

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

CASE No. EXP/433/ICANN/50

THE FINANCIAL SERVICES ROUNDTABLE

(USA)

vs/

DOTFRESH INC

(UAE)

(Consolidated with case No. EXP/510/ICANN/127

AMERICAN INSURANCE ASSOCIATION (USA) vs/ DOTFRESH INC. (UAE))

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

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List of Abbreviations

Applicant	Dotfresh Inc.
Application	Appl. I.D. 1-1063-32835 <.insurance>
APWG	Anti-Phishing Working Group
Attachment	Attachment to Module 3 of the gTLD Applicant Guidebook
Beijing GAC Advice	GAC communiqué issued in Beijing on 11 April 2013
Centre	International Centre for Expertise of the International Chamber of Commerce
CPE	Community Priority Evaluation
Directi	Parent company of the Applicant
Expert Determination	Expert Determination
fTLD Registry Services	fTLD Registry Services LLC: Affiliate company of the Objector which has filed a community application for the string .insurance
GAC	ICANN's Government Advisory Committee
GFIA	Global Federation of Insurance Associations
gTLD	generic Top Level Domain
Guidebook	gTLD Applicant Guidebook
ICANN	Internet Corporation for Assigned Names and Numbers
ICANN Final Report	Final Report by the ICANN Generic Names Supporting Organization dated August 8, 2007
Objection	community objection filed by The Financial Services Roundtable
Objector	The Financial Services Roundtable
OECD	Organization for Economic Cooperation and Development
PIC	Dotfresh's Public Interest Commitment
Proceedings	Exp. 433/ICANN/50
Procedure	Module 3 of gTLD Applicant Guidebook
Requirements	The standing to file an objection and the four tests on the merits that the Objection must meet to be successful
Rules	Rules for Expertise of the ICC
Toronto GAC Advice	GAC communiqué issued in Toronto on 17 October 2012
UDRP	Uniform Domain Dispute Resolution policy: an arbitration-like process set up by ICANN to resolve disputes over domain name registrations

1. INTRODUCTION

1. This expert determination [**“Expert Determination”**] is issued pursuant to the proceedings being held before the International Centre for Expertise [**“Centre”**] of the International Chamber of Commerce Centre designated as EXP/433/ICANN/50 [**“Proceedings”**]¹.
2. The Proceedings deal with the community objection [**“Objection”**] filed by The Financial Services Roundtable [**“Objector”**] to the application registered by Dotfresh Inc. [**“Applicant”**] before the Internet Corporation for Assigned Names and Numbers [**“ICANN”**] for the new generic top level domain [**“gTLD”**] .insurance (Appl. I.D. 1-1063-32835) [**“Application”**].
3. The Objector – The Financial Services Roundtable – is a “leading advocate on behalf of the financial services community, including insurance members”². The Objector’s address and representative are:

Mr. Richard Whiting
Executive Director and General Counsel
1001 Pennsylvania Avenue, NW Suite 500 South
Washington D.C. 20004 USA
Ph: (+ 1) 202.589.2413
rich@fsround.org

4. The Applicant – Dotfresh Inc. – is a wholly-owned subsidiary within the Directi group³ [**“Directi”**], incorporated under the laws of the Republic of Seychelles. The Applicant’s address and representative are:

Mr. Brijesh Harish Joshi
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5. The Expert is:

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¹ This case is consolidated with EXP/510/ICANN/127. However, each of the objections is being issued a separate Expert Determination.

² Objection, p. 6.

³ Application, answer, Q 29.

2. PROCEDURAL AND FACTUAL BACKGROUND

6. On 13 June 2012 the Applicant filed with ICANN an application requesting the gTLD .insurance.
7. On 13 March 2013 the Objector filed an Objection with the Centre, which gave rise to the present Proceedings.
8. On 23 April 2013 the Centre informed the parties that the case had been consolidated with EXP/510/ICANN/127⁴.
9. On 3 May 2013 ICANN declared that the Application had passed the Initial Evaluation.
10. The Applicant filed its Response on 7 June 2013.

Appointment of Expert

11. The Expert was appointed on 28 July 2013 by the Chairman of the Standing Committee of the Centre pursuant to article 3(3) of Appendix I to the Rules.

Main procedural steps of the Proceedings

12. The file was transferred to the Expert on 5 August 2013 following the payment in full by the parties of the requested advances on costs and the confirmation of the constitution of the panel by the Centre.
13. By letter of 12 August 2013 the Expert inquired whether the parties required further submissions⁵.
14. On 20 August 2013 the Expert authorised additional submissions, providing, as requested and discussed with the parties, a period of 30 days for the Objector's additional submissions (ending on 18 September 2013) and a subsequent 30 days for the Applicant's response (ending on 18 October 2013).
15. On 27 August 2013, after consultation with the parties, the Expert delivered to the parties a Mission Statement, reflecting the basic aspects of the Proceedings.
16. The Objector delivered the Additional Submissions on 18 September 2013.
17. On 19 September 2013, the Objector delivered a letter from the Global Federation of Insurance Associations ["GFIA"] endorsing the Objector's position, and requesting the panel to allow inclusion of such letter in the consolidated proceeding. The Applicant made no objection to such request, and on 27 September 2013 I authorised the inclusion of the GFIA letter into the Proceedings.⁶

⁴ The Applicant was requested by the Centre to file a response for each objection. The Expert was given the discretion to issue one or two Expert Determinations. The Mission Statement provided that there would be two Expert Determinations.

⁵ The Objector requested further submissions. The Applicant did not object, but requested the opportunity to reply, which was granted by the Expert. Neither party requested a hearing.

⁶ By email of said date.

18. The Applicant filed its Additional Submissions on 18 October 2013.
19. The language of the Proceedings has been English⁷, which was the language of all documentation submitted, and all communications have been delivered by email⁸.

Delivery date

20. Article 21(a) of the Attachment provides that the Centre and the Expert shall make reasonable efforts to ensure that the Expert renders his decision within 45 days of the “constitution of the [p]anel”. The Centre considers that the panel is constituted when the Expert is appointed, the parties have paid their respective advances on costs in full and the file is transferred to the Expert. In this case, the panel was constituted on 5 August 2013 (i.e. the date on which the file was transmitted to the Expert). The Centre and the Expert were accordingly to make reasonable efforts to ensure the determination was rendered no later than 19 September 2013 (as calculated in accordance with articles 6(e) and 6(f) of the Attachment)⁹. Pursuant to article 21(b) of the Attachment, the Expert submitted the determination in draft form to the Centre for scrutiny as to form before it was signed.

3. THE GAC COMMUNIQUES AND ICANN IMPLEMENTATION OF GAC ADVICE

21. ICANN’s Governmental Advisory Committee [“GAC”]¹⁰ issues periodically (after its meetings) communiqués to ICANN in relation to the gTLD process providing, *inter alia*, advice on sensitive issues. Of special relevance to this expert determination are:
 - The Toronto communiqué, in relation to the enforcement of commitments made by applicants in their applications (A), and
 - The Beijing communiqué, in relation to the issue of protections for sensitive strings (B), which I review below.

A. The enforcement of commitments made in applications – Toronto communiqué

22. On 17 October 2012, the GAC issued the GAC Communiqué – Toronto [“**Toronto GAC Advice**”], in which, *inter alia*, GAC requested a written briefing from the ICANN Board on how ICANN would ensure that any commitments made by applicants, in their applications or subsequent changes, would be overseen and enforced by ICANN.
23. Specifically, the GAC advised the ICANN Board that “it is necessary for all these statements of commitments and objectives to be transformed into binding contractual commitments, subject to compliance oversight by ICANN”¹¹.

⁷ As required by article 5(a) of the Attachment.

⁸ As required by article 6(a) of the Attachment.

⁹ Pursuant to article 17 of the Attachment, the Expert authorized the request made by the parties to deliver additional submissions, and fixed the calendar for the delivery of the documentation and of the expert determination in accordance with such requests.

¹⁰ A committee formed to consider and provide advice on the activities of ICANN as they relate to concerns of governments – Procedure, Module 3, 3-2.

24. In response to such request¹², the ICANN Board implemented the Public Interest Commitments [“PIC”] Specification Proposal. In summary, under this scheme, applicants may identify commitments made in their applications (or new ones in addition to such commitments) in a schedule (designated Specification 11) to the Registry Agreement to be signed with ICANN. Pursuant to the terms of the Registry Agreement, said commitments become part of the agreement and are enforceable by ICANN.¹³

25. The Applicant delivered on 31 May 2013 a PIC in relation to the .insurance Application. The PIC stated:

“Dotfresh Inc. respectfully submits the following Public Interest Commitment for the .Insurance registry:

1. General Names (as described in section 18b sub-section 4.1 of the application) will be available for registration to institution related to the insurance industry only. For example: insurance carriers, agents, brokers, service providers.
2. Each registered general domain name must be similar to the business name, common name, common law name, trademark name, corporate name of registrant or its products or services or offerings.
3. Both of the above criteria along with the identity of the registrant must be validated before a general domain name is activated.
4. The above applies to general domain names whether registered during sunrise, landrush or general availability.
5. Proxy registrations will not be permitted in .Insurance.”

26. The terms of the PIC are intended to be reflected in Specification 11 of the Registry Agreement.

B. The sensitive strings – Beijing communiqué

27. On 11 April 2013 the GAC issued the GAC Communiqué – Beijing [“**Beijing GAC Advice**”], where it stated that “to reinforce existing processes for raising and addressing concerns the GAC is providing safeguard advice to apply to broad categories of strings (see Annex I)”.

28. In Annex I to the Beijing GAC Advice the GAC advised the ICANN Board that:

“Strings that are linked to regulated or professional sectors should operate in a way that is consistent with applicable laws. These strings are likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm... [I]n the current round the GAC has identified the following non-exhaustive list of strings that the above safeguards should apply to:
Financial: ...insurance”.

