

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

CASE No. EXP/485/ICANN/102

REPUBLICAN NATIONAL COMMITTEE

(USA)

vs/

UNITED TLD HOLDCO LTD.

(CAYMAN ISLANDS)

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 OF THE INTERNATIONAL
CHAMBER OF COMMERCE**

PARIS, FRANCE

Case No. EXP/485/ICANN/102

IN THE PROCEEDINGS BETWEEN

REPUBLICAN NATIONAL COMMITTEE (USA)

Objector

v

UNITED TLD HOLDCO LTD. (CAYMAN ISLANDS)

Applicant

EXPERT DETERMINATION

Expert Panel composed of Professor Brigitte Stern

Date: 7 January 2014

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TABLE OF ABBREVIATIONS

Abbreviation	Name
“Appendix III”	Appendix III of the ICC Expertise Rules, Schedule of expertise costs for proceedings under the New gTLD Dispute Resolution Procedure
“Applicant”	The Applicant to a new gTLD and Respondent in the Community Objection proceedings
“Application”	The Applicant’s application to the new gTLD
“Centre”	The Centre for Expertise of the International Chamber of Commerce
“Determination”	The present Expert Determination rendered by the Expert in these Community Objection proceedings
“Guidebook”	The gTLD Applicant Guidebook
“Guidebook/3”	Module 3 to the gTLD Applicant Guidebook (version 4 June 2012)
“GOP”	Grand Old Party
“gTLD”	Generic top-level domain name
“ICC Practice Note”	ICC Practice Note on the Administration of Cases
“ICANN”	Internet Corporation for Assigned Names and Numbers
“Objection”	The Objector’s objection against the registration of a new gTLD, including the ‘Objection Form to be completed by the Objector’ and a substantive Memorial of 18 pages annexed to it as a separate document
“Objector”	The Objector to the registration of a new gTLD and Claimant in the Community Objection proceedings
“Parties”	The Objector and the Applicant to the Community Objection proceedings

“Procedure”	Attachment to Module 3 of the gTLD Applicant Guidebook: New gTLD Dispute Resolution Procedure
“Related Entity”	The party related to the Objector in the Community Objection proceedings
“Response”	The Applicant’s response to the Objection in the ‘Response Form to be completed by Applicant’ including substantive developments of 10 pages
“RNC”	The Republican National Committee
“RSLC”	The Republican State Leadership Committee, which joins the Objection as a related entity
“Rules”	Rules for Expertise of the ICC
“United TLD”	United TLD Holdco Ltd.

I. INTRODUCTION

A. THE DISPUTE

1. This dispute is a Community Objection filed by the Republican National Committee against the registration by United TLD Holdco Ltd. of the new generic top-level domain name .republican.

B. THE PARTIES

1. The Objector

2. The Objector to the new generic top-level domain name (“gTLD”) .republican and Claimant in the Community Objection proceedings (the “Objector”) is the Republican National Committee (“RNC”). It has its registered office at 310 1st Street SE, Washington, DC 20003, United States of America.
3. The Objector is represented in these proceedings by David Einhorn, Esq. of Baker & Hostetler LLP, 45 Rockefeller Plaza, New York, NY 10111, United States of America (deinhorn@bakerlaw.com).
4. The Republican State Leadership Committee (“RSLC”) joins the Objection as a related entity to the Objector (the “Related Entity”).¹ The Related Entity has its registered office at 1201 F Street NW, Suite 675, Washington, DC 20004, United States of America (cjankowski@rslc.org).

2. The Applicant

5. The Applicant for the new gTLD .republican and Respondent in the Community Objection proceedings (the “Applicant”) is the company United TLD Holdco Ltd. (“United TLD”). It has its registered office at Uglan House, South Church Street, George Town, KY1-1104, Cayman Islands (hello@unitedtld.com).
6. The Applicant is represented in these proceedings by Ian C. Ballon, Wendy M. Mantell and Justin A. Barton of Greenberg Traurig LLP, 1840 Century Park E, Suite 1900, Los Angeles, CA 90067, United States of America. (ballon@gtlaw.com, mantellw@gtlaw.com, bartonju@gtlaw.com).
7. The Objector and the Applicant are herein together collectively referred to as the “Parties.” The Related Entity is referred to separately.

¹ Objection Form of 13 March 2013, p. 3: “Other Related Entities” Objection, p. 2.

II. THE PROCEDURE

A. PROCEDURAL HISTORY

8. On 13 June 2012, the ICANN website published the Applicant's application for the registration of the new gTLD .republican (the "Application"). ICANN's publication of the Application infers that it was duly filed prior to 12 April 2012, as required at Section 1.1.1 of the gTLD Applicant Guidebook (the "Guidebook").² The status of the Application is available on the ICANN website.³
9. The Objector filed a Community Objection against the Applicant's registration of .republican as a new gTLD on 13 March 2013 (the "Objection"). The Objection was submitted to the ICC Centre for Expertise (the "Centre") pursuant to Article 3(d) of the Attachment to Module 3 of the gTLD Applicant Guidebook (the "Procedure"). The date of filing corresponds to the deadline set by ICANN on its website.⁴ The Objector duly paid the EUR 5,000 filing fee to the Centre as required by Article 1(2) of Appendix III of the ICC Expertise Rules ("Appendix III").⁵
10. Satisfied with the administrative review conducted according to Article 9 of the Procedure, the Centre registered the Objection.⁶ After the Centre's registration of the Objection, ICANN published the Objector's Community Objection on its website on 12 April 2013. This publication complies with Article 10(a) of the Procedure.⁷
11. On 15 May 2013, the Applicant submitted its Response to the Objector's Community Objection against the registration of the string .republican. The Centre performed its administrative review of the Response and found it to be in compliance with Article 11 of the Procedure and with the Rules for Expertise of the ICC (the "Rules").⁸ Indeed, the Applicant duly filed its Response within the 30-days time limit after the Centre's notification according to Article 11(b) of the Procedure; and the filing fee of EUR 5,000 was paid by the Applicant as required by Article 1(3) of Appendix III.⁹

² Guidebook, Section 1.1.1, pp. 1-3.

³ At: <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1128>.

⁴ At: <http://newgtlds.icann.org/en/program-status/odr>.

⁵ Cf. Centre's email to the Objector dated 18 March 2013 and Objector's Invoice dated 7 March 2013 filed with the Objection.

⁶ Cf. Centre's email to the Objector dated 5 April 2013.

⁷ Cf. Centre's email to the Parties dated 15 April 2013.

⁸ Cf. Centre's email to the Parties dated 27 May 2013.

⁹ Cf. Payment Certificate dated 15 May 2013 and attached to the Response.

12. On 14 June 2013, the Chairman of the Standing Committee of the Centre appointed Professor Brigitte Stern as Expert in the Community Objection proceedings, pursuant to Article 3(3) of Appendix I to the Rules. On 19 June 2013, the Parties were informed of this nomination.¹⁰ Professor Stern's address is 7 rue Pierre Nicole, 75005 Paris, France (stern@univ-paris1.fr). The Expert is the sole member of the Panel in accordance with Article 13(b)(iv) of the Procedure.
13. In its letter dated 2 August 2013 and further to the payment in full of the estimated costs by the Parties, the Centre confirmed full constitution of the Expert Panel and accordingly transferred the file to Professor Stern. Article 21(a) of the Procedure provides that the Panel shall make "reasonable efforts to ensure that the Expert Determination is rendered within forty-five (45) days of the constitution of the Panel." Further, the same provision provides that in "specific circumstances," a brief extension may be granted.
14. Considering the novelty of the exercise and what she perceived as some ambiguities in the Module 3 to the gTLD Applicant Guidebook ("Guidebook/3"), the Expert wanted to duly clarify the criteria to be applied and requested therefore a short extension. By e-mail of 9 September 2013, the Centre wrote to the Expert stating: "Taking into account specifics of the current case, the extension of the time limit until 30 September 2013 is acceptable to the Centre." The Expert duly informed the Parties of this extension of time granted by the Centre. The present Expert Determination (the "Determination") was submitted for scrutiny to the Centre within the extended period of time in accordance with Article 21(a) and (b) of the Procedure.
15. The Centre fixed the amount of the initial deposit at EUR 107,200 in order to cover the administrative costs of the Centre and the fees and expenses of the Expert. Each Party duly paid these costs in full. This complies with Article 14(3) of the Rules, Article 14 of the Procedure, and Appendix III. Due payment was confirmed by the Centre.¹¹

B. PROCEDURAL ISSUES

16. These proceedings are governed by the Rules and their Appendix III, supplemented by the ICC Practice Note on the Administration of Cases ("ICC Practice Note") under the Guidebook, including the Guidebook/3 and the Procedure.
 - Article 1(d) of the Procedure provides that by applying for a new gTLD, an applicant accepts the applicability of this Procedure and the

¹⁰ Cf. Centre's email to the Parties dated 19 June 2013.

¹¹ Cf. Centre's email to the Parties dated 2 August 2013.

applicable rules of the dispute resolution service provider. This equally applies to an objector when filing an Objection. The parties can only derogate from the Procedure and the Rules with the approval of ICANN or of the relevant dispute resolution service provider.

