

## **Annex 4**



International Chamber of Commerce

*The world business organization*

International Centre for Expertise • Centre international d'expertise

**EXP/422/ICANN/39**

EUROPEAN STATE LOTTERIES AND TOTO ASSOCIATION (SWITZERLAND) vs/ AFILIAS LIMITED (IRELAND)

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ALTIUS

Mr. Kristof Neefs

Contact Information

Redacted

*By email:* Contact Information Redacted

HENGLER MUELLER PARTERSCHAFT VON RECHTSANWÄLTEN

Dr. Dirk Uwer

Contact Information Redacted

*By email:* Contact Information Redacted

12 June 2013

Dear Sirs,

Please be advised, that pursuant to Article 13 of the Procedure and Article 9(5)(d) of the Rules, the Centre has appointed as Expert in this matter:

Mr. Clive Duncan Thorne

Reynolds Porter Chamberlain LLP

Tower Bridge House, St Katharine's Way

London E1W 1AA, UK

Tel: Contact Information Redacted

Email:

The Expert is the sole member of the Panel in accordance with Article 13 of the Procedure.

**Chairman of the Standing Committee of the Centre**

The Chairman of the Standing Committee appointed the Expert on 12 June 2013, pursuant to Article 3(3) of Appendix I to the Rules.

.../...

**ICC International Centre for ADR • Centre international d'ADR de la CCI**

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E-mail [expertise@iccwbo.org](mailto:expertise@iccwbo.org) Website [www.iccexpertise.org](http://www.iccexpertise.org)

Please note that the Panel will only be fully constituted upon receipt of the parties' full payment of the Costs.

### **Expert's Availability and Independence**

We enclose the Expert's ICC *curriculum vitae*, as well as his Declaration of Acceptance and Statement of Independence.

Please be advised that the Expert has declared that he is available and able to serve as Expert in this matter.

### **Expert's Fees and Expenses**

Pursuant to Article 3 of the Appendix III to the Rules, ICC has fixed the Expert's hourly rate at € 450. Further, any reasonable expenses of the Expert shall be reimbursed.

### **Deposit for Costs**

#### **1. Costs**

According to Article 14(3) of the Rules, ICC currently estimates the total Costs for this matter at **€ 58 600**, subject to later readjustments.

The Costs cover the estimated fees and expenses of the Expert, as well as ICC's administrative costs incurred and still to be incurred.

In the course of the proceeding, the Centre may have to readjust the estimated Costs.

Further, and pursuant to Article 14(5) of the Rules, upon termination of the proceeding the Centre shall settle the total Costs of the proceeding and shall, as the case may be, reimburse the party or parties for any excess payment or bill the parties for any balance required.

#### **2. Advance Payment**

The Costs have to be fully paid by each party pursuant to Article 14(b) of the Procedure.

Accordingly, the Costs should be paid in the following manner:

- Objector: € **53 600** (€ 58 600 – € 5 000 already paid)
- Applicant: € **53 600** (€ 58 600 – € 5 000 already paid)

In accordance with Article 14(b) of the Procedure, the payment has to be made **within 10 days of the receipt of this letter**. The evidence of such payment has to be submitted to the Centre within the same time limit.

Therefore, we invite the parties to proceed with the payment of the Costs pursuant to the following instructions:

.../...

Beneficiary (*Account holder*): Confidential Business Information

Bank of Beneficiary: Confidential Business Information

IBAN:

on your payment to help ensure that it is accurately credited. <sup>tion</sup> Informa **the application ID**

Please note also that the parties should bear any banking charges associated with the payment.

We draw your attention to the fact that if the Objector fails to make the advance payment of Costs, its Objection shall be dismissed and no fees that the Objector has paid shall be refunded (Article 14(d)(i) of the Procedure).

Further, we draw your attention to the fact that if the Applicant fails to make the advance payment of Costs, the Objection will be deemed to have been sustained and no fees that the Applicant has paid shall be refunded (Article 14(d)(ii) of the Procedure).

Finally, please note that upon termination of the proceeding, ICC shall refund to the prevailing party, as determined by the Panel, its advance payment of Costs (Article 14(e) of the Procedure). However, please note that the Filing Fee is not refundable.

### **Transfer of the File**

Please be advised that the Costs must be fully paid by each party before this proceeding can continue. Once full payments have been received, the Centre will transfer the file to the Expert and invite him to proceed with this matter.

Accordingly, the Expert and the parties should **not** make contact until the Centre has transferred the file to the Expert.

Should you have any further questions, please do not hesitate to contact us.

Yours faithfully,



Špela Košak  
Deputy Manager  
ICC International Centre for Expertise

.../...