¹¹ Toronto GAC Advice section IV.1. This is not applicable to community applications, as the registry operator has requirements in its registry agreement to maintain community based policies specified in the application. Module 5, 5-14.

¹² Letter from S. Crocker to GAC dated 16 January 2013.

¹³ Section 2.17 of the standard Registry Agreement states:

“2.17 Additional Public Interest Commitments. Registry Operator shall comply with the public interest commitments set forth in Specification 11 attached hereto (“Specification 11”).”

29. The GAC further advised the ICANN Board in Annex I that:

“1. In addition, some of the above strings may require further targeted safeguards, to address specific risks, and to bring registry policies in line with arrangements in place off line. In particular, a limited subset of the above strings are associated with market sectors which have clear and/or regulated entry requirements (such as: financial, gambling....) in multiple jurisdictions, and the additional safeguards below should apply to some of the strings in those sectors:

[...]

6. At the time of registration, the registry operator must verify and validate the registrants’ authorizations, charters, licenses and/or other related credentials for participation in that sector.

7. In case of doubt with regard to the authenticity of licenses or credentials, Registry Operators should consult with relevant national supervisory authorities, or their equivalents.

8. The registry operator must conduct periodic post-registration checks to ensure registrant’s validity and compliance with the above requirements in order to ensure they continue to conform to appropriate regulations and licensing requirements and generally conduct their activities in the interests of the consumers they serve”¹⁴.

4. **REQUIREMENTS APPLICABLE TO THE OBJECTION**

30. A community objection permits an application to be rejected if a significant part of the community to which the string is explicitly or implicitly targeted presents substantial opposition and there is likelihood of material detriment to the rights or legitimate interests of a significant portion of the members of the community. The determination is to be made by an expert panel¹⁵.

A. **Applicable rules**

31. In its review of a community objection, the panel will apply primarily:

- Module 3 (Objection Procedures) [“**Procedure**”] and its attachment [“**Attachment**”] of the gTLD Applicant Guidebook [“**Guidebook**”] (other parts of the Guidebook will also be helpful as reference, including specifically Module 4 (String Contention Procedures)¹⁶).
- Rules for Expertise of the ICC [“**Rules**”].
- Appendix III to the Rules, Schedule of expertise costs for proceedings under the Procedure.
- ICC Practice Note on the Administration of Cases under the new gTLD Dispute Resolution Procedure.

32. Finally, the Procedure refers to the 8 August 2007 Final Report by the ICANN Generic Names Supporting Organization [“**ICANN Final Report**”], which includes the rationales of the different objections¹⁷. Thus, the panel can draw additional guidance from the ICANN Final Report.

¹⁴ Beijing GAC Advice, p. 10.

¹⁵ Recommendation 20 – ICANN Final Report: “An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted”.

¹⁶ On the reference value of Module 4, see paragraph 51 for further analysis.

¹⁷ Procedure, 3-5.

33. I now detail below certain relevant aspects of each of these rules.

B. Requirements and standards

34. Pursuant to the Procedure, a community objection must satisfy the following requirements to be successful:

35. First: the Objector must prove that it has standing to object¹⁸ (a).

36. Second: having proven standing, the Objector must demonstrate that the following four tests regarding the merits are complied with¹⁹ (b):

- The community invoked by the Objector is a clearly delineated community;
- The community opposition to the application is substantial;
- There is a strong association between the community invoked and the applied-for string; and
- 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 standing and the four tests described below will be referred to as the “**Requirements**”.

37. To assist the panel in its task, the Procedure identifies for each of the Requirements a non-exhaustive list of factors which the panel may consider. The panel is authorised to balance the relevant factors (though not all factors must be established) and to take other factors into consideration²⁰.

38. In making its determination, the panel may refer to and base its findings upon the statements and documents submitted by the parties and/or any rules or principles that it determines applicable²¹.

39. The panel must bear in mind that it is the Objector who bears the burden of proving that the Requirements and standards applicable to the objection are met²².

a. Standing to object

40. The first step is to qualify for standing to file a community objection. In order to have standing, the Objector must prove that it is an established institution and that it has an ongoing relationship with a clearly delineated community.

¹⁸ Procedure, 3-5.

¹⁹ Procedure, 3-22/25.

²⁰ Procedure, 3-22/25.

²¹ Attachment, article 20(b)

²² Attachment, article 20(c)

41. To evaluate whether the Objector is an established institution, the panel may consider, among others, the following factors²³:

- Level of global recognition of the institution;
- Length of time the institution has been in existence; and
- Public historical evidence of its existence, such as the presence of a formal charter or national or international registration, or validation by a government, inter-governmental organisation, or treaty; the institution must not have been established solely in conjunction with the gTLD application process.

42. To evaluate whether there is an ongoing relationship with a clearly delineated community, the panel may consider, among others, the following factors²⁴:

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

b. Requirements on the merits

43. If the Objector is found to have standing, then it must pass the following four tests on the merits.

(i) First test: the Objector must prove that the community is clearly delineated

44. To evaluate whether the community is clearly delineated²⁵, the Procedure provides that the panel may consider, among others, the following factors:

- 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 or entities are considered to form the community;
- The length of time the community has been in existence;
- The global distribution of the community (this may not apply if the community is territorial); and
- The number of people or entities that make up the community.

(ii) Second test: the Objector must prove that the community opposition is substantial

45. This second Requirement will only be analysed if the first test is passed, i.e. if a clearly delineated community is found.

46. In considering whether the second test is met, the Procedure provides that the panel may consider, among others, the following factors²⁶:

- The number of expressions of opposition relative to the composition of the community;
- The representative nature of entities expressing opposition;

²³ Procedure, 3-8.

²⁴ Procedure, 3-8.

²⁵ Procedure, 3-22/23.

²⁶ Procedure, 3-23.

- The level of recognised stature or weight among sources of opposition;
- The distribution or diversity among sources of expressions of opposition, including:
 - Regional
 - Subsectors of community
 - Leadership of community
 - Membership of community
- The historical defence of the community in other contexts; and
- The costs incurred by the objector in expressing opposition, including other channels the objector may have used to convey opposition.

(iii) Third test: the Objector must prove the existence of a strong association

47. If substantial opposition to the application is evidenced, the Objector must then prove that there is a strong association between the applied-for string and the community invoked²⁷.

48. To evaluate the existence of a strong association between the string and the community, the panel may consider, among others, the following factors²⁸:

- Statements contained in the application;
- Other public statements by the applicant; and
- Associations by the public.

(iv) Fourth test: the Objector must prove likelihood of detriment to rights or legitimate interests

49. Finally, if a strong association between community and string has been established, the Objector must prove that the application creates the 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 targeted²⁹.

50. To evaluate the existence of material detriment to the members of the community, the Procedure advises the panel to use, among others, the following factors³⁰:

- 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 of the applied-for gTLD string; and

²⁷ Procedure, 3-23/24.

²⁸ Procedure, 3-24.

²⁹ Procedure, 3-24.

³⁰ Procedure, 3-24.

- Level of certainty that alleged detrimental outcomes would occur.

* * *

51. Module 4 of the Guidebook (String contention procedures) provides criteria to review and score a community-based application. It shares some common concepts with the community objection procedure (such as community establishment and nexus between the string and the community), though its standards are stricter, and though it can provide some guidance, it can only be taken as a general reference³¹.

52. ICANN provides the following guidelines in relation to Recommendation 20 of its Final Report:

“Guidelines

a) Substantial – in determining substantial the panel will assess the following: signification portion, community, explicitly targeting, implicitly targeting, established institution, formal existence, detriment.

b) Significant portion – in determining significant portion the panel will assess the balance between the level of objection submitted by one or more established institutions and the level of support provided in the application from one or more established institutions. The panel will assess significance proportionate to the explicit or implicit targeting.

c) Community – community should be interpreted broadly and will include, for example, an economic sector, a cultural community or a linguistic community. It may be a closely related community which believes it is impacted.

d) Explicitly targeting – explicitly targeting means there is a description of the intended use of the TLD in the application.

e) Implicitly targeting – implicitly targeting means that the objector makes an assumption of targeting or that the objector believes there may be confusion by users over its intended use.

f) Established institution – an institution that has been in formal existence for at least 5 years. In exceptional cases, standing may be granted to an institution that has been in existence for fewer than 5 years.

Exceptional circumstances include but are not limited to a re-organization, merger or an inherently younger community.

The following ICANN organizations are defined as established institutions: GAC, ALAC, GNSO, ccNSO, ASO.

g) Formal existence – formal existence may be demonstrated by appropriate public registration, public historical evidence, validation by a government, intergovernmental organization, international treaty organization or similar.

h) Detriment – the objector must provide sufficient evidence to allow the panel to determine that there would be a likelihood of detriment to the rights or legitimate interests of the community or to users more widely”.

³¹ Thus, Module 4 states that “*It should be noted that a qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application, as embodied in the criteria below. Accordingly, a finding by the panel that an application does not meet the scoring threshold to prevail in a community priority evaluation is not necessarily an indication the community itself is in some way inadequate or invalid.*” – Module 4, 4-9.

C. Published Expert Determinations

53. Both parties have made references to other published expert determinations. Though other expert determinations are not binding, well-argued analysis may have persuasive value and legal certainty will be enhanced if in similar situations, experts base their findings on analogous principles. On this basis, I may take any such references into consideration if deemed appropriate.

5. SUMMARY OF THE OBJECTION

54. The Objector claims that the granting of the string insurance to the Applicant will result in material detriment to the insurance community³², and considers that the Application should be rejected.
55. The Objector claims that it has standing to object (A), and meets the four tests on the merits required by the Procedure (B).

