also fail.

C. *The “Substantial Opposition” to the Application*

(3) *Is there a substantial opposition to the application for the “.sport” gTLD on behalf of a significant part of the Sport Community?*

109. Having decided that the Sport Community is clearly delineated, the Appointed Expert now turns to determine whether there is a substantial opposition of a significant part of the Sport Community.

(i) *Positions of the Parties*

110. Objector highlights that it expresses opposition on behalf of the 107 International Federations encompassed in such association, as listed in Appendix A-2 of the Objection. Objector has proffered more than 50 letters of opposition from different federations and also points to other individual oppositions.<sup>38</sup>

111. SportAccord notes that while many international sport bodies, international sport federations and specialized agencies have already expressed their opposition, there is no evidence, by contrast, of community support in favour of the application “.sport” gTLD made by dot Sport Limited.

112. According to SportAccord, “*the portion of the community expressing opposition through its representative organization is not just significant, but overwhelming*”.<sup>39</sup> It also argues that Applicant’s application targets the most visible and highly organized segments of the Sport Community, represented by national and international sport federations.

113. Finally, Objector elaborates on the argument that although individual practitioners of the Sport Community (who do not need organization to practise sports) have not made opposition to the application, it is natural that the organized segment of such Community reacts and raises objections on behalf of their stakeholders.

114. In turn, Applicant claims that SportAccord has failed to prove “substantial

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<sup>38</sup> See: Objection, page 9.

<sup>39</sup> See: Objection, page 10.

opposition” to the application, since Objector represents a subset of the alleged community and does not represent the interests, goals, or values of numerous stakeholders in the alleged community (for instance, sports excluded from membership and the other stakeholders not represented by Objector).<sup>40</sup>

115. Applicant insists on the “relative” low number of oppositions compared with the composition of the alleged community. In Applicant’s own words, “*expressions of opposition from Objector are small compared to the large composition of the alleged ‘sport’ community*”.<sup>41</sup>

116. Further, dot Sport Limited also claims that Objector did not provide examples of support from members of the alleged community that do not comprise its membership. Based on this argument, Applicant states that Objector does not encompass all sport activities by any means.

117. Applicant also alleges that Objector organized a campaign among its members to support its Objection by using a standard template letter that requires no thought or effort to sign it.<sup>42</sup> Notwithstanding so, Applicant notes that only half of SportAccord’s members have actually shown support to the Objection. Further, Applicant states that Objector has offered no proof that its membership as a whole signed on to the opposition.

118. Regarding the counter-argument related to individual sport practitioners (not organized) advanced by Objector, dot Sport Limited answers that such assertion “*totally ignores the fact that the sports industry includes a great number of professional organisations such as media outlets, who could easily have objected*” but did not do so.<sup>43</sup>

(ii) *Considerations of the Appointed Expert*

119. The Appointed Expert has to decide whether there is a substantial opposition to the application for the “.sport” gTLD on behalf of a significant part of the Sport Community.

120. To this end, the Appointed Expert will focus on Article 3.5.4 of the ICANN Guidebook, which establishes the standards to be analysed in order to make a determination on this issue.<sup>44</sup>

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<sup>40</sup> See: Response, page 8. Moreover, dot Sport Limited states that, according to the sports survey undertaken by itself, the vast majority of the public are not even aware of the existence of SportAccord.

<sup>41</sup> See: Response, page 8.

<sup>42</sup> See: Response, page 9.

<sup>43</sup> See: Response, page 9.

<sup>44</sup> According to such provision, “*a panel could balance a number of factors to determine whether there is substantial opposition, including but not limited to: (i) number of expressions of opposition relative to the composition of the community; (ii) representative nature of entities expressing opposition; (iii) level of recognized stature or weight among sources of opposition; (iv) distribution or diversity among sources of expressions of opposition, including: (a) regional (b) subsectors of community, (c) the leadership of community, (d) membership of community; (v) historical defense of the*

121. In order to determine the appropriate standard to evaluate the Objection, it should be noted that Article 3.5.4 of the ICANN Guidebook does not require that the “entire” community expresses its opposition. Rather, it requires that Objector proves a “substantial” opposition within the community it has identified itself as representing.