- Point 8 of the ICC Practice Note states that by accepting the process as defined in Article 1(d) of the Procedure, parties are deemed to have agreed that the expert determination shall be binding upon them. Article 12(3) of the Rules confirms this.
- According to Article 23(b) of the Procedure, the Procedure applies in its version of 11 January 2012. This is indeed the version that was in effect on the day when the relevant application for a new gTLD was submitted.
- Article 4(c) of the Procedure provides that the Procedure shall prevail in the event of any discrepancy between the Procedure and the Rules.

17. As provided by Article 4(d) of the Procedure, the place of the proceedings is the location of the Dispute Resolution Service Provider, *i.e.* the Centre, located in Paris, France.

18. Pursuant to Article 5(a) of the Procedure, the proceedings have been duly conducted in English. It bears mentioning that the requirement for the Expert Mission set out in Article 12(1) of the Rules has been waived in accordance with Point 6 of the ICC Practice Note.

19. In accordance with Article 6(a) of the Procedure, all communications by the Parties, the Expert and the Centre have been submitted electronically. The Expert did not require additional submissions or production of evidence by the Parties, and the proceedings were carried out without the holding of a hearing. None of the Parties has requested that a hearing be held.

III. POSITIONS OF THE PARTIES

20. The Expert will present here a summary of the Parties' positions, while more detailed arguments of the Parties will be referred to in the course of the reasoning.

A. THE OBJECTOR'S POSITION

21. The Community Objection presented by the Objector is based on its allegation that there 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.

22. In the Objection Form, the Objector describes the community it represents in the following manner: “The Republican National Committee (“RNC”), as the official organization representing the United States Republican Party, is an established institution representing the interests of the clearly delineated Republican Community ...”¹² The Expert will indicate below that the presentation is both more complex and less clear in the substantive part developing the Objection Form and annexed to it.¹³
23. As to the remedies requested in the Objection Form, the Objector requests the Expert to mandate denial of the Applicant’s registration of .republican as a new gTLD, and additionally requests that the ICC refund the portion of the Expert fees borne by it.¹⁴
24. The Objector alleges that it has standing to object to the registration of .republican since it is an established institution representing the interests of the clearly delineated Republican Community. It contends that the same test should apply to the Related Entity. First, the Objector describes itself as an established institution that has been globally recognized as the official representative of the Republican Party for over 150 years. Second, the Objector argues that its primary purpose is to organize and pursue the Republican Agenda on behalf of the Republican Community. According to the Objector, the Republican Community comprises individuals and entities that uniformly identify with Republican ideals.¹⁵ Third, the Objector considers that it meets its burden of proving its standing to object.
25. The Objector further argues that its Objection meets the required ICANN standards to be sustained. The Objection is reported as duly demonstrating substantial opposition among a significant portion of the Republican Community to the .republican string’s registration. To begin with, the Objector refers to the standing to object test to support the existence of a clearly delineated Republican Community. Further, it contends that the Republican Community collectively and strongly opposes the registration of the .republican gTLD and that the Objection represents this hostility. Moreover, the Objector finds the word republican used in the applied-for gTLD to be associated with the Republican Community both domestically and internationally. Eventually, the Objector argues that the registration of this string by the Applicant would be of material detriment to the entire Republican Community, especially since it would create confusion among the public.

¹² Objection Form, p. 4.

¹³ This is in the form of a Memorial of 18 pages.

¹⁴ Objection Form, p. 5.

¹⁵ Objection, p. 7.

B. THE APPLICANT'S POSITION

26. The Applicant requests the Expert to reject the Community Objection on the ground that the Objector does not have a community to represent. It argues that the Objection would deprive US and worldwide republicans of benefiting from an open .republican gTLD.¹⁶
27. The Applicant contends that the Objector does not have standing in these proceedings, as it does not serve the benefits of all republicans in any given community. According to the Applicant, the Objector's assertion that the Republican Community refers to the same group of individuals and organizations disregards the geographic and ideological diversity of republicans throughout the globe. The Applicant equally rejects the existence of a single Republican Agenda both internationally and in the US. Furthermore, the Applicant alleges that the Objector's evidence does not support its standing to object.
28. Even if the Objector had standing, the Applicant argues that the Objection fails to meet the ICANN standards. Firstly, the Applicant rejects the Objector's assertion that there exists a clearly delineated Republican Community. Secondly, the Applicant contends that its Application is not subject to substantial opposition. Thirdly, the Applicant considers that the community represented by the Objector is in fact associated with the .gop gTLD. Fourthly, it sustains that instead of causing material detriment to the rights or legitimate interests of republicans, the registration of .republican would permit all individuals associated with republican ideals to use the gTLD and would promote ICANN's goals.

IV. THE EXPERT'S ANALYSIS

29. The test to determine whether a Community Objection has to be sustained is twofold. Firstly, the Objector has to demonstrate its standing to object. Secondly, the Objection must fulfill the ICANN standards allowing the Expert to sustain an Objection on the merits.
30. As mentioned in paragraph 14 of this Determination, the Expert considers that the concepts to be used as well as the articulation between the different steps of the analysis to be performed by the panels need to be clarified. Faced with what she perceived as some ambiguities in the texts to be applied, the Expert has tried to have a logical and coherent approach to the task entrusted to her.

¹⁶ Response, p. 13.

A. A CLARIFICATION OF THE CONCEPTS TO BE USED

1. The distinction between the standing and the merits levels

31. The Expert was somewhat intrigued in reading the Guidebook/3 by the fact that two criteria seemed to be common to the analysis of the standing to object and the analysis of the merits.

32. Indeed, Section 3.2.2.4 of the Guidebook/3,¹⁷ describing the requirements for an Objector to have standing to object, reads:

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. (Emphasis added)

33. Thereafter,¹⁸ among the four tests to be fulfilled by an Objector in order to succeed on the merits, two similar requirements are indicated:

The community invoked by the objector is a **clearly delineated community**; and

...

There is a **strong association between the community invoked and the applied-for gTLD string** ... (Emphasis added)

34. Faced with the mention of these same requirements at the two stages of the analysis any expert has to perform, the Expert had to interpret the Guidebook/3 in order to give sense to these requirements.

35. In order to perform such interpretation, the Expert relied on the principle of “*effet utile*” generally accepted in international law. The principle of *effet utile* requires international courts and tribunals to interpret international rules “so as to give them their fullest weight and effect consistent with the normal sense of the words and with other parts of the text and in such a way that a reason and a meaning can be attributed to every part of the text.”¹⁹

36. This principle of interpretation is applied in many international domains, for example by the International Court of Justice,²⁰ by the Appellate Body of the

¹⁷ Guidebook/3, Section 3.2.2.4, pp. 3-7.

¹⁸ Guidebook/3, Section 3.5.4, pp. 3-23.

¹⁹ Richard Gardiner, TREATY INTERPRETATION, New York, Oxford U. Press, 2008, p. 149

²⁰ I.C.J., Judgment of 9 April 1949, *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania)*, Rec., 1949, p. 24; I.C.J., Advisory Opinion of 21 June 1971, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, p. 35, para. 66; I.C.J., Judgment of 20 December 1988, *Border and Transborder Armed Actions (Nicaragua v. Honduras)*, Rep. 1988, p. 89, para. 46; I.C.J., Judgment of 3 February 1994, *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, Rep. 1994, p. 23; I.C.J.,

WTO,²¹ by investment arbitration tribunals and other arbitral tribunals,²² and the Expert sees no reason not to apply it in disputes concerning domain names.

37. To illustrate how the principle has been applied, the Expert refers to the decision of the ICSID tribunal in *AAPL*, which explained:

Nothing is better settled, as a canon of interpretation in all systems of law than that a clause must be so interpreted as to give it a meaning rather than so as to deprive it of meaning.²³

38. It has since then been confirmed in a great number of investment awards, which refer to the

... cardinal rule of the interpretation of treaties that each and every operative clause of a treaty is to be interpreted as meaningful rather than meaningless. It is equally well established in the jurisprudence of international law, particularly that of the Permanent Court of International Justice and the International Court of Justice, that treaties, and hence their clauses, are to be interpreted so as to render them effective rather than ineffective.²⁴

39. It stems from this *jurisprudence constante* that an interpretation which deprives a word or a phrase of any usefulness “runs counter to the general principle of effectiveness (*effet utile*) and for that reason also ought to be set aside.”²⁵

40. In compliance with this firmly settled rule of interpretation, the provisions in question must be interpreted so that all and every elements the Guidebook/3 contains are meaningful. It appears to the Expert that the best explanation for this double mention of two criteria at the standing level and at the merits level is that the rules apply both to Community Objections raised by institutions whose

Judgment of 5 December 2011, *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*, Rep. 2011, p. 673, para. 92

²¹ WTO, *Canada – Measures affecting the importation of milk and the exportation of dairy products*, Report of the Appellate body of 13 October 1999 (WT/DS103-DS113/AB/R), para. 133.

²² Award of the UK/USA Arbitral Tribunal of 1926 in the *Cayuga Indians* case, *Repertory*, vol. II, para. 2036, pp. 35-36; Arbitral Award of 17 July 1986, *Filleting within the Gulf of St. Lawrence between Canada and France*, R.I.A.A., vol. XIX, p. 243, para. 20; Arbitral Award of 21 October 1994, *Laguna del desierto*, R.G.D.I.P. 1996, p. 585.