A. Standing to object

56. The Objector must prove that it is an established institution (a) and that it has an ongoing relationship (b) with a clearly delineated community (c).

a. An established institution

57. To establish standing in this case, the Objector points out that it is an organisation with a long existence. The first of its predecessor organisations was formed in 1912, and in 1999 the organisation's mission was broadened to represent the interests of integrated financial providers (i.e., banks, insurance and securities). Today the organisation includes approximately 100 of the largest integrated financial services companies operating in the U.S., including 21 major insurance institutions³³.

b. Ongoing relationship with the community

The Objector claims that it has an ongoing relationship with the insurance community. This is evidenced by its mission to unify the leadership of large integrated financial companies, including insurance, and the various activities developed on behalf of the community, including a series of programs and working groups; and promoting a trade association of insurance agents and brokers³⁴.

c. The community is clearly delineated

58. The Objector avers that the insurance community is clearly delineated by virtue of the formal regulatory boundaries imposed in all member countries of the Organization for Economic Cooperation and Development [“OECD”]³⁵. Further evidence of this boundary is the general

³² Objection, p. 7.

³³ Objection, p. 4.

³⁴ Objection, p. 6.

³⁵ Objection, p. 8

restriction on the use of the term “insurance” only to the entities meeting the legal requirements to operate in the insurance market³⁶.

59. The Objector points out that the Applicant itself acknowledged that the insurance string was associated with market sectors “which have clear and/or regulated entry requirements in multiple jurisdictions....”³⁷.
60. According to the Objection, other factors that help delineate the community are:
- (i) The existence of standard setting organisations within the insurance community. Specifically, the International Organization for Standards (ISO) has published the ICS (International Classification for Standards) which is “intended to serve as a structure for catalogues of international, regional and national standards and other normative documents and as a basis for standing-order systems for international, regional and national standards”. Insurance services are specifically enumerated therein³⁸.
 - (ii) The existence of international organisations that have been created to establish best practices and coordinate with standard setting bodies within the insurance community. Examples include: the International Association of Insurance Supervisors (IAIS), the European Insurance and Occupational Pensions Authority (EIOPA) and the International Insurance Foundation (IIF)³⁹.

B. Requirements on the merits

61. The Requirements on the merits consist of four tests, the first of which (the existence of a clearly delineated community) has already been addressed in the previous section. The Objector’s position with respect to the remaining three tests is as follows.
- a. There is substantial opposition to the Application**
62. The Objector claims that, from among this clearly delineated community, there is substantial opposition to the Application. In addition to the opposition as represented by the Objector, and other entities⁴⁰, which have delivered letters expressing their support for the Objector’s opposition (including one from the Global Federation of Insurance Companies⁴¹), the Expert should consider the very substantial international support to the fTLD Registry Services LLC [“**fTLD Registry Services**”] community application⁴².
63. Moreover, the Objector has a long standing involvement in advocating/defending the insurance and financial communities in various fora.⁴³

³⁶ Objection, p. 8.

³⁷ Add. Sub., p. 2

³⁸ Objection, p. 8

³⁹ Objection, p. 9

⁴⁰ Annexed as annex C to the Objection.

⁴¹ Letter of 19 September 2013.

⁴² Objection, p. 9. Add. Sub., p. 4.

⁴³ Objection, p. 10

b. There is a strong association between the string and the community

64. The Objector claims that there is a strong association between the community and the string. This is due to the existence of rules or regulations at local and/or national level which standardise the criteria to be applied for an entity to qualify as an insurance company⁴⁴.
65. The Objector suggests that the text of the Application itself recognises the nature of this community and its participation⁴⁵.

c. The Application is likely to cause material detriment

66. The Objector submits that allowing the Applicant to operate the string creates the likelihood that the community will experience material detriment for the following reasons:
67. The first reason is that the Applicant is part of the Directi family of companies, which have a poor track record in maintenance of domain registries. In this regard, The Objector notes that:
- Independent analysis shows that Directi accounted for the largest percentage of malicious domain name registrations of any named registrar; even using a normalised metric method, Directi is the only ICANN accredited registrar that ranks in the top ten of the Anti-Phishing Working Group [“APWG”] report “Global Phishing Survey: Trends and Domain Name Use in 1H2012 APWG’s top ten phishing registrars⁴⁶. The Objector submits that there is a likely causality between the lack of sufficient safeguards in Directi’s registration process and the corresponding large percentage of malicious domain names⁴⁷.
 - Public Domain Registry (PDR), another Directi entity providing domain registration services, has failed to proactively address cybersquatting and other abusive registration practices directed at the financial services sectors. This has led to numerous documented instances in which members of the insurance community have had to expend financial and legal resources to file a UDRP (i.e. ICANN’s Uniform Dispute Resolution Procedure to resolve disputes over domain name registrations [“UDRP”]) proceeding to combat abusive domain name registrations sponsored by PDR⁴⁸.
 - At least one other applicant has called into question the qualifications of the Applicant/Radix Registry to operate any registry⁴⁹, alleging use of the proxy services to mask the identity of cybersquatters⁵⁰, through its service PrivacyProtect.org.
68. The second reason is that where the registry operator has no meaningful and on-going relationship with the community targeted by the gLTD, changes in ownership of the owner of

⁴⁴ Objection, p. 10.

⁴⁵ Specifically, the Objector states: “Based on the following excerpt text and other references to “community” from Dotfresh’s application, it would appear it recognizes the nature of this community and its participation, “INSURANCE will also allow registrants in the insurance community to differentiate themselves.” Objection, p. 10.

⁴⁶ Objection, p. 11.

⁴⁷ Objection, p. 12.

⁴⁸ Objection, p. 13.

⁴⁹ Objection, p. 13.

⁵⁰ Objection, p. 13.

the right to the string can result in modifications of the safeguards/representations made in the original application⁵¹.

69. The third reason is that the safeguards established in the Application to restrict the use of the string to insurance related companies are inadequate, and exclude from application of the restrictive policies generic domain names. As a consequence, generic names may be registered by third parties that are not regulated insurance entities. Allowing the registration of these key resources by members outside the community represents a real and distinct harm to the insurance community⁵².
70. The fourth reason is that if the Applicant is given the right to operate .insurance, members of the insurance industry would likely feel the need to register a substantial number of purely defensive and unnecessary registrations to protect the variations of names in their brands. This defensive action, the need to maintain a constant monitoring of the internet and to take remedial action (letters of warning, UDRPs, etc.) would result, according to the Objector, in substantial costs to the community every year⁵³.

6. SUMMARY OF THE APPLICANT'S RESPONSE

71. Responding to the Objection, the Applicant claims that the Objector has failed to prove standing (A), and has not proven any of the four tests on the merits (B).

A. Lack of Standing

72. The Applicant alleges that the Objector lacks standing because it has failed to prove that it has an ongoing relationship with a delineated community, for various reasons, namely:
- A clear delineated community is required by the Guidebook standards. There is no community as defined by the Guidebook, and in any event it is not clearly defined. Consequently, there can be no on-going relationship therewith⁵⁴.
 - Even if a community is assumed to exist, the Objector has failed to evidence a relationship: the Applicant acknowledges the relationship with the 21 insurance institutions that form its membership, but the alleged insurance community does not consist only of these institutions. All the activities described are specific to the U.S. alone. The Objector has failed to evidence any relationship with a single insurance company outside the U.S.⁵⁵.

B. Requirements on the merits

73. On the merits, the Applicant submits that the Objector has not been able to meet any of the four tests for several reasons, namely:

⁵¹ Objection, p. 12, citing as an example the string .sport, which originated as a professionals string and has produced sextoys.pro, online casino.pro, etc.

⁵² Add. Sub., p. 8.

⁵³ Objection, p. 14.

⁵⁴ Response, p. 6.

⁵⁵ Response, p. 6

a. No clearly delineated community

74. In order to demonstrate a clearly delineated insurance community, as per the Guidebook, the Objector must demonstrate⁵⁶:

- Cohesion amongst all insurance companies and evidence that they tend to “unite and stick together for a common cause”;
- Awareness and recognition among the insurance companies that they are actually members of such alleged community;
- Recognition among the public of the existence of an insurance community;
- A clear and non-dispersed definition of a member of such an insurance community.

75. The Objector has not identified a clearly delineated community as evidenced by the following⁵⁷:

- *No cohesion*: Module 4 of the Guidebook states that the expression “community” has evolved considerably from its Latin origin – “*communitas*” meaning “fellowship” which implies more of cohesion than a mere commonality of interest. There is no evidence existing or presented of cohesion between most insurance companies around the world, let alone every single insurance company in the world.
- *No awareness*: a visit to 20 sites of the world’s leading insurance companies reveals that none mention an “insurance community”, though some mention “insurance industry” or “insurance sector”. The Objector itself acknowledges that there is an insurance industry/insurance sector, but none of its communications refer to an insurance community.
- *No public recognition*: a google search for the term “insurance community” does not bring up any single website that mentions the existence of an insurance community.
- *Delineation*: there are innumerable dissimilarities in what companies can be considered as an insurance company across the world. Key differences lie in the required legal form, business plans, and list of documentations, minimum capital requirements and solvency margin requirements. Consequent to this, an insurance company in Japan is not considered an insurance company in Luxembourg. Therefore the purported insurance community is not clearly delineated.

76. The Objector did not present any evidence proving the above.

b. No substantial opposition

77. The Applicant submits that the Objector has failed to evidence substantial opposition by the community⁵⁸.

78. As its first argument, the Applicant states that the Objector provides only seven letters opposing the Application; of these, four are from actual insurance companies, and the rest from insurance associations which have insufficient recognised stature or weight among sources of

⁵⁶ Response, p. 10

⁵⁷ Response, p. 8.