122. Therefore, the Appointed Expert is of the view that the argument on the “relative low number” of oppositions compared to the composition of the Sport Community, as put forward by Applicant, should be balanced with the relevance and representative nature of each opposition within the community. For instance, in the present case, the opposition made by an individual rugby player or fan will not have the same weight in order to determine if an objection represents substantial opposition as the one made by the International Rugby Board.<sup>45</sup>

123. In this respect, the Appointed Expert is satisfied with the evidence produced by Objector, which includes 55 letters of opposition submitted by different recognized sport federations,<sup>46</sup> together with other statements from different reputable sport organizations and specialized agencies, such as the International Olympic Committee (IOC), the World Anti-Doping Agency (WADA) or the United Nations Office on Sport for Development and Peace (UNOSDP).<sup>47</sup>

124. Aside from this, the Appointed Expert notes that Objector represents all its members in these proceedings. Indeed, in accordance with its internal organization, the fact that SportAccord’s Executive Council has decided to object to dot Sport Limited’s application implies that all members of the association are deemed to have agreed to such decision to object.<sup>48</sup>

125. Therefore, to require individual letters from all SportAccord’s members –as Applicant has suggested– is simply redundant. The fact that other sport federations represented by Objector did not explicitly object to dot Sport Limited application should not be seen, in the Appointed Expert’s view, as an opposition to SportAccord’s claim.

126. Consequently, based on the representative nature of the Objector for the Sport Community, the relevance of the entities which have expressed their opposition (either individually or through the Objector) and the global recognition of the entities which are represented by Objector in these proceedings, the Appointed Expert concludes that there is a substantial opposition to the application “.sport” gTLD on behalf of a significant part of the Sport Community as established in Article 3.5.4 of the ICANN Guidebook.

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*community in other contexts; and (vi) costs incurred by objector in expressing opposition, including other channels the objector may have used to convey opposition”.*

<sup>45</sup> See: Objection, Appendix A-3, tab 34.

<sup>46</sup> See: Objection, Appendix A-2.

<sup>47</sup> See: Objection, Appendix A-3.

<sup>48</sup> SportAccord’s Statutes, Article 33.3 “...the Council represents and commits SportAccord with regard to third parties”. See Exhibit Ap-1.

D. Targeting

(4) *Is the Sport Community explicitly or implicitly targeted by the application “.sport” gTLD?*

127. The next issue to be decided by the Appointed Expert is whether the Sport Community has been explicitly or implicitly targeted by the application for the “.sport” gTLD made by Applicant.

(i) *Positions of the Parties*

128. Due to the fact that word “sport” is almost exclusively associated with organized sport, sport for leisure and sport for health, Objector states that the Sport Community is “*explicitly*” targeted by the application for the “.sport” gTLD. In any event, SportAccord also argues that the “.sport” gTLD string “*implicitly*” targets the Sport Community.

129. Therefore, Objector concludes that the criterion of “*strong association*” between the Sport Community and the gTLD string “.sport” is, in its view, completely satisfied.<sup>49</sup>

130. Conversely, Applicant alleges that Objector failed to prove a “*strong association*” between the applied-for gTLD string and the alleged community since SportAccord does not represent the community as a whole. According to dot Sport Limited, “*whereas Applicant’s use of the TLD would target the entire sports industry, Objector plans to restrict the TLD at launch to persons of their choosing, beginning with Federations and other governing sports bodies, before later opening up the TLD to persons of its choosing outside the restricted definitions, using vague and unspecified post validation procedures and unspecified eligibility requirements*”.<sup>50</sup>

131. Applicant considers that it has a broader target than the alleged Sport Community, and the “*strong association*” alleged by Objector is purely ancillary or derivative.

(ii) *Considerations of the Appointed Expert*

132. It is for the Appointed Expert to decide whether the Sport Community is explicitly or implicitly targeted by the application for the “.sport” gTLD.

133. Pursuant to Article 3.5.4 of the ICANN Guidebook, “*the objector must prove a strong association between the applied-for gTLD string and the community represented by the objector. Factors that could be balanced by a panel to determine this include but are not limited to: (i) Statements contained in application; (ii) other*

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<sup>49</sup> See: Objection, page 10.

<sup>50</sup> See: Response, page 10.

*public statements by the applicant; (iii) associations by the public”.*

134. In the Appointed Expert’s opinion, since the community represented by Objector is the “Sport Community”, it is evident that the application for “.sport” gTLD made by Applicant explicitly targets such community.

135. Having recognized that the Sport Community is clearly delineated, it cannot be denied that there is a strong (or even identical) association between the applied-for gTLD string “.sport” and the community represented by Objector.

136. Therefore, the Appointed Expert concludes that the Sport Community has been explicitly targeted by the “.sport” gTLD.

E. Detriment

(5) *Is there any material detriment to the rights or legitimate interests of the Sport Community if the application for the “.sport” gTLD is allowed to proceed?*

137. Finally, the Appointed Expert has to address the issue of whether the application for the “.sport” gTLD causes any material detriment to the rights or legitimate interests of the Sport Community.