²³ *Asian Agricultural Products Ltd. (AAPL) v. Republic of Sri Lanka*, ICSID (ARB/87/3), Award of 27 June 1990, para. 40.

²⁴ Arbitral Award of 19 August 2005, *Eureko B.V. v. Republic of Poland*, para. 248. See also e.g.: *Noble Ventures v. Romania*, ICSID, (ARB/01/11), Award of 12 October 2005, para. 50, or *Pan American Energy LLC and BP Argentina Exploration Co. v. Argentina*, ICSID (ARB/03/13), Decision on Preliminary Objections of 27 July, 2006, para. 132; *Cemex Caracas Investments B.V. and Cemex Caracas II Investments B.V. v. Bolivarian Republic of Venezuela*, ICSID (ARB/08/15), Decision on Jurisdiction of 30 December 2010, paras. 104-114; *Tidewater Inc. and others v. The Bolivarian Republic of Venezuela*, ICSID (ARB/10/5), Decision on Jurisdiction of 8 February 2013, para. 134.

²⁵ *Salini Costruttori S.p.A. and Italstrade S.p.A. v. Hashemite Kingdom of Jordan*, ICSID (ARB/02/13), Decision on Jurisdiction of 9 November 2004, paras. 94-95.

standing to object has to be verified and to the Independent Objector who automatically has standing. As the existence of a clearly delineated community and a strong association between the community invoked and the applied-for gTLD string are fundamental criteria, at the root of any possible objection, it seems efficient to have them verified as soon as possible, in other words, at the level of standing for the institutions and at the level of merits for the Independent Objector. This implies that if and when it is verified at the standing level, the Expert does not need to proceed to the same verification at the merits level.

2. The criteria for establishing the requirements common to the two levels

41. The solution just outlined is however not entirely applicable, as the criteria for the determination of the existence of these two requirements are only elaborated on in Section 3.5.4 of the Guidebook/3. Therefore, further clarification is needed concerning the process of decision of the Expert.
42. A first clarification seems to be needed concerning precisely the existence of a clearly delineated community, which is a fundamental requirement. In the conditions concerning the standing to object, the focus is on the existence of an established institution and on the relationship of that institution with a clearly delineated community, some possible factors for establishing this relationship being enunciated.²⁶
43. However, the criteria for finding the existence of a clearly delineated community are only to be found in the Section concerning the merits. The Expert, considering that the existence of a clearly delineated community is the absolute first step in her analysis, will therefore examine this question at the outset – when examining the existence of a standing to object – and take inspiration for the finding of such community from the criteria enumerated in Section 3.5.4.
44. Furthermore, although the general heading of the Section 3.2.2.4 relating to the standing to object refers to the necessity of a strong association of the community with the applied-for string,²⁷ the mention of this criterion is not reiterated in the subsequent parts of the Section, while it is clearly mentioned and explicated in Section 3.5.4 concerning the merits and setting the different standards to be fulfilled in order to succeed on the merits.²⁸ For this reason, contrary to the analysis relating to the clearly delineated community, which the Expert does not consider to be fit to be postponed to the merits phase, the Expert will suspend her analysis of the existence of a strong association of the community with the applied-for string until the merits phase.

²⁶ Guidebook/3, Section 3.2.2.4, pp. 3-8.

²⁷ Guidebook/3, Section 3.2.2.4, pp. 3-7.

²⁸ Guidebook/3, Section 3.4.5, pp. 3-24.

45. To sum up, the Expert finds it essential to review the association between the Objector and the clearly delineated community at the standing phase while she leaves the review of the association between the community and the gTLD string for the merits stage.

3. The scope of the “substantial” opposition to the gTLD

46. The Expert has also been concerned by the criterion of the “substantial opposition.”

47. In order to determine whether there is substantial opposition to the gTLD, as required in the Guidebook/3, it is essential to determine the scope of the community to which the requirement of a “substantial opposition” applies. The Expert would like to point out the difference in wording in parts of the Guidebook/3 and the Procedure. The Attachment to Module 3 which, it is reminded here, is called the Procedure, establishes in its opening statement that “(t)hese Procedures were designed with an eye towards timely and efficient dispute resolution. As part of the New gTLD Program, these Procedures apply to all proceedings administered by each of the dispute resolution service providers (DRSP).”²⁹

48. In order to follow the Expert’s reasoning at this early point, it is worth indicating at the outset that four criteria have to be fulfilled for a Community Objection to succeed on the merits: a clearly delineated community, a substantial opposition, a strong association of the community with the relevant string and a detriment to the community.³⁰

49. The Expert is concerned here with the scope of the required “substantial opposition.” Article 2(e)(iv) of the Procedure requires “substantial opposition ... from a significant portion of the community to which the string may be explicitly or implicitly targeted.” This formula was already more or less enunciated in the Standards, more precisely in Section 3.5.4 of the Guidebook/3,³¹ where it is stated that it has to be determined “whether there is substantial opposition from a significant portion of the community to which the string may be targeted.” When developing the test of “substantial opposition”, it is stated in this same Section that “(t)he Objector must prove substantial opposition within the community it has identified itself as representing.”³² These do not necessarily seem to be identical communities.

50. Determining whether the community targeted by the new gTLD and the community an objector identifies itself as representing are more or less the same is at the core of a Community Objection. In fact, for an objection to be sustained, the

²⁹ Procedure, p. 1.

³⁰ See paragraph 57 of this Determination below.

³¹ Guidebook/3, Section 3.5.4, pp. 3-22 to 3-23.

³² Guidebook/3, Section 3.5.4, pp. 3-23.

objector bears the burden of proving that those communities are intimately associated. The Expert has two options regarding the scope of the “substantial opposition.” She can either consider that “substantial opposition” simply refers to the community which the Objector considers itself as representing (Option A) or that it refers both to this community and to the community to which the new gTLD string is explicitly or implicitly targeted (Option B). In order to solve this issue, the Expert refers again to the principle of *effet utile*, which can be considered to be alluded to in the Procedure whose goal is an “efficient dispute resolution” and to the overall objectives of ICANN’s new gTLD strings and the expert procedure associated with them.³³

51. The Expert will therefore first examine the consequences of Option A. If the substantial opposition referred only to the community in the name of which the opposition is filed, this would render this requirement almost meaningless. Indeed, it would allow almost any small and even a very small community in the world to submit a successful objection if all its members were in agreement. If a substantial opposition among the sole community an objector represents were sufficient for an objection to be sustained, this could open the floodgates to abusive objections. Minor communities within the larger community explicitly or implicitly targeted by an applied-for gTLD could oppose to the registration without representing substantial opposition within the larger community.
52. Let us take an example linked with the string dealt with here. If an institution called “The Republicans” argued to represent all the republicans in a small town of 200 inhabitants and all inhabitants had sent an e-mail supporting the objection, would that be sufficient for an expert to find a substantial opposition to the string .republican, which is deemed to apply worldwide to the global Internet community? The negative answer seems self-evident. To accept that a small and even very small unanimous community represented by a duly established institution could successfully object to a string virtually applicable to millions of people in the world would defeat the process of validation of the new gTLD strings set up by ICANN.
53. Moreover, one should keep in mind that the ICANN new gTLD Program is aimed at developing competition and consumer choice,³⁴ and not at setting easy limitations to the development of new gTLDs.
54. Therefore, the Expert considers that the only meaningful test is Option B, *i.e.* that the substantial opposition has to exist both at the level of the community invoked by the Objector and of the community targeted by the new gTLD string.
55. It could have seemed appropriate to verify that there exists a substantial opposition from the community invoked by the Objector at the standing level, as only an

³³ See paragraph 47 of this Determination above referring to the opening statement of the Procedure and Preamble of the Guidebook.

³⁴ Guidebook, Preamble.

institution representing a community clearly opposed to the test should have standing. And it could have seemed equally appropriate for an objector, representing a clearly delineated community unanimously objecting to a new string, to succeed at the merits level, only if its objection represents a substantial opposition to the community to which the string is targeted. However, in order not to make the analysis overly intricate, the Expert will analyze the double test of the “substantial opposition” at the merits level, taking among others into consideration the fact that the factors to be taken into account for such finding are only mentioned in Section 3.5.4 of the Guidebook/3 relating to the merits.³⁵

56. After due consideration of the different indications given in the applicable texts interpreted in order to make them overall meaningful and the goals of ICANN, the Expert thus considers that a double analysis should be conducted with regard to the criterion of substantial opposition. First, the Expert shall review whether in the community represented by the Objector, opposition is substantial, second, the Expert shall determine whether opposition is also substantial within the community targeted by the string. Although it would have been logical to perform the first analysis at the standing level and the second at the merits level, the Expert, as mentioned above, for the sake of simplicity and in order to follow as much as possible the texts to be applied, will examine this double test at the merits level.

4. A summary of the Expert’s approach

57. The Expert, in applying the texts with due regards to their *effet utile* and the general goals of ICANN in launching these procedures for the review of the new gTLD strings, will proceed in the following manner:

- In order to verify the standing of the Objector:
 1. First, as a preliminary question, establish whether there exists a clearly delineated community named by the Objector;
 2. Second, examine whether the Objector is an established institution and;
 3. Third, analyze whether the Objector has an ongoing relationship with the community initially found to exist in the first step of the reasoning;
- Then, once it is established that there is standing to object, which implies that there exists a clearly delineated community, in order to analyze the merits of the Objection, the Expert must still verify that:

³⁵ Guidebook/3, Section 3.5.4, pp. 3-23 to 3-24.