Enclosures (*for parties only*):

- Expert's ICC *curriculum vitae*
- Expert's Declaration of Acceptance and Statement of Independence

c.c. (*without enclosures*):

- Mr. Clive Duncan Thorne

*By email:*

Contact Information  
Redacted

## **Annex 5**



International Chamber of Commerce

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**EXP/422/ICANN/39**

EUROPEAN STATE LOTTERIES AND TOTO ASSOCIATION (SWITZERLAND) vs/  
AFILIAS LIMITED (IRELAND)

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ALTIUS

Mr. Kristof Neefs

Contact Information Redacted

*By email:* Contact Information Redacted

HENGLER MUELLER PARTERSCHAFT VON RECHTSANWÄLTEN

Dr. Dirk Uwer

Contact Information Redacted

*By* Contact Information Redacted

Mr. Clive Duncan Thorne

REYNOLDS PORTER CHAMBERLAIN LLP

Contact Information Redacted

*By email:* Contact Information  
Redacted

3 July 2013

Dear Sirs,

The Centre writes to you with reference to its recent correspondence.

**Deposit for Costs**

The Centre acknowledges receipt of € 53 600 paid by the Objector, constituting its advance payment of the estimated Costs, and € 53 600 paid by the Applicant, constituting its advance payment of the estimated Costs.

Accordingly, the estimated Costs have now been paid in full by each party and the Centre confirms the full constitution of the Expert Panel.

.../...

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**Transfer of the File**

Accordingly, we now proceed with the transfer of the file to the Expert Panel.

We enclose herewith a copy of the Objection and of the Response for the Expert Panel's information.

Further, we enclose a copy of any additional relevant correspondence between the Centre and the parties in this matter.

**Applicable Rules**

We remind the Expert Panel that the following documents are available on the Centre's website (<http://www.iccwbo.org/products-and-services/arbitration-and-adr/expertise/icann-new-gtld-dispute-resolution/documents/>):

- Rules for Expertise of the ICC ("Rules");
- Appendix III to the Rules, Schedule of Expertise Costs for Proceedings under the New gTLD Dispute Resolution Procedure ("Appendix III");
- ICC Practice Note on the Administration of Cases under the New gTLD Dispute Resolution Procedure ("ICC Practice Note");
- Attachment to Module 3 of the gTLD Applicant Guidebook, New gTLD Dispute Resolution Procedure ("Procedure");
- ICANN gTLD Applicant Guidebook.

Additionally, we enclose herewith a Note on Personal and Expert Panel's Expenses for Proceedings Related to the New gTLD Dispute Resolution and a Guidance and Checklist for Expert Determination for Proceedings Related to the New gTLD Dispute Resolution for the Expert Panel's information.

**Next Steps**

The Centre invites the Expert Panel to now proceed with this matter in accordance with the above-mentioned rules and documents. Further, we invite the parties to henceforth correspond directly with the Expert Panel.

**Correspondence**

We remind the Expert Panel and the parties that henceforth all correspondence in this matter must always be sent in copy to the Expert Panel, the Centre, all parties and, as the case may be, the parties' representatives (Article 6(b) of the Procedure).

Further, we remind the parties and the Expert Panel that all correspondence must be submitted electronically, unless the Expert Panel has granted a party specific leave to submit a document in a different form (Article 6(a) of the Procedure and Article 1 of the ICC Practice Note). In such case, a copy of such document must also be sent to the Expert Panel, the Centre, all parties and, as the case may be, the parties' representatives.

**Time Limit for Rendering the Expert Determination**

In particular, we remind the Expert Panel that the draft Expert Determination must be submitted to the Centre within 45 days of the constitution of the Expert Panel, *i.e.* following the day of receipt of this letter by the Expert Panel

.../...



In specific circumstances, the Centre may grant the Expert Panel a brief extension upon a reasoned request (Article 21(a) of the Procedure).

### **Adjusted Deposit for Costs**

Please be reminded that ICC has decided to fix the estimated Costs for this matter at € 58 600.

The estimated Costs are intended to cover the Expert Panel's fees and expenses, as well as ICC's administrative costs incurred and still to be incurred.

However, the final Costs will be fixed by the Centre at the end of the proceeding when it has been informed of the actual amount of time spent by the Expert Panel and the incurred expenses. The Centre will fix the final Costs taking into account the above information and ensuring that the Expert Panel is paid for the reasonable amount of time spent and reimbursed for the expenses incurred pursuant to Appendix III to the Rules. Subsequently, and, as the case may be, the Centre shall reimburse the parties any overpaid amount and shall reimburse the prevailing party its full advance payment of Costs.

### **Hours Spent and Expenses**

We invite the Expert Panel to inform the Centre regularly about the amount of time already spent on this matter, as well as its estimate of any further amount of time to be spent on this matter.