(i) *Positions of the Parties*

138. Objector states that the “.sport” gTLD application made by dot Sport Limited lacks accountability to the Sport Community. Regarding the detriment that such application may generate, SportAccord points to ambush marketing, cybersquatting, typo-squatting, brand-jacking, misuse of sport themes for pornography, the systematic exacerbation of naming conflicts and the massive utilization of name-defensive registrations, giving examples on how each situation (in any given scenario) may affect the rights or legitimate interests of the Sport Community.<sup>51</sup>

139. In its Objection, SportAccord describes other possible detriments, such as the false sense of official sanction that consumers may have if an unaccountable registry operator manages such domain.<sup>52</sup>

140. Further, according to Objector, *“Under the United States Department of Commerce’s agreement with ICANN, the Affirmation of Commitments, ICANN must demonstrate that the new gTLD program contributes, in part, to consumer trust. Delegating “.sport” to an unaccountable registry operator, which lends a false sense of official sanction to the .sport domain name space, would inevitably erode consumer trust by misleading individuals through unofficial content”.*<sup>53</sup>

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<sup>51</sup> See: Objection, page 11.

<sup>52</sup> See: Objection, page 13. SportAccord says that, for example, “Rugby.Sport” domain will lead internet users to believe that the International Rugby Board sanctions such a website.

<sup>53</sup> See: Objection, page 13.

141. Objector also notes that if the “.sport” gTLD application is allowed to proceed, the Sport Community would suffer a loss in its image and prestige by the misappropriated use of community-specific keywords. *“The very reason why there is a community-based objection (as opposed to a rights infringement objection) is the fact that keywords targeting a sub-community are a commons and that each member of the sub-community has the right to expect that community institutions ensure the responsible management of those keywords.”*<sup>54</sup>

142. According to Objector, while in many cases there is no concept of individual ownership in terms of intellectual property, each community has a natural concept of collective ownership of keywords essential to it or to its sub-communities. Based on this argument, SportAccord considers that the uncontrolled or unaccountable operation of the “.sport” registry would constitute the *“tragedy of the commons”*, a material detriment which cannot be measured in monetary units.

143. Objector expands on the disruption of Sport Community efforts and achievements. It provides examples of the loss of credibility of community-based governance models and states that community-based communication policies for anti-doping, anti-drug, anti-racism, ticket scalping, illegal or undesirable gambling, etc., will be disrupted if key domain names related to them are used without adherence to those policies. This can only be avoided, in Objector’s view, if the gTLD registry is directly accountable to the Sport Community.<sup>55</sup>

144. Further, SportAccord focuses on the actual and certain damages that the Sport Community would suffer in case the “.sport” gTLD is operated by a registry without appropriate community-based accountability. In Objector’s view, not only would this situation generate an economic damage, but also a detriment of the reputation, the values and the governance of the Sport Community as a whole.<sup>56</sup>

145. Finally, Objector points to the loss of benefits for not operating the “.sport” TLD by the Sport Community itself, the loss of opportunity to create a community-based organizational tool and, most important, the irreversible damage caused by the forfeiture of the opportunity for the Sport Community to build the right image through the operation of the gTLD.<sup>57</sup>

146. Applicant contends that, in fact, Objector failed to prove a likelihood of material detriment to the rights or legitimate interests of the alleged community. In its opinion, Objector speculates that the alleged detriments would befall the alleged Sport Community should the gTLD be delegated to Applicant, but *“most of the alleged detriments are detriments inherent in the nature of the Internet and not attributable to Applicant’s plans for operating the gTLD”*.<sup>58</sup>

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<sup>54</sup> See: Objection, page 14.

<sup>55</sup> See: Objection, page 15.

<sup>56</sup> See: Objection, page 17.

<sup>57</sup> See: Objection, page 18.

<sup>58</sup> See: Response, page 11.

147. Applicant claims that it has taken measures to address the detriments inherent in the nature of the Internet. *“Thus, Objector’s alleged detriment seems to purely stem from the fact that Applicant would be delegated the gTLD instead of Objector”*.<sup>59</sup>

148. Further, it is dot Sport Limited’s position that Objector proves no kind or amount of damage to the reputation of the Sport Community that would result from Applicant’s operation of the applied-for gTLD string. In Applicant’s words, *“Consumer trust will be a core operating principle: abusive registrations and abuse of the gTLD will result in rapid sanctions”*.<sup>60</sup>

149. In addition, dot Sport Limited accuses Objector of not offering evidence (i) that Applicant is not acting or does not intend to act in accordance with the interests of the Sport Community or of users more widely; (ii) that Applicant’s operation of the “.sport” gTLD string will interfere with the core activities of the alleged community; and (iii) much less that the Objector’s core activities depend on the domain name system.<sup>61</sup>

150. Applicant also states that the alleged economic damage to the Sport Community has not been proved by Objector. In any case, abusive behaviour or Objector’s speculative detriments, if they occur, may be easily corrected or penalized. In addition, dot Sport Limited criticizes some evidence advanced by Objector which, in its view, does not show any actual damage to the alleged Sport Community.<sup>62</sup>

151. To conclude, it is Applicant’s position that the Objector’s alleged damages are hypothetical and would not result from Applicant’s operation of the applied-for gTLD string.<sup>63</sup>

(ii) *Considerations of the Appointed Expert*

152. The Appointed Expert has to decide on the likelihood of material detriment to the rights or legitimate interests of the Sport Community in the event that the application process ends with the adjudication of the string (“.sport”) to Applicant.