1. First, there is a substantial opposition towards the applied-for gTLD meaning
 - a. substantial opposition within the community represented by the Objector (the “objecting community”), and;
 - b. substantial opposition of a significant portion of the community to which the string is targeted (the “string community”);
2. Second, there is a strong association between the community represented by the Objector and the new string;
3. Third, there is a likelihood of material detriment to the community represented by the Objector.

B. STANDING TO OBJECT

58. Prior to reviewing the merits of the Objection, the Expert must be satisfied that the Objector has standing to object. This threshold requirement is set out at Section 3.2.2 of the Guidebook/3, which provides that “(o)bjectors must satisfy standing requirements to have their objections considered.”³⁶
59. As far as Community Objections are concerned, Section 3.2.2.4 of the Guidebook/3 provides that established institutions associated with clearly delineated communities have standing to object.³⁷ In order to have standing to object, the Objector must prove both of the following:
- (a) It is an established institution, and;
 - (b) It has an on-going relationship with a clearly delineated community.
60. This same paragraph indicates that in order to verify the existence of a standing to object, the analysis has to focus on “the community named” by the Objector.
61. The first step of any inquiry on the existence of a standing to object is therefore to ascertain which community has been named by the Objector. Thereafter, the Expert will examine whether the Objector is an established institution, which has an ongoing relationship with a clearly delineated community, if such a community has been determined to exist.³⁸

³⁶ Guidebook/3, pp. 3-5.

³⁷ Guidebook/3, Section 3.2.2.4, pp. 3-7.

³⁸ These criteria are summarized above at para. 57.

62. It can be noted at the outset that the Objector considers that “(t)he RNC has standing to object to the registration of .republican,”³⁹ while the Applicant states that “(a)s an initial matter, the RNC does not have standing to submit this objection ...”⁴⁰ The Objector contends both that the RNC is an established institution and that it is associated with the clearly delineated Republican Community. In fact, an attentive lecture of the Objection shows that the Objector never really demonstrates the existence of a clearly defined Republican Community, but states it as an unproven assumption, merely discussing what it describes as “strong, ongoing relationships”⁴¹ between the RNC and this supposedly clearly defined community. The Applicant does not contest the fact that the RNC is an established institution, but considers that there exists no clearly delineated Republican Community, neither domestically in the United States nor internationally; having come to the conclusion that the Republican Community invoked is not a clearly delineated community, the Applicant did not discuss the existence or inexistence of an association of RNC with such undefined community.

1. First: Is a clearly delineated community named by the Objector?

63. The first point to ascertain is to understand in the name of which community the Objector purports to object. The Guidebook/3 invites the Expert to balance the following factors in order to determine the existence of a clearly delineated community:⁴²

- The level of public recognition of the group as a community at a local and/or global level;
- The level of formal boundaries around the community and what persons and entities are considered to form the community;
- The length of time the community has been in existence;
- The global distribution of the community;
- The number of people or entities that make up the community.

64. The Expert is not limited in her inquiry by these factors, as it is indicated in the Guidebook/3 that this list is not limitative.

a. Which community has been named by the Objector: the Republican Party or the Republican Community?

i. The naming of the Republican Community

³⁹ Objection, p. 2.

⁴⁰ Response, p. 4.

⁴¹ Objection, p. 4.

⁴² Guidebook/3, Section 3.2.2.4, pp. 3-22.

65. Firstly, the Expert has faced a difficult challenge in trying to ascertain which community the Objector was identifying as the clearly delineated community giving it standing to act. As has been noted, in the Form the Objector presents itself as “representing the United States Republican Party” which it alleges “is an established institution representing the interests of the clearly delineated Republican Community.”⁴³ (Emphasis added) Under this formulation, the community, although baptized “the Republican Community” can only be assimilated to the community represented by the Party composed of the members – physical or institutional – of the United States Republican Party. In other words, the two expressions seem to cover the same reality, and at that stage it appears that the US Republican Party and the Republican Community are to be considered as synonymous.
66. However, further reading of the Memorial developing the substantive aspects of the Objection leads to ambiguity, as the RNC presents itself as acting “on behalf of the United States Republican Party and the larger Republican Community.”⁴⁴ (Emphasis added) This indicates that the RNC claims to speak for a larger community than the one represented by the US Republican Party. It thus appears that the RNC invokes two different communities, in the first place the US Republican Party and in the second place (“and”) “the larger Republican Community.”(Emphasis added) The use of the definite article “the” instead of “a” conveys the idea that there is only one possible Republican Community in the Objector’s mind.
67. There is however a third step in the Objector’s presentation based on a semantic shift from the main community invoked initially – the US Republican Party – to a larger community – the Republican Community – invoked subsequently, that would be encompassed in the usual meaning of the string .republican, in the English language: page 2 of the Objection, the RNC concludes its “Introduction” by stating that “(t)he RNC, on behalf of the Republican Community, opposes registration of .republican ...” (Emphasis added) In other words, the community referred to here is only “the Republican Community” and the Republican Party is no longer mentioned, nor is any other more precisely defined community.
68. In sum, although the Objector seems to claim alternatively to represent the United States Republican Party and/or the Republican Community,⁴⁵ jointly or separately, the Expert has come to the conclusion that the Objector presents itself primarily as representing what it calls “the Republican Community.” This conclusion is based on the countless references to the expression Republican Community in its Objection, as well as on the unambiguous title of the conclusion to the developments relating to its standing to object: “The RNC clearly has standing to

⁴³ Objection Form, p. 4.

⁴⁴ Objection, p. 1. See a similar formulation p. 2: “The RNC files the instant objection in its capacity as representative of the Republican Party and the Republican Community in general.”

⁴⁵ Republican Community whose contours vary in the different parts of the Objection.

object to the registration of .republican on behalf of the Republican Community.”⁴⁶(Emphasis added)

69. It is therefore primarily on the basis of the Republican Community, named by the Objector, that the Expert will examine whether the conditions which have to be fulfilled by the RNC for it to have standing to object are satisfied.

ii. The scope of the named community

70. The Expert has found it difficult to understand what the Objector entails by its reference to the Republican Community. On the one hand, the Objector uses a general definition of the Republican Community as “a clearly delineated global group of politically like-minded individuals and entities” of which it purports to be the official representative.⁴⁷ On the other hand, it defines itself as the official representative of the Republican Party.⁴⁸ This confusion reaches its climax when the Objector states the following: “the Republican Community is a clearly delineated, global community comprised of individuals and entities commonly interested in promoting the Republican Party’s agenda.”⁴⁹(Emphasis added)

71. This back-and-forth between the two concepts – the US Republican Party and a larger Republican Community – is present all along the Memorial and has rendered the legal analysis extremely difficult.

72. Besides, it appears that the Objector has made some attempts to invoke an even broader community than the US Republican Community. It indeed states that “entities and individuals who identify with the Republican Party for business, political, or personal reasons can be found both nationally and worldwide.”⁵⁰ (Emphasis added) In the same vein, the Objector states that “the Republican Community is a clearly delineated, global community comprised of individuals and entities commonly interested in promoting the Republican Party’s agenda.”⁵¹ (Emphasis added).

73. Because of the ambiguity of the presentation of the RNC all along its Objection, the Expert has deemed it necessary to examine the subsidiary and alternative possibility that such Republican Community invoked by the RNC is in fact the community of the members of the US Republican Party.

74. Indeed, if the underlying assumptions of the objections are focused on, it rapidly appears that the community invoked under the generic formula of “the Republican Community” is essentially the community which is represented by the US

⁴⁶ Objection, p. 7.

⁴⁷ Objection, p. 7.

⁴⁸ Objection p. 3 referring to Attachment A to Objection, para. 2.

⁴⁹ Objection, p. 9.

⁵⁰ Objection, pp. 1-2.

⁵¹ Objection, p. 9.

Republican Party. A few formulations found in the Memorial, which justify such conclusion, can be given here, but there are others. For example, in order to demonstrate that the RNC has strong relationships with “the clearly delineated Republican Community,” the RNC explains that it “recognizes elections for its 168 members ... elected by each of the fifty United States, the District of Columbia and the five U.S. territories.”⁵² On its face, such role of the RNC can only concern the Party, not any wider Republican Community. Another example is the following: the Objector asserts that “(a)s the primary organizational body of the Republican Party, the RNC’s sole purpose is to benefit the Republican Community by identifying, organizing, and promoting the Republican Agenda.”⁵³ It appears to anyone that the organization of the US Republican Party has for its sole purpose to benefit the community of the US Republican Party, by the promotion of the US Republican Party Agenda and not to benefit any other party or entity. A last example could be given here: it is the contention of the RNC that its role in the republican presidential nomination process is strong evidence that the RNC institutional purpose is “to represent the interests of the Republican Community.”⁵⁴ It is difficult to imagine a role more closely and exclusively linked with the US Republican Party than the process of nomination of the republican candidate for President, such a process being quite foreign to any other defined or undefined community.