Further, and with reference to the Note on Personal and Expert Panel's Expenses for Proceedings Related to the New gTLD Dispute Resolution, we remind the Expert Panel to inform the Centre of any incurred expenses immediately.

In this regard, please note that the current estimated Costs does not yet include a deposit for expenses should the parties and the Expert Panel decide to hold a hearing.

Accordingly, and should the Expert Panel decide to hold a hearing, we invite it to inform the Centre immediately in order for the Centre to readjust the estimated Costs and, as the case may be, invite an additional payment from the parties.

Depending on the Expert Panel's indication of the time necessary to conduct the proceeding and the estimated expenses, the Centre may readjust the estimated Costs in due course and invite an additional payment of the parties.

### **Mediation and Negotiation**

Finally, and with reference to Article 16 of the Procedure, we remind the parties that they are free to participate in negotiations and/or mediation at any time throughout the proceeding with the aim to settling their dispute amicable.

In this regard, the parties may wish to consider conducting a mediation pursuant to the ICC ADR Rules and administered by the ICC International Centre for ADR. ICC can also assist the parties in finding a suitable mediator. Should the parties wish to obtain further information in this regard, we invite them to contact the Centre by email at [adr@iccwbo.org](mailto:adr@iccwbo.org).

.../...

Yours faithfully,



Špela Košak  
Deputy Manager  
ICC International Centre for Expertise

Enclosures: *(for the Expert Panel only)*

- Copy of the Objection
- Copy of the Response
- Copies of relevant Correspondence between the Parties and the Centre
- Note on Personal and Expert Panel's Expenses for Proceedings Related to the New gTLD Dispute Resolution
- Guidance and Checklist for Expert Determination for Proceedings Related to the New gTLD Dispute Resolution

## **Annex 6**

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Mr. Clive Duncan Thorne  
ICC Expert  
REYNOLDS PORTER CHAMBERLAIN LLP  
Tower Bridge House, St Katharine's Way  
London E1W 1AA  
United Kingdom

By e-mail to **Contact Information Redacted**

Brussels, 4 July 2013

**Request for additional round of submissions  
(Article 17 of the Procedure)**

Dear Mr. Thorne,

Re: Community objection to .LOTTO gTLD application  
O. ref.: R.0268 – PHV KN  
Y. ref: ICC EXP/422/ICANN/39

We write to you in our capacity of counsel for the Objector, European State Lotteries and Toto Association ("**European Lotteries**"), to request an additional round of written submissions in accordance with Article 17(a) of the New gTLD Dispute Resolution Procedure.

An additional written statement is justified for a.o. the following reasons.

Firstly, the Applicant's Response of 13 May 2013 features a host of reproaches addressed to members of European Lotteries (see, for example, p.5 of the Response: "*several of its members are in constant, deliberate and persistent breach of national laws*"). While European Lotteries holds the view that these remarks are irrelevant to the resolution of this dispute, it insists on a retort to these comments.

Secondly and in the same vein, the Response relies on a skewed (and, in some cases, outright wrong) interpretation of CJEU case law on gambling by referring to European Lotteries' members as "*monopolists [...] more often than not constructed in violation of European law*" (p.6 of the Response). In view of the importance of this matter, European Lotteries respectfully requests to be offered the opportunity to set the record straight on this issue.

Thirdly, the Response deliberately aims to blur the boundaries between Lotteries (to which the .LOTTO string clearly relates in the eye of the public) and the gambling sector (see e.g. p.7 and Attachment 4 of the Response) in an attempt to support its position that opposition is not substantial. Although European Lotteries is convinced that the Expert will not be persuaded by this misguided presentation of the case, it respectfully requests to clarify the distinction and its particular relevance to this matter.

Fourthly, the Applicant purports that European Lotteries “*failed to prove that the community members need online communication in order to conduct their business model*” (p.12 of the Response). While, again, this statement is misguided, European Lotteries would welcome the opportunity to demonstrate its members’ efforts to promote safe and responsible online lotteries.

\* \*  
\*

Against this backdrop, our client respectfully requests you to allow additional written submissions by the parties and to fix the time limits for such submissions in accordance with Article 17 of the Procedure.

In fixing the time limits for additional submissions, we kindly request you to award the maximum term of 30 days (Article 17(b) of the Procedure) for both parties, in view of potential practical difficulties concerning availability during the summer holiday period.

A copy of this request is provided to Mr. Dirk Uwer, representing the Applicant.

We look forward to your decision on this request.