153. The Appointed Expert first notes that, in accordance with Article 3.5.4 of the ICANN Guidebook, *“the objector must prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant por-*

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<sup>59</sup> See: Response, page 11.

<sup>60</sup> See: Response, page 11. Applicant further believes that there are benefits to rights and legitimate interests of the sports industry created by operation of a free and open TLD by a commercial entity. *“Given that there is no special regulated definition of the word “sport” or any restriction on the use of the word worldwide, combined with the fact that consumers understand that a domain name registration in a particular gTLD does not confer or even define special status for the holder worldwide and for every purpose, there will not be any loss of trust in the sports industry...”*

<sup>61</sup> See: Response, page 12.

<sup>62</sup> See: Response, page 13.

<sup>63</sup> See: Response, page 13.

*tion of the community to which the string may be explicitly or implicitly targeted. An allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment”.*

154. Such Article also provides the factors that could be used by an expert panel in making this determination. These elements include, but are not limited to, “(i) *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; (ii) 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; (iii) interference with the core activities of the community that would result from the applicant’s operation of the applied-for gTLD string; (iv) dependence of the community represented by the objector on the DNS for its core activities; (v) 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; and (vi) level of certainty that alleged detrimental outcomes would occur*”.<sup>64</sup>

155. First, the Appointed Expert finds that the ICANN Guidebook does not call for “actual damage” for an objection to be accepted. It establishes a lower bar, namely a “*likelihood of material detriment*”, logical consequence of the impossibility of assessing any damage when the Applicant has yet to start operating the gTLD string.

156. Therefore, the standard that the Appointed Expert should apply to this issue is the “chance” that detriment will occur, which differs from the standard of “actual damage” invariably applied in litigation or arbitration. In other words, the standard of a “*likelihood of material detriment*” is, in the Appointed Expert’s opinion, equivalent to future “possible” damage.

157. In this regard, the Appointed Expert agrees with Applicant that many detriments alleged by Objector are purely hypothetical, such as the risk of cybersquatting, ambush marketing or the misuse of sport themes for purposes foreign to sport values.

158. Notwithstanding so, the Appointed Expert is of the opinion that Objector has proved several links between potential detriments that the Sport Community may suffer and the operation of the gTLD by an unaccountable registry, such as the sense of official sanction or the disruption of some community efforts.

159. Further, the Appointed Expert shares Objector’s argument that all domain registrations in a community-based “.sport” gTLD will assure sports acceptable use policies. On the other hand, this cannot be warranted by Applicant in the same way in the event that the application for the “.sport” gTLD is approved by

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<sup>64</sup> Article 3.5.4 of ICANN Guidebook.

ICANN.

160. Regarding the economic damage that SportAccord may suffer, the Appointed Expert is of the view that although the figures and calculations on negative externalities provided by Objector may have been exaggerated,<sup>65</sup> the risk of economic damages which would be inflicted to Objector due to the operation of the gTLD by an unaccountable registry shows a reasonable level of certainty and could not be avoided if the application is allowed to proceed.

161. Therefore, the Appointed Expert is not in a position to accept Applicant's argument that Objector's alleged detriment only relies on the fact that Applicant would be delegated the ".sport" gTLD instead of Objector.

162. Finally, even though SportAccord has not proved that dot Sport Limited will not act (or will not intend to act) in accordance with the interests of the Sport Community, the Appointed Expert considers that this is only one factor, among others, that may be taken into account in making this determination. Conversely, the Appointed Expert sees a strong dependence of the Sport Community on such domain name.

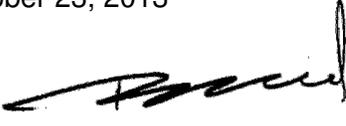
163. For these reasons, the Appointed Expert concludes that there is a strong likelihood of material detriment to the rights or legitimate interests of the Sport Community if the application ".sport" gTLD is allowed to proceed.

## VII. Decision

164. Having read all the submissions and evidence provided by the Parties, for the reasons set out above and in accordance with Article 21(d) of the Rules of Procedure, I hereby render the following Expert Determination:

- I. The "Community Objection" which has been put forward by SportAccord in these proceedings is successful.
- II. Objector SportAccord prevails.
- III. The ICC Centre will refund SportAccord the advance payment of costs it made in connection with these proceedings.

Date: October 23, 2013

Signature: 

Prof. Dr. Guido Santiago Tawil  
Expert

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<sup>65</sup> See: Objection, Appendix A-13.