⁵⁸ Response, p. 9.

opposition⁵⁹. Moreover, all come from North America⁶⁰; the Objector has not presented a single letter from an insurance company outside the U.S.

79. In furtherance of this argument, the Applicant considers that the letters of support for fTLD Registry Services – the Objector’s affiliate – delivered by the Objector should not be considered while judging this application, and should be disregarded⁶¹.
80. As a second argument, the Applicant alleges that the Objector has failed to prove that it actually represents the opposition of its 24 insurance members, asking whether the Objector had conducted a vote among its members, or whether it has documented authority to represent the views of these companies⁶². Furthermore, the Applicant states that “the ICC Expert for .Shop has established precedent for the fact that an association’s membership cannot represent substantial opposition.”⁶³
81. In its third argument, the Applicant alleges that the Objector has a clear motivation of self-interest in submitting this objection, an abuse of the objection process to secure the .insurance TLD for its subsidiary fTLD Registry Services⁶⁴.

c. Lack of strong association

82. The Objector has not evidenced the existence of a strong association between the community and the string⁶⁵:
83. As its first argument, the Applicant argues that “insurance” is not a community, and the word insurance does not have a strong association with such purported community.⁶⁶
84. As a second argument, the word “insurance” has several different meanings in the dictionary, and none of the definitions identified suggests that the string “insurance” stands for an insurance community.⁶⁷

d. No material detriment

85. The Applicant submits that the Objector fails to provide evidence of material detriment to the community:
86. As its first argument, the Applicant states that it has put in place a multitude of augmented security measures that go above and beyond ICANN’s requirements and closely match the security measures proposed by fTLD Registry Services in its application.⁶⁸

⁵⁹ Response, p. 12.

⁶⁰ The Applicant notes in Add. Sub., p. 10, that the Objector supplied one more letter after the deadline for its Additional Submissions and catalogues this letter as coming from the European region.

⁶¹ Add. Sub., p. 10.

⁶² Add. Sub., p. 9.

⁶³ Add. Sub., p. 9.

⁶⁴ Response, p. 12.

⁶⁵ Response, p. 14.

⁶⁶ Response, p. 14.

⁶⁷ Response, p. 14.

⁶⁸ Response, p. 15.

87. As a second argument, the Applicant points out that as a gesture to prove its intent to follow through on all its commitments, it has filed a PIC statement on 31 May 2013 making the commitments legally enforceable.⁶⁹ The Applicant is committed to implementing every policy outlined in its Application.

88. The Applicant specifically rebuts all the allegations made by the Objector, as follows:

- In relation to the alleged poor track record of the Directi group, the allegations made by the Objector are flawed and biased. The Applicant annexes a letter from Directi explaining the circumstances of the phishing report and the PDR UDRPs (the ICANN resolution procedure for malicious use of domain names, of which another affiliate of Direct is part). It attaches additionally a letter from Radix (another affiliate of Directi – the Applicant’s parent company) to ICANN addressing the cybersquatting allegations made.
- In relation to the Objector’s generic domain name allegations, the Applicant submits that, the reservation by the Applicant of some generic domain names within .insurance allows the registry operator to convey a positive image to users, and that such generic names will in any event be allocated to registrants that will promote the .insurance namespace and benefit the registrants of general names⁷⁰.
- Regarding the Objector’s allegation that the Applicant’s lack of a relationship will allow/encourage cybersquatting in .insurance, the Applicant submits that the applicability of detailed eligibility restrictions and strict name selection policies (legally enforceable), coupled with a multitude of other security mechanisms detailed in the application, render the likelihood of cybersquatting and loss of institutional reputation immaterial⁷¹.
- The Applicant rejects the Objector’s allegation that members of the insurance industry would likely feel the need to register a substantial number of purely defensive, unnecessary and costly registrations to protect the variations of names in their brands. The Applicant states that its policies and processes ensure that only the eligible registrant can register a general domain name that it qualifies for⁷².

89. In summary⁷³:

- The Objector has not evidenced any damage that would result from the Applicant’s operation of .insurance.
- The Objector has not evidenced that the Applicant intends to act in a manner detrimental to insurance companies.
- There is no evidence of any detrimental outcome.

7. FINDINGS OF THE EXPERT

90. In order to be successful, the Objector must prove that it has standing to object (A) and that the four Requirements on the merits are met: the community it invokes is clearly delineated (B), there is substantial opposition from the community to the Application (C), there is a strong association between the community and the string (D), and the Application creates the

⁶⁹ Response, p. 15.

⁷⁰ Add. Sub., p. 13.

⁷¹ Response, p. 18.

⁷² Response, p. 18.

⁷³ Response, annex 6.1, section 4.

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 (E).

91. The Objector claims it has met all the above, while the Applicant avers that the Objector has failed to prove any.

92. I turn now to review the Requirements.

A. The Objector's standing to object

93. To have standing, the Objector must prove that it is an established institution (a) with an ongoing relationship (c) with a clearly delineated community (b).

a. The Objector is an established institution

94. To establish standing the Objector must first prove that it is an established institution.

95. The Objector has submitted evidence that it is an organisation representing the interests of integrated financial providers. Its origins date from the early twentieth century. Though initially it was aimed essentially at the banking field, in 1999 it changed its mission to include insurance and securities markets. Today its members include bank companies (which comprise around 44% of the members), insurance companies (around 28%), broad diversified companies (around 17%) and securities companies (around 10%)⁷⁴.

96. On the basis of the above, I am satisfied that the Objector has shown it is an established institution for the purposes of these Proceedings.

b. Ongoing relationship with a clearly delineated community

97. Having shown that it is an established institution, the Objector must then prove that it has an ongoing relationship with a clearly delineated community invoked by the Objector.

Determination of the community represented

98. The first question to be addressed is the determination of the community the Objector is invoking. The Objector does not specifically define the community it represents, which may be either the global insurance community or the U.S. insurance community. In my opinion it is clear that the Objector is basing its case on the global insurance community, as proven by the fact that the Objector refers to the regulatory constraints at OECD level countries⁷⁵.

99. Additionally, the Objector has gone to great lengths to provide evidence of the opposition from international insurance associations, with references to the "growing ranks within the insurance community explicitly supporting the community approach"⁷⁶. I thus conclude that the community being invoked is the global insurance community.

⁷⁴ Objection, p. 4 and www.fsround.org for distribution of %.

⁷⁵ Objection, p. 8 - Note that the Applicant acknowledges this in its Add. Sub., p. 9.

⁷⁶ Add. Sub., p. 4.

100. It has not been contested that the community invoked by the Objector coincides with an economic sector. The Guidelines to Recommendation 20 of the ICANN Final Report define community as follows:

“Community – community should be interpreted broadly and will include, for example, an economic sector, a cultural community or a linguistic community. It may be a closely related community which believes it is impacted”.

101. Having determined the community invoked, I now proceed to consider whether it is a clearly delineated one⁷⁷.

The Objector’s allegations

102. The Objector claims that an international insurance community is evidenced by:

- (i) the fact that insurance companies carrying direct insurance activities are subject to regulation and supervision in the OECD countries;
- (ii) the restriction on the use of the word “insurance” in various contexts by various national and local laws;
- (iii) the various standard setting organisations within the insurance community, such as the International Organization for Standards (ISO), that have been created to establish best practices and coordinate with standard setting bodies within the insurance community, such as AIAS⁷⁸, among others.

Expert’s findings

103. I am persuaded by the Objector that there is a clearly delineated⁷⁹ community, for the following reasons:

104. (i) The insurance community is a highly regulated sector. Most jurisdictions have enacted regulations providing for the need to meet substantial entry requirements based on solvency, technical capability and the requirements that officers and shareholders meet proper standards.

⁷⁷ For the purposes of considering standing to file an objection, the Procedure requires, *inter alia*, evidence of an ongoing relationship with a clearly delineated community (see Procedure 3.2.2.4, 3-8). Additionally, the existence of a clearly defined community is one of the requirements that must be evidenced under the section on review of the merits (see Procedure 3.5.4, 3-22/23). I see no reason to consider that the same term “clearly delineated community” should have two different meanings. To avoid reviewing twice the same concept, I will take into consideration in this section not only the factor provided for in section 3.2.2.4 – existence of formal boundaries around the community – (which is restated under section 3.5.4), but also the factors suggested to the Expert under section 3.5.4. to evaluate the existence of a clearly defined community. The conclusion will thus be applicable both to the analysis on standing and to the test under the merits.

⁷⁸ Objection, p. 8/9.

⁷⁹ Module 4 of the Guidebook defines in its criterion 1 (which deals with the determination of the existence of a community), delineation as follows: “Delineation relates to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low”.

105. (ii) These regulations:
- restrict the use of the word “insurance” to ensure that entities which do not meet the entry requirements and are not properly registered are precluded from using the term insurance in their corporate name.
 - supervise ongoing activities.
106. All these measures have as their ultimate goal the protection of the consumer and of the solvency of the financial system.
107. The above evidences the existence of clear formal boundaries providing a clear delineation of the worldwide community.
108. (iii) International organisations have been created to establish standards, best practices and to coordinate with standard setting bodies within the insurance community⁸⁰:
- The International Organization for Standards (ISO) has published the International Classification for Standards (ICS) international standards, including insurance;
 - The Global Federation of Insurance Associations (GFIA), an association which represents around 88% of the world insurance premiums, and has the objective of representing the insurance community on a world wide scale⁸¹, a role which has been already recognised by the IAIS⁸². An example of this collective action is the defence of the fTLD Registry Services application by the Objector, and the specific opposition to the Applicant’s .insurance application.
109. The above supports the recognition of the supra national dimension of the insurance industry and evidences the awareness of an international insurance community⁸³.

⁸⁰ Such as the International Association of Insurance Supervisors (IAIS).