Faithfully yours,



Kristof Neefs



Philippe Vlaemminck

Cc: Mr. Dirk Uwer, counsel for the applicant Afiliac (by e-mail to [Contact Information Redacted](#))

# **Annex 7**

**RPC**

ALTIUS

Mr. Kristof Neefs and Mr Philippe Vlaemminck  
Contact Information Redacted

By email: Contact Information  
Redacted

HENGLER MUELLER PARTERSCHAFT VON RECHTSANWÄLTEN  
Contact Information Redacted

Contact Information Redacted

By email:

9 August 2013

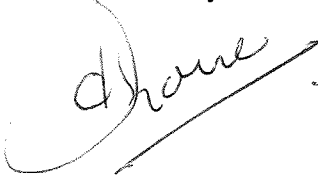
Dear Sirs

**EXP/422/ICANN/39  
EUROPEAN STATE LOTTERIES AND TOTO ASSOCIATION (SWITZERLAND) vs/  
AFILIAS LIMITED (IRELAND)  
COMMUNITY OBJECTION TO .LOTTO gTLD**

I enclose for your information a copy of my letter of 24 July 2013 written in response to Altius's letter of 4 July requesting leave for an additional round of submissions pursuant to Article 17 of the Procedure.

I had understood that this letter would be distributed to the parties by the ICC International Centre for Expertise at the time but this was not the case. Accordingly, I apologise for the delay in circulating my decision on the request.

Yours faithfully



**Clive Duncan Thorne  
Expert**

Enc

ADVISORY | DISPUTES | TRANSACTIONS

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A member of

**TERRALEX**



cc - Case Management Team

Ms Hannah Tümpel  
Manager

Ms Špela Košak  
Deputy Manager

Ms Emma Reade  
Assistant



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38 Cours Albert 1er  
75008 Paris  
France

D: Contact Information Redacted  
F:  
E:

FAO: Mrs Hannah Tümpell, Manager  
Ms Špela Košak, Deputy Manager  
Ms Emma Reade, Assistant

Our ref: CDT/INT150.1

24 July 2013

Dear Sirs

**EXP/422/ICANN/39 European State Lotteries and Toto Association (Switzerland) v. Affiliat  
Limited (Ireland)**

I am in receipt of the letter of 4 July 2013 from Altius, Counsel for the Objector, European State Lotteries and Toto Association.

I have considered that letter pursuant to Article 17 of the Procedure to permit additional written submissions by the parties and to fix the time limits for submissions.

I have now read the papers and considered Altius's request.

The request is made for (expressly amongst others, though they are not specified) the reasons set out in the letter of request. These are as follows:-

1. The Applicant's Response of 13 May 2013 features a host of reproaches addressed to members at European Lotteries.

The Objector indicates that the remarks referred to are "irrelevant to the resolution of this dispute". It insists on a retort to these comments. The Expert agrees that the remarks are irrelevant to the resolution of the dispute and in those circumstances there is no reason why they should be dealt within an additional written statement.

2. The Applicant's response relies on a "skewed (and, in some cases outright wrong) interpretation of CJEU case law on gambling..."

The Expert does not consider that this request is necessary for the purpose of interpreting cited CJEU case law. The Expert is currently in a position to consider whether or not there is any justification for the description of members of the Objector as "monopolists". In these circumstances, it does not consider that it is necessary for further submissions to be made by the Objector.

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London Bristol Hong Kong Singapore



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3. The Response deliberately aims to blur the boundaries between Lotteries and the gambling sector.

Altius state that although their client is convinced that the Expert will not be persuaded by this "misguided presentation of the case" it requests an opportunity to clarify the distinction. In the Expert's view, this is unnecessary. The point is made and summarized in the letter of 4 July.

4. The Applicant purports that European Lotteries "fail to prove that the community members need online communication in order to conduct their business model"

The Expert notes that the Objector regards the statement as "misguided". He does not, however, consider that any additional submission would assist him in deciding the Objection.

It follows that the Expert is not prepared to allow additional written submissions from the parties as requested on behalf of the Objector. The Expert will continue to determine the Objection on the basis of the existing submissions currently before him.

Yours faithfully



**Clive Duncan Thorne**  
**Expert**

## **Annex 8**



## **Governmental Advisory Committee**

Beijing, People's Republic of China – 11 April 2013

### **GAC Communiqué – Beijing, People's Republic of China<sup>1</sup>**

#### **I. Introduction**

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Beijing during the week of 4 April 2013. Sixty-one (61) GAC Members participated in the meetings and eight (8) Observers. The GAC expresses warm thanks to the local hosts China Internet Network Information Center (CNNIC), China Organizational Name Administration Center (CONAC), and Internet Society of China for their support.

#### **II. Internal Matters**

##### **1. New Members and Observers**

The GAC welcomes Belarus, Cape Verde, Côte d'Ivoire, Lebanon, and the Republic of the Marshall Islands to the Committee as members, and The World Meteorological Organisation as an Observer.

##### **2. GAC Secretariat**

Following a request for proposals, the GAC received presentations from two organizations and agreed that one such candidate should be providing secretariat services to the GAC, with the aim of becoming operational as soon as possible. Negotiations with such organization will start immediately after the Beijing meeting.