75. In order to fully perform her mission, the Expert has also been minded to look at the public letters sent by the Applicant and the Objector to the global community, which have been posted on ICANN’s website.⁵⁵
76. From those letters, the true actors seem to emerge more clearly. The letter of RNC and RSLC “To whom it may concern” is dated 14 September 2012, the letter sent by United TLD to ICANN is dated 30 October 2012.
77. The Expert has first focused on the letter sent by the respective Chairmen of the RNC and the RSLC. The following extracts are relevant:

The Republican State Leadership Committee (“RSLC”) and the Republican National Committee (“RNC”) submit this letter of public comment in opposition to the application by United TLD Holdings Ltd. (“United TLD”) for the .REPUBLICAN top level domain (gTLD).

...

The RSLC is the largest caucus of Republican state leaders and the only national organization formed to elect down ballot, state-level Republican office-holders.

⁵² Objection, pp. 4-5.

⁵³ Objection, p. 5.

⁵⁴ Objection, p. 6.

⁵⁵ At: <http://www.icann.org/en/news/correspondence/2012>.

...

The RNC is the structural heart of the Republican Party of the United States.

...

If United TLD were allowed to operate .REPUBLICAN, it would be provided with the imprimatur of authority to represent the interests of the Republican Party, which is something that the Republican Party strongly opposes.

Furthermore, users may rely on the .REPUBLICAN gTLD for official information regarding the Republican Party, voter registration, elected officials party news and other information relevant and important to a citizen's right to vote and engage in the U.S. political system.

78. The unique focus here is on the US Republican Party, its structure, its elections and the US political system.
79. The Response of United TDL signed by the Director of the company is also relevant:

First, it is important to note (as we made clear in our application) that the label "republican" is not one that can be claimed solely by the Republican political party operating in the United States. There are Republican parties operating in many other countries around the world. Additionally, millions of citizens throughout the world identify themselves as "republicans" without holding membership in any of these Republican parties. Finally, republicanism is a governing concept that stretches back to the ancient Greeks, and far beyond the narrower definition captured by modern political parties themselves. Therefore, the RSLC and RNC's argument that United TLD's application should be denied because it would give the impression that it is endorsed by the Republican Party in the United States is not accurate ...

United TLD's application for .REPUBLICAN is an "open" gTLD and therefore United TLD has no intention to become a "source" for any content, including any political information.

80. It appears from a close examination of the Objection as well as the just analyzed public letters that it can also be concluded that both Parties to the present dispute considered the community involved to be the Republican Party of the United States. In other words, the Expert is minded to accept that the Objector presents itself secondarily as representing the US Republican Party.

iii. Conclusion

81. Therefore, the Expert, although she considers that the formal Objection *de jure* has been raised in the name of the Republican Community, will examine subsidiarily

the solution that should be adopted if it is considered that it is *de facto* in the name of the Republican Party.

b. Is the Republican Community a clearly delineated community?

82. Before entering into the details of the examination of the existence of any specific community, it seems apposite for the Expert to give a general definition of what a community is. There is no definition of what should be understood by the term “community” as such in the Guidebook, although it does provide some guidance and factors to determine what is a “clearly delineated community” in its Section 3.4.5. Unfortunately, the Parties do not either define the notion of community. According to the Objection, a community could be understood as individuals and entities that identify with ideals different from those of another group.⁵⁶ However, such definition is centered on political communities. More generally, the Oxford Dictionaries define a community as “a group of people (...) having a particular characteristic in common.”⁵⁷ It is with this general meaning of the term “community” that the Expert will analyze the existence of a clearly delineated community associated with the Objector.
83. It seems that the concept of community is broad and can encompass many different types of communities. According to the cited definition, a common characterization is the necessary element to establish the existence of a community. The common characteristic can be of different types: it can be the fact of living in the same territory (in France), or having the same nationality (Italian); it can be the fact of sharing a common physical characteristic (the community of people having a certain genetic disease) or a common belief (religious groups); it can be a community of people having the same activities (professors, lawyers and so on); it can be a community of thoughts and values (the people opposed to the death penalty) and so on. Some of these communities seem to be easy to define and clearly delineated, but others imply a more difficult apprehension of their limits, like a community of thoughts (“*une communauté de pensée*”) which seems to be less easily delineated.
84. The Objector defines the Republican Community as a clearly delineated global group of politically like-minded individuals and entities. It considers that “(t)he many different individuals and entities that comprise the Republican Community uniformly identify with Republican ideals and thereby are distinguished from those adhering to other political ideologies.”⁵⁸ Furthermore, the use of the word republican by a wide spectrum of entities is reported as an illustration of the existence of a clearly delineated Republican Community.⁵⁹

⁵⁶ Objection, p. 7.

⁵⁷ At: <http://oxforddictionaries.com/definition/english/community>.

⁵⁸ Objection, p. 7.

⁵⁹ Objection, p. 7.

85. According to the Objector, the Republican Community is a clearly delineated group of individuals and entities with the common goal of promoting the Republican Agenda.⁶⁰ The first element of its demonstration is the alleged existence of the Republican Community for over 150 years. Further, the Objector details that this community includes national, state, and local organizations, as well as more than 84 million self-identified US Republicans. It enumerates Republican Party establishments in US states, territories, and counties, and Republican Party members amongst national and state officeholders. Finally, the Objector considers that all members of the Republican Community share a common interest in the promotion of the Republican Party's social, political and economic agenda.
86. The Applicant denies the existence of a single Republican Community on the ground that it disregards the geographic and ideological diversity of republicans throughout the globe. It also rejects the reality of a single Republican Agenda. From a domestic standpoint, it stresses the diversity of republican entities, acting independently from the Objector. The political discourse is equally reported as too disparate to support the Objector's contention that it represents a single Republican Community. In addition, the Applicant mentions that the Objector's platform does not systematically reflect the platforms of state GOP parties. From an international standpoint, 51 countries are listed as also having republican parties.⁶¹ According to the Applicant, those are not necessarily affiliated with the Objector, the US Republican Party, or their ideologies.
87. The Applicant alleges that the Objector fails to demonstrate that there are clear lines that define a Republican Community. First, the Applicant considers that worldwide monitoring of US politics does not suffice to establish global recognition of a clearly delineated Republican Community. Domestically, the issue of who speaks for the Republican Party also remains. Second, the Applicant argues that there are no formal boundaries around a Republican Community. Third, the Applicant contemplates the existence of Republican forms of governments in Ancient times independently from the history of the Objector and the ideas advocated by it. Fourth, the Applicant stresses the fact that the Objector does not address the global distribution of the "Republican Community" and argues that the Objector merely represents a subset of republicans that exist in the US. Fifth, the Applicant contends that if there is such thing as the Republican Community, it is vastly larger than the Objector.
88. First, the Expert wishes to stress the importance of analyzing the meaning of the word republican at this initial stage since it conditions the existence of a Republican Community. The Parties' submissions on the question of the existence of a clearly delineated Republican Community in fact reveal the varying meaning of this adjective republican depending on the substantive word with which it is

⁶⁰ Objection, pp. 5, 9.

⁶¹ Response, p. 7 referring to Annex 2(A)-(D) to the Response.

associated. As rightly explained by the Applicant, even if it defines a similar element, the word republican covers different realities due to the geographic and ideological diversity throughout the world. In the view of the Expert, from Aristotle's student Plato's "Republic" to the book of Philip Pettit,⁶² "Republicanism: A Theory of Freedom and Government,"⁶³ representative of the "republicanist" trend in contemporaneous philosophy, there is no unity, which could define "the" clearly delineated Republican Community.

89. From a general viewpoint, the Expert considers that the noun Republican does not have a consensual meaning, such as enabling a clear delineation of the Republican Community.
90. Second, the Expert takes into consideration the five factors listed by the Guidebook/3⁶⁴ to deepen the review of the existence of a Republican Community.
91. The Expert notes that the Objector neither contemplates the public recognition of the Republican Community, nor its global distribution. The Applicant on the contrary, vigorously denies the existence of both factors, focusing on the point that the Objector only represents the US Republic Party, instead of the Republican Community. The monitoring of US politics around the globe should not, in any event, associate the meaning of the word republican to the sole reality of US politics. Besides, one could argue that in spite of such monitoring, foreign citizens remain free to feel concerned about US politics. Therefore, the global audience has no reason to assimilate the Republican Community to US politics; the more so since historically, "*res publica*" has a universal meaning turned to all political societies.
92. Amongst the three remaining factors, the Expert wishes to stress that the Objector's contention that the Republican Community is made of individuals and entities sharing the common goal of promoting the Republican Agenda fails due to the diversity of the individuals and entities forming the Republican Community.
93. The Republican Community is reported by the Objector to have been in existence for 150 years. The Expert is forced to characterize this as an affront to history. Republican communities have existed since ancient times and many countries have been guided by the idea of republicanism throughout their political history. The Objector appears to wrongfully assimilate the history of its institution with that of the idea of republicanism.
94. At last, the Objector enumerates all entities making it up and lists 84 million self-identified US Republicans. The Applicant correctly points out that the Republican Community extends beyond US Republicans. In the world, the number of individuals identifying themselves as republican would actually be significant,

⁶² At: http://fr.wikipedia.org/wiki/Philip_Pettit.

⁶³ Clarendon Press, 1997.