⁸¹ GFIA’s mission statement states:

“The Global Federation of Insurance Associations (GFIA) is a non-profit association established to represent national and regional insurance associations that serve the general interests of life, health, general insurance and reinsurance companies and to make representations to national governments, international regulators and others on their behalf.....

The federation:

- represents member association's interests to, among others, international regulatory groups, standard-setters and governments to increase the industry's effectiveness;
- contributes to an international dialogue on issues of common interest by formalising contact, cooperation and dialogue among national and regional insurance associations;
- co-operates with other international organisations, particularly those representing the insurance industry;
- shares non-commercially sensitive information and research; and
- provides information on positions taken by the federation.” (www.gfiainsurance.org)”.

⁸² The digital Financial Post published in 09/10/12 the following in relation to the appointment of the first president of GFIA: “This is a great day for the insurance industry around the world,” Mr. Swedlove declared in a statement. “The Federation will give our associations the ability to respond on a timely basis to international issues affecting our industry and to speak with one voice”.”. We look forward to working with GFIA and its members as we all continue to promote effective and globally-consistent supervision of the insurance industry,” said Peter Braumüller, chairman of the executive committee of the Washington, D.C.-based International Association of Insurance Supervisors”.

⁸³ The International Association of Insurance Supervisors (IAIS), is an organization of insurance supervisors and regulators from more than 200 jurisdictions in nearly than 140 countries. In addition to its Members, more than 130 Observers representing international institutions, professional associations and insurance and reinsurance companies, as well as consultants and other professionals participate in IAIS activities. Established in 1994, the IAIS is the international standard setting body responsible for developing and assisting in the implementation of principles, standards and other supporting material for the supervision of the insurance sector. The IAIS also

110. I am therefore persuaded that the Objector has proven the existence of a clearly delineated international insurance community for the purposes of this Objection proceeding.
111. I turn now to the Applicant's counter arguments. The Applicant submits that (i) the Objector has failed to evidence cohesion and awareness of the existence of a community; (ii) there is no public recognition of the invoked community; and (iii) and that the invoked community is not sufficiently delineated⁸⁴.
112. I find these arguments not sufficiently persuasive to change my previous finding.
113. (i) The Applicant relies on Module 4 of the Guidebook, which requires evidence of the cohesion factor between all the insurance companies, who must be aware that they form part and are members of the alleged community.
114. First, I am not convinced that Module 4 precepts should be applied automatically, since they are meant for a different procedure, namely the contention procedure. As stated above (see paragraph 51), Module 4 may be used only as general reference⁸⁵. In any event, the existence of supra-national organisations protecting the interests of the insurance sector as analysed above, is proof of the cohesion and awareness of the group's existence and common interest. Moreover, the fact that significant associations⁸⁶ have sent letters supporting the fTLD Registry Services as a Community Application shows that the international insurance community is very ready (in the words of the Applicant) "to unite and stick together for a common cause"⁸⁷.
115. (ii) I am not persuaded by the argument that no public recognition has been evidenced, on the basis that a google search for the term "insurance community" does not bring up any single website that mentions the existence of an insurance community⁸⁸. In general, the term community is more easily used in the context of persons, and not legal entities. In this latter context, the terms industry or sector are probably more appropriate, and certainly more readily used, when referring to a legal entities community as understood in the Guidebook⁸⁹.
116. (iii) The Applicant avers that the innumerable differences in the way companies can be considered as insurance companies across the world imply that the purported insurance

provides a forum for members and observers to share their experiences and understanding of insurance supervision and insurance markets.

⁸⁴ Response, p. 8.

⁸⁵ Module 4 states that "It should be noted that a qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application, as embodied in the criteria below. Accordingly, a finding by the panel that an application does not meet the scoring threshold to prevail in a community priority evaluation is not necessarily an indication the community itself is in some way inadequate or invalid." – Module 4, 4-9.

⁸⁶ Global Federation of Insurance Associations (88% of world premiums through 35 associations), Insurance Bureau of Canada (90% premium volume of P&C insurance in Canada, Insurance Council of Australia (90% premium income written by private sector general insurers), Insurance Europe (95% of total European Premium income through 34 associations).

⁸⁷ Response, p. 10.

⁸⁸ Response, p. 8.

⁸⁹ I draw attention to the Recommendation 20 of the Principles Recommendations & Implementation Guidelines produced by ICANN's Generic Names Supporting Organization (GNSO), which specifically stated: "(c) Community – community should be interpreted broadly and will include, for example, an economic sector,".

community is not clearly delineated. I find this argument unconvincing: though the specific entry barriers may be different, the fact remains that regulations exist and cover similar concepts⁹⁰. Furthermore, entry requirements are designed with the same aim, which is to provide barriers to entry to ensure a safe, recognisable insurance environment on which the customer, be it a local or a foreigner, can rely.

c. Ongoing relationship

117. Having accepted that the community the Objector is invoking is clearly delineated, I now approach the issue of whether there is an ongoing relationship between the Objector and the community.
118. On this point, the Objector alleges that it has acted as an advocate of the insurance sector in various *fora*, and that it has created working groups, committees and other instruments which facilitate the participation of its members in activities related to the general interests of the insurance sector.
119. I have reviewed the activities mentioned by the Objector – this being one of the criteria established in the Procedure⁹¹ – and note that most of them are related to the U.S. market, and not to the global community being invoked.
120. However, as Expert, I am authorised to value factors other than those expressly established in the Procedure⁹², and I have found signs that the international insurance community has trusted the Objector and is confident that the Objector will act in the interest of the community:
- The Global Federation of Insurance Associations issued on 19 September 2013 a letter expressly seconding the Objector’s actions in these Proceedings.
 - International insurance associations⁹³ have shown clear support to the fTLD Registry Services community application (*pro memoria*: the community application made by the Objector’s affiliate). The operating managers of fTLD Registry Services are the American Bankers Association and The Financial Services Roundtable (the Objector)⁹⁴. Moreover, both the Insurance Bureau of Canada and the Insurance Council of Australia have requested fTLD Registry Services to expand the availability of the string to the global insurance community, a sign of trust with fTLD Registry Services and, indirectly, with the Objector.
121. It is my opinion that the facts described above are significant and, jointly with the other considerations made, reveal the existence of an ongoing relationship between the Objector and the community invoked.

⁹⁰ The Applicant identifies these as follows: “Key differences lie in the required legal form, business plans, and list of documentations, minimum capital requirements and solvency margin requirements.” Response, p. 9.

⁹¹ Procedure, 3-23.

⁹² Procedure, 3-23.

⁹³ The Global Federation of Insurance Associations, (a representative body for the global insurance industry comprising 35 member associations, who account for approximately 88% of the world insurance premiums); Insurance Europe, the European insurance and reinsurance federation (representing undertakings accounting for around 95% of total European premium income); The Insurance Council of Australia (representing around 90% of total premium income written by private sector insurers); Insurance Bureau of Canada, (the Canadian national industry association representing 90% by premium of the P&C Insurance business).

⁹⁴ Application, question 18(a).

122. In conclusion, standing requires the Objector to prove that it is an established community with an ongoing relationship with a clearly delineated community invoked by the Objector. I find that Objector has satisfied all these elements, and declare that the Objector has standing to file the Objection.

* * *

123. Having considered that the Objector has standing to object, I turn now to the review of the standards section (Procedure, section 3.5.4).

B. Test 1: Clearly delineated community

124. I have already considered (see section A. b.) the existence of a clearly delineated community, and I have been convinced that the existence of clear formal boundaries around the community, and the public recognition and awareness of the supra national insurance community proves the existence of a clearly delineated community.

C. Test 2: Substantial opposition by the community

125. Having considered that the community invoked by the Objector is clearly delineated, the next test is to determine whether there is substantial opposition from the community.

126. To evaluate whether the opposition is substantial, the Procedure invites the Expert to consider several factors, including, among others, the number of expressions of opposition relative to the composition of the community, the representative nature of such opposition, the level of recognised stature or weight among sources of opposition and the distribution or diversity among sources of expressions of opposition.

127. The Objector claims that it has proven substantial opposition from the community, evidenced by various letters of support of this Objection, and by the fact that there is substantial endorsement to the competing community application presented by fTLD Registry Services. The Applicant on the other hand, submits that such evidence is insufficient.

128. I am persuaded by the arguments of the Objector and unconvinced by those of the Applicant, for the following reasons:

Companies represented by the Objector

129. The Objector represents 21 insurance member companies with a substantial size and business activity, of which 14 are within the top 50 U.S. insurance companies and five of them are listed within the 50 largest insurance companies in the world by assets.⁹⁵ These are companies with a recognised stature among the insurance community.

130. While the Applicant does not deny the significance of the Objector's membership, it alleges that the Objector has failed to prove that it actually represents the opposition of its 24 insurance members⁹⁶.

⁹⁵ Source: www.relbanks.com

⁹⁶ Add. Sub., p. 9. Additionally, the Applicant states that "The ICC Expert for .Shop has established precedent for the fact that an association's membership cannot represent substantial opposition". I have reviewed the .shop determination, and I am not persuaded by the Applicant's interpretation. The Expert did not reject the

131. I cannot agree with the Applicant. The Objector identifies itself as:

“... the leading advocacy organization for America’s financial services industry. With a 100-year tradition of service and accomplishment, FSR is a dynamic, forward-looking association advocating for the top financial services companies, keeping them informed on the vital policy and regulatory matters that impact their business.....

With expanding Washington involvement in our industry, forming relationships and engaging with public officials and policymakers is critical to helping our members see around the curve, understand policies and regulations, and provide input to help shape them.

FSR is driven at the CEO level giving us a unique and influential voice in Washington. At every level of the government, FSR is working to ensure that our members’ interests are well represented”⁹⁷.