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<sup>1</sup> To access previous GAC advice, whether on the same or other topics, past GAC communiqués are available at: <https://gacweb.icann.org/display/gacweb/GAC+Recent+Meetings> and older GAC communiqués are available at: <https://gacweb.icann.org/display/gacweb/GAC+Meetings+Archive>.

### **3. GAC Leadership**

The GAC warmly thanks the outgoing Vice-Chairs, Kenya, Singapore, and Sweden and welcomes the incoming Vice-Chairs, Australia, Switzerland and Trinidad & Tobago.

## **III. Inter-constituencies Activities**

### **1. Meeting with the Accountability and Transparency Review Team 2 (ATRT 2)**

The GAC met with the ATRT 2 and received an update on the current activities of the ATRT 2. The exchange served as an information gathering session for the ATRT 2 in order to hear GAC member views on the Review Team processes and areas of interest for governments. The GAC provided input on governmental processes and the challenges and successes that arose during the first round of reviews, and implementation of the GAC related recommendations of the first Accountability and Transparency Review Team.

### **2. Board/GAC Recommendation Implementation Working Group (BGRI-WG)**

The Board–GAC Recommendation Implementation Working Group (BGRI–WG) met to discuss further developments on ATRT1 recommendations relating to the GAC, namely recommendations 11 and 12. In the context of Recommendation 11, the GAC and the Board have concluded the discussion and agreed on the details of the consultation process mandated per ICANN Bylaws, should the Board decide not to follow a GAC advice. With respect to Recommendation 12, on GAC Early Engagement, the BGRI-WG had a good exchange with the GNSO on mechanisms for the GAC to be early informed and provide early input to the GNSO PDP. The BGRI–WG intends to continue this discussion intersessionally and at its next meeting in Durban.

### **3. Brand Registry Group**

The GAC met with the Brand Registry Group and received information on its origins, values and missions.

### **4. Law Enforcement**

The GAC met with law enforcement representatives and received an update from Europol on the Registrar Accreditation Agreement (RAA).

\*\*\*

The GAC warmly thanks the Accountability and Transparency Review Team 2, the Brand Registry Group, Law Enforcement, and the ICANN Board who jointly met with the GAC as well

as all those among the ICANN community who have contributed to the dialogue with the GAC in Beijing.

## IV. GAC Advice to the ICANN Board<sup>2</sup>

### 1. New gTLDs

#### a. GAC Objections to Specific Applications

##### i. The GAC Advises the ICANN Board that:

i. The GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following applications:<sup>3</sup>

1. The application for .africa (Application number 1-1165-42560)
2. The application for .gcc (application number: 1-1936-2101)

ii. With regard to Module 3.1 part II of the Applicant Guidebook<sup>4</sup>:

1. The GAC recognizes that Religious terms are sensitive issues. Some GAC members have raised sensitivities on the applications that relate to Islamic terms, specifically .islam and .halal. The GAC members concerned have noted that the applications for .islam and .halal lack community involvement and support. It is the view of these GAC members that these applications should not proceed.

#### b. Safeguard Advice for New gTLDs

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).

#### c. Strings for Further GAC Consideration

In addition to this safeguard advice, that GAC has identified certain gTLD strings where further GAC consideration may be warranted, including at the GAC meetings to be held in Durban.

- i. Consequently, **the GAC advises the ICANN Board** to: not proceed beyond Initial Evaluation with the following strings : .shenzhen (IDN in Chinese), .persiangulf, .guangzhou (IDN in Chinese), .amazon (and IDNs in Japanese and Chinese), .patagonia, .date, .spa, .yun, .thai, .zulu, .wine, .vin

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<sup>2</sup> To track the history and progress of GAC Advice to the Board, please visit the GAC Advice Online Register available at: <https://gacweb.icann.org/display/gacweb/GAC+Recent+Meetings>

<sup>3</sup> Module 3.1: "The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.

<sup>4</sup> Module 3.1: "The GAC advises ICANN that there are concerns about a particular application "dot-example." The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.

**d. The GAC requests:**

- i. a written briefing about the ability of an applicant to change the string applied for in order to address concerns raised by a GAC Member and to identify a mutually acceptable solution.

**e. Community Support for Applications**

**The GAC advises the Board:**

- i. that in those cases where a community, which is clearly impacted by a set of new gTLD applications in contention, has expressed a collective and clear opinion on those applications, such opinion should be duly taken into account, together with all other relevant information.

**f. Singular and plural versions of the same string as a TLD**

The GAC believes that singular and plural versions of the string as a TLD could lead to potential consumer confusion.

Therefore **the GAC advises the ICANN Board to:**

- i. Reconsider its decision to allow singular and plural versions of the same strings.