⁶⁴ Guidebook/3, Section 3.5.4, pp. 3-23.

since most political regimes are found to fall under this form of government.⁶⁵ The fact that such a large amount of people identifies with the term republican adds on to the confusion regarding the boundaries of the Republican Community.

95. Given the doubts regarding the scope of the adjective republican in general and in this particular case, the Expert, having weighted all the arguments of the Parties, considers it impossible to delineate formal boundaries of the Republican Community.
96. A look at the web page of United TDL⁶⁶ makes one understand that the community recovering what the Objector has called the Republican Community is undefined, both in time, geography and even philosophy:

Register your interest in a .REPUBLICAN domain!

Join the debate with a .REPUBLICAN domain!

A powerful name, used around the world for centuries, the word republican means something to virtually everyone today. Whether it's Plato's Republic, the scores of countries now governed as republics or the ideals of political parties around the world -- chances are that you have a strong and personal connection to this word. (Emphasis added)

97. In principle, the absence of this threshold requirement makes it unnecessary for the Expert to conduct further analysis of the Objection if it is considered as presented in the name of the Republican Community. Indeed the presence of a clearly delineated community is a basic condition whose non-fulfillment blocks any standing to object at the outset. For the sake of completeness, the Expert will however confirm this finding when she will analyze the ongoing relationship of the RNC with the invoked community.⁶⁷

c. Is the US Republican Party a clearly delineated community?

98. The Expert has determined that it can be considered that *de facto* the RNC has presented its objection in the name of the Republican Party. She will therefore verify whether the community of the members of the US Republican Party constitutes a clearly defined community.
99. A review of the factors of the Guidebook/3⁶⁸ leads to the conclusion that the US Republican Party is a clearly delineated community. First, the US Republican Party has been established as a national party in 1856 and became a major political party

⁶⁵ The Expert would like to clarify that assimilation of republicanism to democracy is a shortcut since democracy is only one form of republican government. In addition, if democratic regimes were to constitute the Republican Community, those would still have to be defined.

⁶⁶ At : <http://www.dotrepublican.net/>.

⁶⁷ See below at paras. 105 to 116.

⁶⁸ Guidebook/3, Section 3.5.4, pp. 3-23

in the US four years later, with the election of Abraham Lincoln as President.⁶⁹ It has therefore been in existence for over 150 years. Second, the Republican Party is publicly and historically recognized as “one of the two major political parties in the United States of America.”⁷⁰ In spite of the Applicant’s allegations that there are other institutions which “are overwhelmingly comprised of registered republicans but their policies may differ in many respects from those of the RNC,”⁷¹ and upon which “the RNC’s influence continues to wane,”⁷² the Expert recalls that she needs only focus on the public recognition of the Republican Party at this stage, not on the RNC’s. Besides, the Applicant itself concedes that “the leaders of state republican parties make up the RNC’s membership.”⁷³ The Expert is therefore convinced that the US Republican Party represents the major community of republicans in the country. Third, the Expert agrees with the view that the Republican Party’s boundaries are clearly delineated to “...entities and individuals who identify with (it),”⁷⁴ and especially “(a)nyone participating in Republican politics.”⁷⁵ The Applicant’s allegation according to which the act of voting for the Republican Party does not suffice to constitute a community cannot be sustained.⁷⁶ Fourth, the number of people making up the community has been reported as amounting to nearly sixty million in the 2012 presidential elections.⁷⁷ The Expert is satisfied that such number is significant among a domestic population of 317 million inhabitants.⁷⁸

100. In other words, as the Expert considers in a subsidiary analysis that the Objector represents the US Republican Party, she also considers that this is a sufficiently clearly delineated community, which implies that she will analyze the existence of an ongoing relationship of the RNC with this community for purposes of verifying the existence of a standing to object for the RNC.

⁶⁹ History of the GOP, at: <http://www.gop.com/our-party/our-history/>.

⁷⁰ Objection, p. 1. See also, Objection p. 8: the USTPO noted that the designation of the Republican Party is a “historically famous designation for a major political party.”

⁷¹ Response, p. 6.

⁷² Response, p. 9.

⁷³ Response, p. 6. In this regard, see also the discussion under para. 74 above.

⁷⁴ Objection, p. 1.

⁷⁵ Objection, p. 7.

⁷⁶ Response, p. 9.

⁷⁷ Objection, p. 7.

⁷⁸ US Population Clock, at: <http://www.census.gov/popclock/>.

2. Second: Is the Objector an established institution?

101. According to the Guidebook/3,⁷⁹ the Expert may, amongst others, use the following factors in making this determination:

- Level of global recognition of the institution;
- Length of time the institution has been in existence;
- Public historical evidence of its existence.

102. Based on these three elements, the Objector argues that it is an established institution. First of all, it purports to be domestically and globally recognized as the official representative of the Republican Party. This is not only because it considers itself as the primary Republican institution relied on by US political candidates and electorate, but is also justified by the alleged worldwide monitoring of US politics. Moreover, the Objector contends that, founded by the Republican National Convention in 1856, it has been established for over 150 years. Eventually, the Objector points out the Official Proceedings of the Republican National Conventions as public historical evidence of its role as the representative of the Republican Party.

103. The Applicant concedes that the RNC is an established entity.⁸⁰

104. As a result of the Parties' common recognition of the Objector as an established institution, the Expert needs not further analyze this issue.⁸¹ In any case, there can be no doubt that the RNC is an established institution.

3. Third: Is the Objector associated with a clearly delineated community?

105. In order to determine whether the Objector is associated with a clearly delineated community, the Expert may notably balance the following elements:⁸²

- The presence of mechanisms for participation in activities, membership or leadership;
- Institutional purpose related to the benefit of the associated community;
- Performance of regular activities that benefit the associated community;
- The level of formal boundaries around the community.

⁷⁹ Guidebook/3, Section 3.2.2.4, pp. 3-8.

⁸⁰ Response, p. 5.

⁸¹ By the same token, absent any challenge from the Applicant, the Expert is satisfied with the fact it has been established that the RSLC, the Republican State Leadership Committee, the Related Entity is the only organization formed to elect down-ballot, state-level Republican officeholders, Objection, p. 4.

⁸² Guidebook/3, Section 3.2.2.4, pp. 3-8.

106. The Expert will show that, even if the Republican Community were clearly delineated, the Objector has no on-going relation with it, as all its relations are with the US Republican Party.
107. First, as the official representative of the Republican Community, the Objector considers that it employs established, reliable mechanisms to allow active participation of its constituents. Second, it adds that its primary purpose is to pursue the Republican Agenda on behalf of the Republican Community. Third, it purports to engage in regular activities designed to promote the interests of and benefit the Republican Community.
108. The Applicant focuses on alleging the inexistence of a single Republican Community. As a consequence, it does not directly address the association of the Objector with the Republican Community.
109. In order to determine whether the Objector has an ongoing relationship with either the Republican Community or the US Republican Party, the Expert turns to the factors set out in the Guidebook/3 and addressed by the Objector.⁸³
110. Firstly, the Objector demonstrates the presence of mechanisms for participation within its institution, especially through internal elections systems. It purports to allow constituents of the whole Republican Community to participate. However, its representatives are “elected by each of the fifty United States, the District of Columbia, and the five US territories.”⁸⁴ Therefore, its participation mechanisms are, at best, only directed to the US Republican Party.
111. Secondly, the Objector alleges that its institutional purpose of pursuing the Republican Agenda benefits the Republican Community. Its missions are reported as including political reforming and fundraising, as well as coordinating with other republican entities. Based on the diversity of the Republican Community, the Applicant denies the existence of a single Republican Agenda. Albeit the US Republican Party follows its own agenda, the Expert does not believe that all republicans around the world share the same objectives at the same time. In some countries, republican groups may be struggling to establish a democratic government, whereas in others, such parties mostly concentrate on social reform. However, although the Expert agrees with the Applicant that republicans at the local level in the US are diverse, she considers that the constituent elements of the Republican Party can still be deemed to constitute the clearly delineated community with which the RNC has an ongoing relation.⁸⁵
112. Thirdly, communication campaigns, public relation events, or educational programs are cited by the Objector as the regular activities, which it performs to the benefit of the Republican Community. Such activities certainly impact the

⁸³ See above, para. 105.

⁸⁴ Objection, p. 5 referring to Attachment A to Objection, para. 9.

⁸⁵ See also above at para. 99.

community it represents. Nonetheless, the Objector cannot purport to carry on activities benefiting all republicans around the world. Its activities, undertaken for the US Republican Party, may have a rebound effect on other republicans around the globe. Yet, this effect may either be beneficial or detrimental, when those individuals and entities have diverging views from that of the Objector. The public activities performed by the RNC clearly are aimed at the US Republican Party.