132. In other words, the Objector is an association created by its members with the mission to advocate on behalf of the members in the furtherance of their aims and interests. I find it therefore absolutely reasonable to consider that the Objector’s actions are within the mandate of all the members, and should be taken as such, without the need to have every statement voted upon by its members.

133. Finally, it is in any event worth highlighting that several of the members, including very significant entities such as Prudential, Nationwide, Allstate and StateFarm have gone to the lengths of confirming the Objector’s position through the delivery of support letters⁹⁸ – which brings us to the second argument.

Letters of support and opposition comments

134. (i) The Objector has delivered eight letters of support expressing opposition to the Application, seven from among its members and related associations⁹⁹, and one from the Global Federation of Insurance Associations (GFIA – an association of the global insurance industry comprising 35 member associations, which represent insurers and reinsurers in 56 countries, collecting 88% of world-wide premiums)¹⁰⁰. The Applicant complains that only a few letters of opposition were delivered by four insurance companies and three associations, all from the U.S.

135. I am not persuaded by the Applicant. Of the letters delivered in support of the Objector, seven came from members of the Objector’s organisation, and in that sense I allot them confirmatory value, but it is the eighth letter that I find especially relevant, namely the GFIA letter dated 19 September 2013. GFIA is an organisation formed by a very substantial number of worldwide insurance associations. They represent according to their website, around 88% of the world insurance companies by premium. GFIA has been established, as seen from its mission statement, to represent insurance associations and make representations on their behalf to

representative nature of the association, it actually considered that it was not representative enough compared with the community. Furthermore, Module 3 provides as a factor to consider the opposition the representative nature of entities expressing such opposition (Procedure, 3-24). Module 4 also acknowledges the representative nature of community member organizations (Procedure, 4-17).

⁹⁷ www.fsroundtable.org.

⁹⁸ Objection, Annex C.

⁹⁹ Insurance companies: Allstate, Prudential, StateFarm, Nationwide. Associations: Property & Casualty Insurers, Agents for Change, Reinsurance Association of America.

¹⁰⁰ www.gfiainsurance.org.

governments and international regulators. Consequently, its statements must be considered as representing the interests and intention of its associated members.

136. (ii) As further support, the Objector relies on several opposition comments made in ICANN's public forum, notably one from the American Insurance Association, an association grouping 300 U.S. Property & Casualty insurers, with more than 100 billion dollars in premiums.
137. (iii) The Objector has also furnished a list of supporters/endorsers of the Community Application filed by the Objector's affiliate fTLD Registry Services¹⁰¹. This list comprises international insurance associations of substantial size and geographical diversity¹⁰². I note the Applicant's request that these letters should not be considered for the purposes of this community objection proceeding¹⁰³, alleging that the Guidebook does not call for support of a contending application to be considered when judging opposition, but rather should be taken into consideration for the purposes of the Community Evaluation Procedure (CPE) string contention procedure¹⁰⁴.
138. I am unconvinced by such request because, as Expert, I am authorised to value factors other than those expressly established in the Procedure¹⁰⁵: an applicant presenting a community application may, if there is a contending applicant for the same string, request a Community Evaluation Procedure ["CPE"] at the start of the contention resolution stage¹⁰⁶. A successful result in the CPE implies a defeat of all standard applications for the same string (even if the other applications have met all requirements). It follows that any endorsement of a community application is an implicit endorsement of such application against any competing standard applications. Thus, the endorsements of fTLDs Registry Services community application for the same string must be construed as tacit oppositions to the Applicant's application¹⁰⁷, since it is a standard application.

¹⁰¹ Add. Sub., p. 4.

¹⁰² Among others, the Global Federation of Insurance Associations, a representative body for the global insurance industry comprising 35 member associations (whose members account for approximately 88% of the world insurance premiums), the Insurance Bureau of Canada, (the Canadian national industry association representing 90% by premium of the P&C insurance business in Canada), Insurance Europe, (the European insurance and reinsurance federation, whose members account for approximately 95% of total premium income in Europe), and the Insurance Council of Australia (representing more than 90% of premium income written by private sector general insurers in Australia).

¹⁰³ Add. Sub., p. 10.

¹⁰⁴ Add. Sub., Annex C.

¹⁰⁵ Procedure, 3-23.

¹⁰⁶ Guidebook, 4-8/9. The main difference between a standard application and a community-based application lies in the fact that a community-based application must meet stronger requirements than a standard one. The decision whether to present an application as a standard application or a community-based application is up to the presenting applicant.

¹⁰⁷ In this sense, the GFIA endorsement states: "The GFIA welcomes the fTLD Registry Services community-backed bid. It believes that community applications such as that by fTLD is the most appropriate way to manage the .insurance gTLD." Similarly, the IE letters states: "As a community applicant from the industry it represents, fTLD Registry Services understands the industry's need for domain governance and internet security. We have confidence that fTLD will act in the interests of the industry".

Potential conflict of interest and alleged abuse of process

139. As a last set of arguments, the Applicant alleges that the Objector has a clear motivation of self-interest in submitting this objection, which is an abuse of the objection process to secure the .insurance TLD for its subsidiary fTLD Registry Services¹⁰⁸.
140. I cannot agree with these arguments:
- Regarding the potential conflict of interest, the Procedure acknowledges that an objector in a community objection procedure may itself be requesting the same string¹⁰⁹. Whether there is an additional economic benefit for an objector or not does not have any impact *per se* on the right to file an objection.
 - Regarding the alleged abuse of process, this argument must be dismissed *a limine*: for a community objection to prosper, the objector must meet the requirements established by the Procedure, which include, among other factors, substantial opposition of the community targeted, and likelihood of damage to such community. It is unimaginable that an objector successfully proving these requirements would pursue a hidden purpose to defraud or abuse the process.
141. In conclusion, I am persuaded that the Objector has met the requirement of substantial opposition from the international insurance community.

D. Test 3: Strong association between community and string

142. Having established substantial opposition to the Application, the next test to consider is whether there is a strong association between the community and the string.
143. The Objector claims that a strong association does indeed exist, whilst the Applicant denies that such association has been evidenced.
144. To help determine the issue, the Expert may balance factors including: the statements contained in the Application (a) and the level of association by the public between community and the string (b).

a. Statements contained in the Application

145. I have reviewed the text of the Application, and in my opinion there is a clear association between the string and the insurance community. The first sentence in Q18 of the Application, describing the mission/purpose of the gLTD, states:

“The mission of .insurance is to represent the Insurance industry globally in its own differentiated namespace”¹¹⁰.

¹⁰⁸ Response, p. 12.

¹⁰⁹ “An allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment.” Procedure, 3-24.

¹¹⁰ Application Q 18(a), section 1.

146. This is restated further on in the name question:

“This need for the Insurance industry to distinguish both the brand identity and their offering for customers in their own differentiated namespace fuels the motivation behind .Insurance”¹¹¹.

147. In other words, this namespace identifies the brand identity and its products; i.e. the string is clearly associated with the insurance community industry and its products.

148. One final paragraph provides a further example of the association between string and targeted community that transpires from the Application:

“Insurance will also allow Registrants in the insurance community to differentiate themselves from the 200+ million domain names out there. As of now a typical insurance related institutions domain name appears identical to any other domain name in a .gTLD (com) or cc.TLD extension (eg .in). .Insurance provides the ability for Registrants to create a differentiated identity wherein just by looking at the URL end users will be assured of the fact that they are dealing with an insurance related institution”¹¹².

149. The above evidences the clear association between the string .insurance and the insurance community to which it is targeted.

b. Level of association by the public

150. Regarding association by the public of the community and the string, there are several facts that clearly point to such association.

151. To begin with, the Beijing GAC Advice identifies this problematic issue when referring to the trust that the consumers have in the insurance community. In Beijing, the GAC warned:

“Strings that are linked to regulated or professional sectors should operate in a way that is consistent with applicable laws. These strings are likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm”.

152. In other words, because the string (in this case, .insurance) is linked to a regulated sector (the insurance sector), the consumers will assume that the users of such domains are part of the regulated community.

153. I also consider helpful to take the guidelines provided in Module 4 Guidebook (CPE procedure) for valuing the nexus between the string and the community. The guidelines indicate that the matching of the string with the name of the community is a high nexus indicator: the Guidebook grants a score of three points (out of four) if the names match (i.e. string and community have the same name)¹¹³. In our case, the term insurance and the community invoked provide a clear match.

¹¹¹ Application Q 18(a), section 1.

¹¹² Application Q 18(b), section 2.2.

¹¹³ Guidebook, 4-12.

154. I turn now to consider the Applicant’s counter arguments, which are essentially the following two.
155. The first is based on the premise that “insurance” is not a community, and the word insurance does not have a strong association with such purported community. Since I have accepted the Objector’s statement that there is delineated community, this argument fails.
156. The second argument states that the word “insurance” has several meanings in the dictionary, and none of the definitions identified suggests the string “insurance” stands for an insurance community. I find this argument unpersuasive: it is not a question whether the term insurance stands for a community as a definition in the dictionary. The issue is whether the string has a strong association with a community¹¹⁴.
157. In conclusion, I am persuaded that the public strongly associates the string .insurance with the insurance community invoked by the Objector.

E. Test 4: Likelihood of material detriment

158. As the Beijing GAC Advice mentioned, strings that are linked to regulated sectors are likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm.
159. After demonstrating the existence of a clearly delineated community showing substantial opposition to a string with which the community is associated, the Objector must prove that the application creates the 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 targeted¹¹⁵.
160. In addition to the factors provided by the Procedure to consider test 4¹¹⁶, I note that:
- The Objector is not required to prove that the Application will result in actual material detriment; it must only prove that it creates the likelihood of material detriment.
 - The concept of detriment is wider than that of pure damage; it includes loss, damage, disadvantage or injury¹¹⁷.
 - The detriment must be caused to the rights or legitimate interests of a significant portion of the community; while the term “rights” is limited to legal rights (arising by contract or by law), the term “legitimate interests” is wider, encompassing business and economic interests.
161. The Objector’s allegations can be summarised (for fuller description see section 5 - Summary of the Objection), into two main arguments: poor track record in the maintenance of registries (a), and insufficient protection provided by the safeguards established in the Application (b).