**g. Protections for Intergovernmental Organisations**

The GAC stresses that the IGOs perform an important global public mission with public funds, they are the creations of government under international law, and their names and acronyms warrant special protection in an expanded DNS. Such protection, which the GAC has previously advised, should be a priority.

This recognizes that IGOs are in an objectively different category to other rights holders, warranting special protection by ICANN in the DNS, while also preserving sufficient flexibility for workable implementation.

The GAC is mindful of outstanding implementation issues and commits to actively working with IGOs, the Board, and ICANN Staff to find a workable and timely way forward.

Pending the resolution of these implementation issues, the **GAC reiterates its advice to the ICANN Board that:**

- i. appropriate preventative initial protection for the IGO names and acronyms on the provided list be in place before any new gTLDs would launch.

## **2. Registrar Accreditation Agreement (RAA)**

Consistent with previous communications to the ICANN Board

### **a. the GAC advises the ICANN Board that:**

- i. the 2013 Registrar Accreditation Agreement should be finalized before any new gTLD contracts are approved.

The GAC also strongly supports the amendment to the new gTLD registry agreement that would require new gTLD registry operators to use only those registrars that have signed the 2013 RAA.

The GAC appreciates the improvements to the RAA that incorporate the 2009 GAC-Law Enforcement Recommendations.

The GAC is also pleased with the progress on providing verification and improving accuracy of registrant data and supports continuing efforts to identify preventative mechanisms that help deter criminal or other illegal activity. Furthermore the GAC urges all stakeholders to accelerate the implementation of accreditation programs for privacy and proxy services for WHOIS.

## **3. WHOIS**

### **The GAC urges the ICANN Board to:**

- a. ensure that the GAC Principles Regarding gTLD WHOIS Services, approved in 2007, are duly taken into account by the recently established Directory Services Expert Working Group.

The GAC stands ready to respond to any questions with regard to the GAC Principles.

The GAC also expects its views to be incorporated into whatever subsequent policy development process might be initiated once the Expert Working Group concludes its efforts.

## **4. International Olympic Committee and Red Cross /Red Crescent**

Consistent with its previous communications, **the GAC advises the ICANN Board to:**

- a. amend the provisions in the new gTLD Registry Agreement pertaining to the IOC/RCRC names to confirm that the protections will be made permanent prior to the delegation of any new gTLDs.



## **5. Public Interest Commitments Specifications**

### **The GAC requests:**

- b. more information on the Public Interest Commitments Specifications on the basis of the questions listed in annex II.

## **V. Next Meeting**

The GAC will meet during the period of the 47<sup>th</sup> ICANN meeting in Durban, South Africa.

## ANNEX I

### Safeguards on New gTLDs

The GAC considers that Safeguards should apply to broad categories of strings. For clarity, this means any application for a relevant string in the current or future rounds, in all languages applied for.

The GAC advises the Board that all safeguards highlighted in this document as well as any other safeguard requested by the ICANN Board and/or implemented by the new gTLD registry and registrars should:

- be implemented in a manner that is fully respectful of human rights and fundamental freedoms as enshrined in international and, as appropriate, regional declarations, conventions, treaties and other legal instruments – including, but not limited to, the UN Universal Declaration of Human Rights.
- respect all substantive and procedural laws under the applicable jurisdictions.
- be operated in an open manner consistent with general principles of openness and non-discrimination.

#### Safeguards Applicable to all New gTLDs

**The GAC Advises that** the following six safeguards should apply to all new gTLDs and be subject to contractual oversight.

1. **WHOIS verification and checks** —Registry operators will conduct checks on a statistically significant basis to identify registrations in its gTLD with deliberately false, inaccurate or incomplete WHOIS data at least twice a year. Registry operators will weight the sample towards registrars with the highest percentages of deliberately false, inaccurate or incomplete records in the previous checks. Registry operators will notify the relevant registrar of any inaccurate or incomplete records identified during the checks, triggering the registrar’s obligation to solicit accurate and complete information from the registrant.
2. **Mitigating abusive activity**—Registry operators will ensure that terms of use for registrants include prohibitions against the distribution of malware, operation of botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law.
3. **Security checks**— While respecting privacy and confidentiality, Registry operators will periodically conduct a technical analysis to assess whether domains in its gTLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets. If Registry operator identifies security risks that pose an actual risk of harm, Registry operator will notify the relevant registrar and, if the registrar does not take immediate action, suspend the domain name until the matter is resolved.