113. Based on these elements, the Objector does not satisfactorily demonstrate that it is associated to a large Republican Community which extends beyond the US Republican Party.
114. To go on, the Expert needs to examine some elements, which the Objector introduces as evidence of its association with the Republican Community. Those are the US Patent and Trademark Office's rejection of an application by a non-affiliated entity to register the trademark "republican party," and the Applicant's commercial offer made to the Objector and the Related Entity regarding the .republican gTLD. The Applicant considers these facts as irrelevant to prove the Objector's association with the Republican Community
115. The Expert finds it inappropriate to discuss US trademarks law issues in a domain name dispute governed by its own rules of law.⁸⁶ . The trademark was denied registration, as it is a generic word; and the case was suspended due to on-going litigation. In addition, the Expert does not find the commercial offer made by a gTLD company to its potential clients sufficient to associate those clients to the global community, which the gTLD allegedly covers. It follows that the evidence relied on by the Objector does not support its association with the Republican Community.
116. In short, even if the Republican Community were considered as clearly delineated, the Objector does not demonstrate that it is closely associated to such community. The Expert is however satisfied that the RNC can demonstrate that it is closely associated with the US Republican Party.

4. Conclusion

117. The Expert concludes that the Objector does not have standing to object to the Applicant's registration of the new gTLD .republican, in the name of the so-called Republican Community, as it cannot be considered as a clearly delineated community, contrary to the US Republican Party. The Expert acknowledges the Objector as an established institution. But, even if the Republican Community were found to be clearly delineated, the Objector is not closely associated with the Republican Community. To the contrary, as the Objector is an established institution having an ongoing relationship with the clearly delineated community of

⁸⁶ The rules applicable to these proceedings are cited above at para. 16.

the members of the US Republican Party, the Expert considers that it has standing to object on this basis, *i.e.* in the name of the US Republican Party.

118. The Expert will therefore analyze the merits on the assumption that the Objector is objecting to the new gTLD .republican in the name of the US Republican Party.

C. MERITS OF THE OBJECTION

119. According to Article 20(a) of the Procedure, the Panel shall apply the standards defined by ICANN for each category of Objection identified. The “Dispute Resolution standards” are set out at Section 3.5 of the Guidebook/3. As was the case for the standing to object test, the Objector bears the burden of proving that the Objection complies with the applicable standards.⁸⁷

120. Article 2(e)(iv) of the Procedure states that a Community Objection refers to “the objection that there is substantial opposition to the application from a significant portion of the community to which the string may be explicitly or implicitly targeted.”⁸⁸

121. The general presentation of the standards to be fulfilled at the merits level for a community objection to succeed are stated in Section 3.5.4:⁸⁹

The four tests described here will enable a DRSP panel to determine whether there is substantial opposition from a significant portion of the community to which the string may be targeted.

122. The four requirements for a Community Objection to prevail, established in this definition, are then detailed as follows:

- (a) Community – The objector must prove that the community expressing opposition can be regarded as a clearly delineated community (test 1);
- (b) Substantial opposition – The objector must prove substantial opposition within the community it has identified itself as representing (test 2);
- (c) Targeting – The objector must prove a strong association between the applied-for gTLD string and the community represented by the objector (test 3);
- (d) Detriment – The objector must prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a

⁸⁷ Cf. Procedure, Article 20(c), p. 10.

⁸⁸ Procedure, p. 3.

⁸⁹ Guidebook/3, Section 3.5.4, pp. 3-23 to 3-23.

significant portion of the community to which the string may be explicitly or implicitly targeted (test 4).

The Objector must meet all four tests in the standards for its Objection to prevail.

123. In these proceedings, the Objector contends that its Objection meets the ICANN standards as it demonstrates substantial opposition among a significant portion of the Republican Community to the registration of .republican as a new gTLD and creates a likelihood of material detriment to the community it represents. In contrast, the Applicant argues that the Objection fails to meet the ICANN standards.
124. The Expert has already determined in her analysis of the existence of a standing to object, that the US Republican Party was a clearly delineated community.⁹⁰ In other words, test 1 needs not be reexamined at this stage.
125. There remains therefore to determine whether test 2, 3 and 4 are also satisfied.

1. First: Is there substantial opposition to the applied for gTLD string ?

126. It has already been indicated by the Expert that for a substantial opposition to be found to exist, there must be both the requirement of a substantial opposition at the level of the clearly delineated community and the requirement that this opposition represents an opposition from a significant portion of the community to which the string is targeted.⁹¹ The Expert will address these two issues successively.
127. On a preliminary note, the Expert would like to clarify the meaning of a “substantial opposition.” As rightly pointed out by the Independent Objector, the word substantial not only covers the number of oppositions, “but also the material content of comments and oppositions expressed by those concerned, and in particular, the importance of the rights and interests at stake.”⁹² Therefore, to determine whether opposition to the string registration is substantial, the Expert shall consider both the quantity and the quality of oppositions.

a. Is there a substantial opposition among the community the Objector has identified itself as representing?

128. According to the second test in the standards, the Objector must prove substantial opposition within the community it has identified itself as representing. For this purpose, the Guidebook/3 points to the following factors:⁹³

⁹⁰ See above at paras. 98 to 100.

⁹¹ See above at paras. 46 to 56.

⁹² Independent Objector’s Objection to the .Hospital domain name, para. 23, at: <http://www.independent-objector-newgtlds.org/english-version/the-independent-objector-s-objections/hospital-withdrawn-objection/>.

⁹³ Guidebook/3, Section 3.5.4, pp. 3-23 to 3-24.

- Number of expressions of opposition relative to the composition of the community;
- The representative nature of entities expressing opposition;
- Level of recognized stature or weight among sources of opposition;
- Distribution or diversity among sources of expression of opposition including: regional, subsectors of community, leadership of community, membership of community;
- Historical defense of the community in other contexts;
- Costs incurred by objector in expressing opposition, including other channels that objector may have used to convey opposition.

129. The Objector considers this to be clear, as its mission is to represent the interests of the US Republican Party,⁹⁴ including in these proceedings. The costs incurred for this Objection as well as those for its string confusion objection further demonstrate the strength of such opposition.

130. The Applicant purports that there is no substantial opposition against its Application. Domestically, only the Related Entity joins the Objection. Internationally, the Objection is not backed by any organization.

131. The Expert limits her review of the opposition to the new gTLD to the factors discussed by the Parties. The Objector contends that it is the official representative of the Republican Party representing sources opposed to the registration. The Expert agrees with the Objector on the fact that opposition expressed by two major institutions of the Republican Party to the registration of a globally designed gTLD is substantial, as these organizations can be considered as broadly representative of the US Republican Party.

b. Is there a substantial opposition from a significant portion of the community to which the string is targeted?

132. This implies, in the understanding of the Expert, that there is both a substantial opposition inside the clearly delineated community invoked by the Objector, as already verified, as well as outside this community in the framework of what the Expert will call “the string-community”, in other words, “the community to which the string may be explicitly or implicitly targeted.” Indeed, Section 3.5.4 of the Guidebook/3 requires that “(c)ommunity opposition to the application is substantial,” referring therefore to substantial opposition inside the community in whose name the Objector presents its Objection, which the Expert will call the “objecting community.” If this test is read against the general condition of a “substantial opposition from a significant portion” of the string-community, it implies that, for an objection to succeed, the substantial opposition inside the

⁹⁴ Objection, p. 2.

objecting community must be deemed to represent a substantial opposition from a significant portion of the string-community.

133. In other words, the clearly delineated community, which will by definition be smaller than the string-community, has to be able to be considered as speaking in the name of a significant portion of the string-community. The term portion, in the Expert's view, has to be understood in a broad, teleological manner. It cannot only be a quantitative portion, it can also refer to qualitative aspects. In other words, if the substantive opposition of a clearly delineated objecting community can be considered as representing the voice of a significant portion of the string-community, like by a defense of its core values or its core characteristics, and if all other tests are satisfied, the objection should be upheld.⁹⁵
134. The Expert cannot consider that an Objection by an institution representing the sole US Republican Party is a substantial opposition from a significant portion of the community to which the string is targeted. Without minimizing the importance of the role of the United States of America in the world, accepting that the opposition of the US Republican Party stemming only from their territory could be equated to a substantial opposition from a significant portion of the community to which the string is targeted, would amount to a purely US centered view of global politics and would not take into account the contemporaneous reality of the globalization of the world economy.
135. It follows that test 2 is partially unsatisfied: although it has been concluded by the Expert that there was a substantial opposition from the US Republican Party, such opposition cannot be deemed to represent a substantial opposition from a significant portion of the community to which the string is targeted.
136. For the sake of completeness, the Expert will however also examine the other tests.

2. Second: Is the applied for gTLD string strongly associated with the community represented by the Objector?

137. To fulfil the third test, the Objector must prove a strong association between the .republican string and the community it purports to represent. The Guidebook/3 draws the three following factors to the attention of the Expert:⁹⁶
 - Statements contained in application;
 - Other public statements by the applicant;
 - Associations by the public.

⁹⁵ This is also in line with the Expert's understanding of the meaning of "substantial opposition" detailed at para. 127 above.

⁹⁶ Guidebook/3, Section 3.5.4, pp. 3-24.