¹¹⁴ An example could be, for example the association between a potential string such as .kosher with the Jewish community.

¹¹⁵ Procedure, section 3.5.4, 3-34.

¹¹⁶ Procedure, 3-25.

¹¹⁷ Random House Kernerman Webster’s College Dictionary.

a. Track record of the Directi group in the maintenance of registries

The Objector's allegations

162. The Objector has made serious allegations concerning the track record of the Directi group¹¹⁸: it submits that:
- According to the APWG report¹¹⁹, Directi accounted for the largest percentage of malicious domain name registrations in any named registrar, ranking in the top-ten phishing registrars.
 - Furthermore, there are numerous documented instances where members of the insurance community have had to file UDRPs with ICANN to combat abusive domain name registrations sponsored by PDR¹²⁰.
 - On top of it, according to the Objector, there is a track record of the Directi group using the proxy services to mask the identity of cybersquatters¹²¹, through its service PrivacyProtect.org.

The Applicant's response

163. In response to these arguments, the Applicant contends that allegations concerning other entities other than the Applicant are not relevant. In any event, the Applicant submits that:
- APWG report's statistics are based on registrations in four TLDs, (.com, .net, .org, and .in) for which none of the registry operators have any significant restrictions on domain name registrations; therefore, if phishing registrars exist (lured by Directi's low registration prices)¹²², it is not due to an alleged lack of quality control on the front end of Directi's registration process, but to the failure to set restrictions on registrations. Moreover, of the 527 abusive domain names, Directi had only been informed of three prior to the issuance of the APWG report, which were already suspended. Furthermore, upon becoming aware through the APWG report of the abusive domain registrations, Directi suspended all litigious domains.
 - In relation to the allegations on PDR, of the 31 UDRP proceedings submitted by the Objector, PDR was not notified of any abusive behaviour prior to the UDRP filings.
 - The allegations of use of proxy services to mask the identity of cyber squatters was made by a competing applicant in another string, and were addressed in a letter to ICANN; they have thus no bearing on this case.

Expert's findings

164. I find the Objector's allegations serious.

¹¹⁸ The Applicant is part of the Directi Inc. (Directi) group. Directi is a company located in Mumbai, India, under the control of Mr. Bhavin Turakia, as founder and present CEO (annex 6.3 Response). The group includes Radix FCZ (Radix), and Public Domain Registry (PDR).

¹¹⁹ Objection, p. 11. Anti-phishing Working Group (APWG) report "Global Phishing Survey: Trends and Domain Name Use in 1H2012. The APWG produces additionally a secondary report, which normalizes the number of malicious domain names per 10,000 domain names under management.

¹²⁰ Objection, p. 13.

¹²¹ Objection, p. 13.

¹²² Directi registrars provide amongst the lowest domain registration pricing as part of its business strategy. A review of the malicious domain names evidences the fact that low price points lead to abusive registrations. See Directi's letter – annex 6.3 to the Response.

165. The Applicant is a wholly-owned subsidiary within the Directi Group, and according to the Application, the abuse and compliance processes will be run by the Directi Group¹²³. Thus, the policies and practices of the Directi group in this area are relevant to this analysis of the potential harm.

The existence of a general risk of harm

166. It is my view that Directi group does have a poor track record regarding the maintenance of domain registries. Though there may be some justification in some of the cases, the overall picture is actually far from the zero risk the Applicant presents in its Application:

- A proportionally higher level of malicious name registrations in the Directi Group registrars would seem to indicate a certain lack of quality control on the front end of the registration process. Directi explains that low pricing policies of its registrars could be a factor in the abusive registrations. While this may be true, it certainly does nothing to reduce the concern that these practices create, nor is there any evidence that there is an intention to have them modified and to eliminate or at least reduce the risk of further malicious activities. Thus, the risk identified by Directi itself remains. The Applicant's argument that Directi sent a letter to ICANN in response to the cybersquatting events in its PrivacyProtect.org does not assuage my concerns¹²⁴.
- Other group entities such as PDR are failing to proactively fight cybersquatting and other abusive behaviour, increases the concerns. Furthermore, the Applicant's allegations that PDR was never notified of any abuse prior to the UDRP filings, and thus could not take any preventive action, are not convincing.

The existence of a qualified risk of harm

167. Financial institutions are clear targets for malicious phishing and cybersquatting activities. The Beijing GAC Advice warned that these strings are likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm.

168. Thus, I acknowledge the heightened probability of malicious use of domain registrations due to the nature of the string, and the high risk of consumer harm underscored by the GAC. It seems clear to me that without additional material safeguards to operate the string .insurance, I would be inclined to consider that the Objector has proven there is likelihood of material damage to the insurance community should the Applicant be granted the string.

169. The real question is whether the Applicant has implemented appropriate safeguards to ensure that no malicious use of the string could occur. In this regard, the Applicant has acknowledged that the .insurance string requires special security considerations¹²⁵, that it is fully prepared to comply with the safeguards detailed in the Beijing GAC Advice¹²⁶, and indeed, that it has put in place a multitude of augmented security measures that not only go above and beyond ICANN's

¹²³ Application Q 18(b), section 4.1.

¹²⁴ The letter to ICANN did not rebut the allegations of inadequate action against cybersquatting; its contents were aimed at establishing that regardless of the number of UDRPs that the service had been engaged in and lost, the applicant to the string in that case was qualified to apply.

¹²⁵ Application Q 18(b), section 3.1

¹²⁶ Add. Sub., p. 14, which goes on to state: "as repeated several times over in our response".

requirements, but also closely match the security measures proposed by fTLD Registry Services in its application¹²⁷.

170. I will, thus, devote the next chapter to analysing the security measures proposed by the Applicant in order to determine whether they seem sufficient to prevent the risk of harm from actually materialising.

b. Protection provided by the safeguards established in the Application

171. The Applicant represented in the Application that it would implement a number of safeguards to prevent the risks of harm from happening and included the following commitments in a PIC¹²⁸ - that is, it made them legally enforceable:

- “1. General Names (as described in section 18b sub-section 4.1 of the application) will be available for registration to institutions related to the insurance industry only. For example: insurance carriers, agents, brokers, service providers.
2. Each registered general domain name must be similar to the business name, common name, common law name, trademark name, corporate name of registrant or its products or services or offerings.
3. Both of the above criteria along with the identity of the registrant must be validated before a general domain name is activated.
4. The above applies to general domain names whether registered during sunrise, landrush or general availability.
5. Proxy registrations will not be permitted in .Insurance”.

172. The PIC only makes reference to general domain names. Since the Application, however, makes a difference between generic domain names and general domain names (a difference that will prove to be relevant), it is worth explaining such concepts. Generic names would be, for example, auto.insurance, travel.insurance, health.insurance and the like. General names would be essentially the general names for which the registrants would apply, for example, AIG.insurance.

The parties' positions

173. The Applicant affirms having put in place a multitude of augmented security measures that go above and beyond ICANN's requirements¹²⁹ that closely match the security measures proposed by fTLD Registry Services in its application.

174. The Objector points out that, where the registry operator has no meaningful and on-going relationship with the community targeted by the gLTD, its ability to safeguard any sensitive string is a paramount concern, because changes in ownership of the owner of the right to the

¹²⁷ Response, p. 15

¹²⁸ *Pro memoria*: statements made in the Application are enforceable by ICANN in the future if included (specifically or by reference) in the Registry Agreement to be signed eventually between the Applicant – if successful in the Application – and ICANN. As a result of the Toronto GAC Advice, ICANN provided the Public Interest Commitment (PIC) format, whereby applicants could issue PICs indicating whether (all or part of) the statements in the applications would form part of the Registry Agreement. This means that PIC statements will be enforceable by ICANN in the future as part of the obligations assumed by the relevant applicant. Other statements and representations made in an application relating to the future will not be part of the Registry Agreement and will not be enforceable by ICANN.

¹²⁹ Response, p. 15.

string can result in changes in the safeguards/representations made in the original application¹³⁰. The Applicant takes issue with the Objector's allegation and highlights the importance of applying a detailed Eligibility Restrictions and a strict Name Selection policy (legally enforceable), coupled with a multitude of other security mechanisms detailed in the application, which render the likelihood of cybersquatting and loss of institutional reputation immaterial¹³¹.

175. The Objector has questioned the effectiveness of the representations made by the Applicant with respect to the eligibility policies (i.e. who may apply for a domain name), because they do not seem to be applicable to generic names. This means that generic names could be registered to third parties that are not insurance carriers, brokers and service providers (e.g. health.insurance). The Applicant acknowledges that the safeguards are not applicable to generic domain names within .insurance, precisely to allow the registry operator to convey a positive image to users because the domain name will be allocated to registrants that will promote the .insurance namespace and benefit the registrants of general names¹³².

Expert's findings

176. I have reviewed the Application and the PIC, and my conclusion is that the Applicant is not providing the safeguards necessary to avoid the likelihood of material damage to the community. In my analysis I will determine what the appropriate safeguards are and then compare them with those which the Applicant intends to put into effect.