4. **Documentation**—Registry operators will maintain statistical reports that provide the number of inaccurate WHOIS records or security threats identified and actions taken as a result of its periodic WHOIS and security checks. Registry operators will maintain these reports for the agreed contracted period and provide them to ICANN upon request in connection with contractual obligations.
5. **Making and Handling Complaints** – Registry operators will ensure that there is a mechanism for making complaints to the registry operator that the WHOIS information is inaccurate or that the domain name registration is being used to facilitate or promote malware, operation of botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law.
6. **Consequences** – Consistent with applicable law and any related procedures, registry operators shall ensure that there are real and immediate consequences for the demonstrated provision of false WHOIS information and violations of the requirement that the domain name should not be used in breach of applicable law; these consequences should include suspension of the domain name.

The following safeguards are intended to apply to particular categories of new gTLDs as detailed below.

#### **Category 1**

##### **Consumer Protection, Sensitive Strings, and Regulated Markets:**

##### **The GAC Advises the ICANN Board:**

- 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. The following safeguards should apply to strings that are related to these sectors:
  1. Registry operators will include in its acceptable use policy that registrants comply with all applicable laws, including those that relate to privacy, data collection, consumer protection (including in relation to misleading and deceptive conduct), fair lending, debt collection, organic farming, disclosure of data, and financial disclosures.
  2. Registry operators will require registrars at the time of registration to notify registrants of this requirement.
  3. Registry operators will require that registrants who collect and maintain sensitive health and financial data implement reasonable and appropriate security measures commensurate with the offering of those services, as defined by applicable law and recognized industry standards.
  4. Establish a working relationship with the relevant regulatory, or industry self-regulatory, bodies, including developing a strategy to mitigate as much as possible the risks of fraudulent, and other illegal, activities.

5. Registrants must be required by the registry operators to notify to them a single point of contact which must be kept up-to-date, for the notification of complaints or reports of registration abuse, as well as the contact details of the relevant regulatory, or industry self-regulatory, bodies in their main place of business.

In the current round the GAC has identified the following non-exhaustive list of strings that the above safeguards should apply to:

- **Children:**
  - .kid, .kids, .kinder, .game, .games, .juegos, .play, .school, .schule, .toys
- **Environmental:**
  - .earth, .eco, .green, .bio, .organic
- **Health and Fitness:**
  - .care, .diet, .fit, .fitness, .health, .healthcare, .heart, .hiv, .hospital,, .med, .medical, .organic, .pharmacy, .rehab, .surgery, .clinic, .healthy (IDN Chinese equivalent), .dental, .dentist .doctor, .dds, .physio
- **Financial:**
  - capital, . cash, .cashbackbonus, .broker, .brokers, .claims, .exchange, .finance, .financial, .fianancialaid, .forex, .fund, .investments, .lease, .loan, .loans, .market, . markets, .money, .pay, .payu, .retirement, .save, .trading, .autoinsurance, .bank, .banque, .carinsurance, .credit, .creditcard, .creditunion, .insurance, .insure, ira, .lifeinsurance, .mortgage, .mutualfunds, .mutuelle, .netbank, .reit, .tax, .travelersinsurance, .vermogensberater, .vermogensberatung and .vesicherung.
- **Gambling:**
  - .bet, .bingo, .lotto, .poker, and .spreadbetting, .casino
- **Charity:**
  - .care, .gives, .giving, .charity (and IDN Chinese equivalent)
- **Education:**
  - degree, .mba, .university
- **Intellectual Property**
  - .audio, .book (and IDN equivalent), .broadway, .film, .game, .games, .juegos, .movie, .music, .software, .song, .tunes, .fashion (and IDN equivalent), .video, .app, .art, .author, .band, .beats, .cloud (and IDN equivalent), .data, .design, .digital, .download, .entertainment, .fan, .fans, .free, .gratis, .discount, .sale, .hiphop, .media, .news, .online, .pictures, .radio, .rip, .show, .theater, .theatre, .tour, .tours, .tvs, .video, .zip
- **Professional Services:**
  - .abogado, .accountant, .accountants, .architect, .associates, .attorney, .broker, .brokers, .cpa, .doctor, .dentist, .dds, .engineer, .lawyer, .legal, .realtor, .realty, .vet
- **Corporate Identifiers:**
  - .corp, .gmbh, .inc, .limited, .llc, .llp, .ltda, .ltd, .sarl, .srl, .sal
- **Generic Geographic Terms:**
  - .town, .city, .capital

- .reise, .reisen<sup>5</sup>
- .weather
- .engineering
- .law
- **Inherently Governmental Functions**
  - .army, .navy, .airforce
- In addition, applicants for the following strings should develop clear policies and processes to minimise the risk of cyber bullying/harassment
  - .fail, .gripe, .sucks, .wtf

**The GAC further advises the Board:**

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 offline. 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, professional services, environmental, health and fitness, corporate identifiers, and charity) 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' authorisations, 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 registrants' 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.