138. The Objector alleges that the word republican used in the applied-for gTLD is associated with the Republican Party. It considers this assimilation to be domestically and internationally spread in the public, and reflected by the definitions found in a US dictionary and on the Internet. In the Objector's view, the existence of alternative meanings of the word republican is not a relevant factor in the case at hand. In addition, the Objector emphasizes the fact that in its Application,⁹⁷ the Applicant concedes that .republican seeks to become a political forum, thus relating to the Republican Party. The Objector considers the Applicant's parent company's attempt to sell rights or interests in .republican directly to the Republican Party as further evidence of the association between the word republican and the Republican Party.
139. For its part, the Applicant retorts that the community represented by the Objector is in fact associated with the .gop gTLD.⁹⁸ The Applicant first considers that the public association of the word republican extends to the broad notion of republicanism; the strings .republican and .gop hence covering different scopes. The Applicant further argues that the description of the gTLD in its Application,⁹⁹ completed by the offer made to the Objector and the Related Entity, are consistent with its proposition to allow the Objector, together with other groups, to use the string.
140. Further, in its Application, the Applicant refers to republicans as potential users of the proposed gTLD through the following statement in its answer to Question 18:
- “The term republican has held a long and storied place in the history of government and politics. In the thousands of years since the Roman republic forever changed the face of government, people have identified themselves as Republicans. Individual citizens, political parties, civic and student organizations, newspapers and even cities have adopted the name and its proud heritage. Global in scope, today a passionate group of hundreds of millions of individuals and thousands of organizations identify with this word. The mission and purpose of the .republican TLD is to establish an easily recognized and accessible namespace for this large and dynamic group.”¹⁰⁰ (Emphasis added)
141. Therefore, the Expert is satisfied that the new gTLD is directed to all republicans in the world, including US republicans represented by the Objector and the Related Entity, acting in the name of the US Republican Party. Similarly, the Expert considers that an offer made by a gTLD company to some of its potential clients is

⁹⁷ Objection, p. 12 referring to Application, question 18(b)(i).

⁹⁸ GOP stands for Grand Old Party.

⁹⁹ Response, pp. 11-12 referring to Application, question 18(a).

¹⁰⁰ Application, question 18(a).

no evidence of the sole association of this string with the community they purport to constitute, even if it shows however a strong association.¹⁰¹

142. In brief, the Expert concludes that test 3 is satisfied, as the string .republican is strongly associated with the Republican Party, the community represented by the Objector.

3. Third: Does the Application create a likelihood of material detriment to the community?

143. For its Objection to be sustained, the Objector must eventually 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. The Expert is advised to balance the following factors in revising this final condition:¹⁰²

- 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;
- 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;
- Interference with the core activities of the community that would result from the applicant's operation of the applied for gTLD string;
- Dependence of the community represented by the objector on the DNS for its core activities;
- Nature and extent of concrete or economic damage to the community represented by the objector that would result from the applicant's operation for the applied for gTLD string;
- Level of certainty that alleged detrimental outcomes would occur.

144. The Objector argues that the registration of this string by the Applicant would be of material detriment to the US Republican Party. First, the Applicant's history and practices are stated as the illustration of its intention to operate the string in accordance with its own commercial interests. Its applications are qualified as speculative. Furthermore, applying both for .republican and .democrat at the same time, the Applicant is charged with lacking political interest. The Applicant's parent company, Demand Media, is criticized in turn for using the "content farm" model to speculate on the Internet. Second, the Objector alleges that the

¹⁰¹ See also the discussion above at para. 115.

¹⁰² Guidebook/3, Section 3.5.4, pp. 3-24 to 3-25.

Applicant's operation of .republican would cause confusion regarding the source of the information and lead to the misimpression that the information contained on the .republican site is connected with the Republican Party. This would interfere with the Republican Party's core activity of sharing information regarding its ideals, platforms and agenda. Third, the Objector points out that the Applicant's operation of the string would certainly cause actual and irreparable reputational and economic harm to the Republican Party. The confusion would arise from the parallel operation of the GOP website and the .gop gTLD. Moreover, the Objector underscores the potential harm that could derive from the Applicant's conveyance of incorrect or poor content on the string.

145. The Applicant sustains that the registration of .republican would not cause any material detriment to the rights or legitimate interests of republicans. Instead, it would be directed to all individuals associated with republican ideals and promote ICANN's goal of competition and consumer choice. The Applicant confirms that its commitment in operating an open global gTLD is aimed at promoting or discussing republican political issues. In addition, it rejects the contention that .republican would interfere with the Objector's core activities. Finally, the Applicant considers that the Objector should not deprive other republican parties and organizations around the world of being offered the new gTLD.
146. The Expert first turns to the allegation that the Applicant does not intend to operate the gTLD in the interests of the Republican Party. The Objector argues that the Applicant is a pure speculator without political interest. However, the Applicant declares operating in the interests of the Republican Community.
147. The Expert is not convinced by the argument that commercial interests jeopardize political interests in this situation. Furthermore, the fact that the new gTLD is directed to the largest group of republicans throughout the world is in line with the broad definition of the large Republican Community to which the string is targeted. In the Expert's view, this is also in line with the New gTLD Program, aimed at fostering diversity, encouraging competition and creating new options for consumers in the world.¹⁰³ As a matter of fact, there is no evidence that the Applicant is not going to act in the interests of the broad Republican Community, as appears in the statements of United TLD in its Application:

United TLD is committed to operating .republican in a manner that promotes inclusiveness, while creating a safe environment for consumers and rights holders.¹⁰⁴

United TLD will be inclusive in its registration policies for this broad and generic TLD. We will not limit registrant eligibility for second-level

¹⁰³ Guidebook, Preamble.

¹⁰⁴ Application, question 18(a).

registrations and will provide registration services to all legitimate registrants.¹⁰⁵

148. Second, the Expert turns to the potential concrete economic damage caused by the operation of the string on the Republican Party. According to the Objector, harm would especially be caused to its reputation due to the confusion between the .republican string and the GOP's string. This would also interfere with its core activity of sharing information about the Republican Party.
149. The Expert regards the existence of those two strings on the Internet as the illustration of the reality, where republicans throughout the globe divide into national republican parties, including the GOP. In addition, the risk that the Applicant would convey different information from that provided by the GOP should not be understood as a direct threat on the Objector. Rather, this is inherent to any communication platform and favors the freedom of expression. A system where institutional bodies of a community control communication vehicles is dangerous for civil liberties.
150. In addition, the Expert would like to emphasize the Guidebook's special mention, according to which: "(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."¹⁰⁶ This seems to be at point in the present case, since the Applicant qualifies the Objection as the Objector's attempt to eliminate competition for its own gTLD.¹⁰⁷ The Expert considers that there is no need to enter into this controversy because the Objector has not applied for registration of the .republican string itself. Moreover, as accurately recalled by the Applicant, the Objector is in control of its .gop gTLD and is eligible to register its own domain name under the .republican gTLD.¹⁰⁸ In the Expert's view, concrete economic damage on the Republican Party is therefore not established by the registration of the .republican string.
151. Third, the Objector acknowledges that "it is too soon in the nascent gTLD world to know the exact harm likely to be caused by the registration of .republican."¹⁰⁹ In the Expert's understanding, such statement is far from establishing a likelihood of material detriment created by the applied-for gTLD.
152. All in all, the Expert is not convinced that the .republican string, targeted to the republicans of the world, is likely to cause material detriment to a portion of the Republican Community represented by the US Republican Party. This is because it is neither established that the Applicant would not act in the interests of the

¹⁰⁵ Application, question 18(b)(iv).

¹⁰⁶ Guidebook/3, Section 3.5.4, pp. 3-24.

¹⁰⁷ Response, p. 4.

¹⁰⁸ Response, p. 13.

¹⁰⁹ Objection, p. 18.

Republican Community, nor that the registration would cause concrete economic damage to the US Republican Party.

4. Conclusion

153. In conclusion, even if the Objector has standing if it is considered as representing the US Republican Party, and the conditions of substantial opposition inside the Republican Party and the existence of a strong association of the Republican Party with the applied-for string .republican are fulfilled, the Expert has reached the conclusion that there is neither a substantial opposition to the Application from a significant portion of the community to which the string may be explicitly or implicitly targeted, as the Republican Party only relates to US politics, nor a likelihood of detriment to the Republican Party, if the new gTLD is granted to the Applicant, United TDL.
154. As the four conditions for a successful objection are cumulative and not alternative, the Expert concludes that the Objection has to be rejected. Therefore, the Expert rejects the Objection filed by the Objector and joined by the Related Entity against the Applicant's Application for the registration of the new gTLD string .republican.
155. The Centre shall refund the costs advanced by the Applicant, although the Applicant has not requested this directly (whereas the Objector has). The Expert does not consider that in granting the refund of its costs to the Applicant, she acts *ultra petita*. Article 14(e) of the Procedure provides that the Centre shall refund to the prevailing party, as determined by the panel, its advance payment(s) of costs.¹¹⁰ The Expert considers therefore that the refund of costs is a right automatically granted to the prevailing party, once the Expert has designated that prevailing party.
156. The Expert Determination shall be published in full on the ICC's website.¹¹¹

V. DETERMINATION

157. For the reasons stated above, UNITED TLD HOLDCO LTD, the Applicant in these proceedings prevails and the REPUBLICAN NATIONAL COMMITTEE's Objection is dismissed.
158. The Applicant is therefore entitled to refund of its advance payment of costs by the Centre pursuant to Article 14(e) of the Procedure.
159. This constitutes the Expert's final and binding findings.

¹¹⁰ Procedure, article 14(e), p. 9.

¹¹¹ This is the principle set forth at article 21(g) of the Procedure, p. 11.

Date: 7 January 2014

Signature:

Brigitte Stern

Professor Brigitte Stern

Expert