Safeguards established in the Beijing GAC Advice

177. *Pro memoria*: the Beijing GAC Advice stated that strings that are linked to regulated or professional sectors should operate in a way that is consistent with applicable laws, because these strings are likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm. Among such strings, the GAC identified .insurance.
178. In addition, the GAC advised that some strings may require further safeguards to address specific risks and to bring registry policies in line with arrangements offline. In particular, a limited subset of the above strings are associated with market sectors which have clear and/or regulated entry requirements in multiple jurisdictions, such .financial, and proposed, in addition to other measures the following:
- First Safeguard: at the time of registration, the registry operator must verify and validate the registrant's authorisations, charters, licences and/or other related credentials for participation in that sector.
 - Second Safeguard: in case of doubt with regard to the authenticity of licenses or credentials, registry operators should consult with relevant national supervisory authorities or their equivalents.
 - Third Safeguard: the registry operator must conduct periodic post-registration checks to ensure registrant's validity and compliance with the above requirements.

¹³⁰ Objection, p. 12, citing as an example the string .sport, which originated as a professionals string and has produced sextoys.pro, online casino.pro, etc.

¹³¹ Response, p. 18.

¹³² Add. Sub., p. 13.

179. Both parties agree that .insurance is a financial string and in need of special protection. The Applicant has precisely stated that it is prepared to comply with the specific safeguards that the GAC proposed in the Beijing Advice¹³³.

The Applicant's implementation of the Safeguards

180. I have reviewed the Application and the PIC, and consider that the Applicant has not provided safeguards as provided in the Beijing GAC Advice, specifically, by failing to establish (i) any safeguard restrictions on generic domain names and (ii) subsequent control.
181. (i) Unrestricted generic domain names: the Applicant provides for different registration policies depending on whether the domain name is generic or general¹³⁴. Section 4 of Q18(b) of the Application deals with registration policies¹³⁵, providing certain restrictions based on defined eligibility criteria and a name selection policy in its sub-section 4.1 addressing general names. Sub-section 4.2, which deals, *inter alia*, with generic names, does not include eligibility and name selection policies and, thus, does not contain any restrictions.
182. This distinction is reiterated in section 1.1 of Q29 of the Application (which deals with rights protection mechanisms)¹³⁶:

“Insurance will have well defined eligibility requirements and name selection policy for domain registrations within .insurance along with a dispute resolution process (Eligibility Restrictions Dispute Resolution Process – ERDRP) to resolve potential abuse. Our Eligibility and Name Selection policy and process has the following impact on RPMs – Ensures that general domain names within .insurance are registered by insurance carriers, agents, brokers, service providers etc. only....”.

183. Thus it derives that generic domain names will not be subject to the eligibility requirements and name selection policy for domain registrations within .insurance. Consequently, under the text of the Application, generic names (e.g. flight.insurance) could be registered to third parties that are not *bona fide* members of the insurance community.
184. The Applicant argues that the filing of the PIC ensures that it has undertaken enforceable commitments. This argument is irrelevant: the PIC affects the enforceability of the representations made in the Application, it does, however, not alter the content of such representation. Whenever the representations are insufficient, as I have just established, their enforceable character does not cure the defect. I have reviewed the PIC and can confirm that, in coherence with the Application, the reference to general names¹³⁷, clearly excludes the generic domain names from the scope of the PIC¹³⁸.

¹³³ Add. Sub., p. 1, adding “as repeated several times in our response [to the GAC Beijing Advice]”.

¹³⁴ Section 4 of Q 18(b) of the Application.

¹³⁵ I.e. requirements to be met at registration to ensure that the registrant complies with the eligibility policies that may be established.

¹³⁶ And again in section 1.1.1 of Q 29 as reviewed below.

¹³⁷ which are dealt with in section 18. Subsection 4.2 of the Application.

¹³⁸ Section 3 of the PIC provides:

“Dotfresh Inc. respectfully submits the following Public Interest Commitment for the .Insurance registry:

1. General Names (as described in section 18b sub-section 4.1 of the application) will be available for registration to institutions related to the insurance industry only. For example: insurance carriers, agents, brokers, service providers.

2. Each registered general domain name must be similar to the business name, common name, common law name, trademark name, corporate name of registrant or its products or services or offerings.

185. The Applicant furthermore alleges that reserving some generic domain names allows the registry operator to convey a positive image to the users, and to allocate generic domain names to registrants that will promote the .insurance and benefit the registrants of general names within .insurance¹³⁹. I am not persuaded by the Applicant's argument because there is no definition of who may or may not be considered suitable to promote the .insurance. Even if there was such a definition, Applicant has not included any reference to generic names or their intended use in the PIC¹⁴⁰.
186. (ii) No subsequent control: since the initial registration in these generic domain names is not subject to restriction and validation, coherently neither the Application nor the PIC provide for any subsequent review and control, as proposed by the Beijing GAC Advice.

The consequences of the failure to meet the safeguards

187. Consumers are entitled to assume that entities presenting themselves under the .insurance domain in whatever form are regulated entities, subject to the same online registration requirements as their off-line counterparts. Thus, a consumer dealing with an entity perceived as a member of the insurance community may assume that such member acts within the context of its regulated activity, and that products or services contracted are made subject to the applicable regulations¹⁴¹.
188. Since the Application does not provide any eligibility/validation restrictions on the registration of generic names or any subsequent control, it may result in entities which are not members of the insurance community registering generic names in the .insurance domain. If at present there already are a substantial number of malicious domain registrations on the basis of second level registrations, it is likely that the reliance placed by the consumers on the gTLD domain .insurance will increase the level of malicious use.
189. If generic domain names are not subject to any registration or subsequent control, and consumers have placed their trust on the wrongful assumption that registration barriers and subsequent control exist, the likelihood of creating confusion in the mind of the end user will result in harm not only to the consumer, but ultimately, to the reputation of the internet activity of the insurance community.

3. Both of the above criteria along with the identity of the registrant must be validated before a general domain name is activated.

4. The above applies to general domain names whether registered during sunrise, landrush or general availability.

5. Proxy registrations will not be permitted in .Insurance.”

¹³⁹ Add. Sub., p. 13

¹⁴⁰ The GAC Toronto Advice highlighted the fact that a mechanism to ensure enforceability of the statements made in the applications was needed. This was achieved by way of the PICs.

¹⁴¹ For example, it is reasonable to consider that most persons entering a web page through <www.health.insurance> or <www.retirement.insurance>, or receiving an email from <j.smith@health.insurance>, or <j.doe@retirement.insurance> or entering any similar web page or receiving an email from any similar email address will tend to consider that they are dealing with duly accredited insurance entities.

Other issues

190. In addition to the above, there are a number of other issues arising from the Objection and the Application that would further militate for the conclusion I have reached above. Since I have already ruled that there is a material likelihood of detriment to the community, I consider it moot to proceed further¹⁴².

* * *

191. Allowing unregulated companies to appear as regulated entities may result in a failure to bring registry policies in line with arrangements in place offline, leading to a different (and lower) level of protection to online activities as compared to the level of protection offered by the applicable regulations to entities operating in offline activities. The disparity between both areas (online versus offline) increases substantially the potential for confusion and mistakes by the consumer and abuse of the domain by malicious entities.

192. In conclusion, I am persuaded that the Applicant has not committed to institute effective security protection for user interests, and is not acting in the interests of the insurance community. The Application, if allowed, would facilitate an increase in abusive behaviour (such as cybersquatting, typosquatting, phishing...) and would result in material detriment to the community through loss of consumer trust and additional difficulty in the development of the online business.

8. CONCLUSION

193. I find that the Objector has proven that, in relation to the Objection presented against the Applicant's application for the gTLD .insurance:

- The Objector has standing to object, and
- The four following tests have been met:
 - the community affected by the string is a clearly delineated community,
 - there is substantial opposition from the community,
 - there is a strong association between the string and the community, and

¹⁴² The Objector states, *inter alia*, (Objection, p. 12) that the Directi group's track record points "to a lack of quality control on the front end of Directi's registration process that would permit the registration of malicious domain names...there is a likely causality between the lack of sufficient safeguards in Directi's registration process and the corresponding large percentage of malicious domain names. This potential lack of sufficient safeguards seriously calls into question the ability of Dotfresh to validate registrants in .insurance especially in light of its apparent lack of any on-going relationship with the insurance community." In light of these concerns, the adequacy of the protection policies regarding registration of general domain names would have to be reviewed. In this regard, the only restriction included in the PIC is that general names must be made available to institutions related to the insurance industry. Though the PIC provides a list of examples of what entities may qualify, the list is open and thus allows other types of entities, including unregulated entities, to be registered. This may result in entities which are not members of the insurance community registering general names in the .insurance domain, and giving the appearance of being regulated entities. Moreover, the Application lacks definition in the validation process. There is no clear idea as to what documentation will be required, and no information as to how the validation will actually be done. There are no restrictions on registration or validation in the PIC other than the broad "related to the insurance industry" reference and therefore there do not appear to be meaningful enforceable validation policies. Finally, the Objector's stress on the lack of ongoing relationship with the insurance community calls into question the Applicant's acknowledged (Response p. 16) lack of experience and contacts with the insurance industry and its capacity to properly validate registrants.

- 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 is explicitly or implicitly targeted.

9. COSTS

194. Pursuant to article 14(e) of the Attachment, upon termination of the proceedings, the Dispute Resolution Service Provider shall refund to the prevailing party, as determined by the panel, its advance payment of costs. The Objector has prevailed and thus should have its advance costs refunded.

DECISION

For the reasons given above, and in relation to the Objection filed by The Financial Services Roundtable as the Objector against the Application filed by Dotfresh Inc. as the Applicant, for the gTLD .insurance, I find and declare, in accordance with article 21(d) of the Attachment, that:

- I. The Objector has prevailed;
- II. The Objector shall have its advance deposit refunded by the Centre.

Date: 10 February 2014

Signature:



Mr. Juan Fernández-Armesto
Expert