**Category 2**

**Restricted Registration Policies**

**The GAC advises the ICANN Board:**

1. **Restricted Access**
  - As an exception to the general rule that the gTLD domain name space is operated in an open manner registration may be restricted, in particular for strings mentioned under category 1

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<sup>5</sup> Austria, Germany, and Switzerland support requirements for registry operators to develop registration policies that allow only travel-related entities to register domain names. Second Level Domains should have a connection to travel industries and/or its customers

above. In these cases, the registration restrictions should be appropriate for the types of risks associated with the TLD. The registry operator should administer access in these kinds of registries in a transparent way that does not give an undue preference to any registrars or registrants, including itself, and shall not subject registrars or registrants to an undue disadvantage.

## 2. Exclusive Access

- For strings representing generic terms, exclusive registry access should serve a public interest goal.
  
- In the current round, the GAC has identified the following non-exhaustive list of strings that it considers to be generic terms, where the applicant is currently proposing to provide exclusive registry access
  - .antivirus, .app, .autoinsurance, .baby, .beauty, .blog, .book, .broker, .carinsurance, .cars, .cloud, .courses, .cpa, .cruise, .data, .dvr, .financialaid, .flowers, .food, .game, .grocery, .hair, .hotel, .hotels, .insurance, .jewelry, .mail, .makeup, .map, .mobile, .motorcycles, .movie, .music, .news, .phone, .salon, .search, .shop, .show, .skin, .song, .store, .tennis, .theater, .theatre, .tires, .tunes, .video, .watches, .weather, .yachts, .クラウド [cloud], .ストア [store], .セール [sale], .ファッション [fashion], .家電 [consumer electronics], .手表 [watches], .書籍 [book], .珠宝 [jewelry], .通販 [online shopping], .食品 [food]

## ANNEX II

### List of questions related to Public Interest Commitments Specifications

1. Could a third party intervene or object if it thinks that a public interest commitment is not being followed? Will governments be able to raise those sorts of concerns on behalf of their constituents?
2. If an applicant does submit a public interest commitment and it is accepted are they able to later amend it? And if so, is there a process for that?
3. What are ICANN's intentions with regard to maximizing awareness by registry operators of their commitments?
4. Will there be requirements on the operators to maximize the visibility of these commitments so that stakeholders, including governments, can quickly determine what commitments were made?
5. How can we follow up a situation where an operator has not made any commitments? What is the process for amending that situation?
6. Are the commitments enforceable, especially later changes? Are they then going into any contract compliance?
7. How will ICANN decide whether to follow the sanctions recommended by the PIC DRP? Will there be clear and transparent criteria? Based on other Dispute Resolution Procedures what is the expected fee level?
8. If serious damage has been a result of the past registration policy, will there be measures to remediate the harm?

## **Annex 9**





International Chamber of Commerce

*The world business organization*

International Centre for Expertise • Centre international d'expertise

**EXP/422/ICANN/39**

EUROPEAN STATE LOTTERIES AND TOTO ASSOCIATION (SWITZERLAND) vs/  
AFILIAS LIMITED (IRELAND)

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ALTIUS

Mr. Kristof Neefs

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10 December 2013

Dear Sirs,

The Centre hereby notifies the signed Expert Determination dated 9 December 2013 to the parties (Article 2 (b) of the Procedure).

The Expert Determination was approved by the Standing Committee of the Centre.

**Publication of the Expert Determination**

The Expert Panel has agreed with the publication of this Expert Determination online. Accordingly, the Centre shall proceed with the publication of this Expert Determination on the Centre's website in due course (Article 21(g) of the Procedure).

**Notification to ICANN**

The Centre shall submit an electronic copy of the Expert Determination to ICANN by separate email of today

**ICC International Centre for ADR • Centre international d'ADR de la CCI**

.../...

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### **Costs of the Proceedings**

Following receipt of the final Expert Determination and the Expert Panel's indication of the time spent on this matter, the Standing Committee of the Centre has fixed the Expert Panel's fees and expenses (Article 14(a) of the Procedure, Article 3(4)(B) of Appendix I to the ICC Rules for Expertise and Article 3 of Appendix III to the ICC Rules for Expertise).

Subsequently, the Centre has fixed the total costs of the proceedings ("Total Costs"), including ICC's administrative expenses as follows (Article 14(a) of the Procedure and Appendix III Article (2) to the Rules):

Expert Panel's fees:	€ 36 765
Expert Panel's expenses:	€ 590
ICC administrative expenses:	€ 8 500
ICC banking charges:	€ 60
<b>Total:</b>	<b>€ 45 915</b>

### **Non-refundable Filing Fee**

We remind the parties that the Filing Fee of € 5 000 paid by each party is non-refundable.

### **Advance Payments of Estimated Costs by the Parties**

We remind the parties that the Centre had invited an advance payment for the estimated Costs in the amount of € 53 600. Further, we note that said advance payment of the estimated Costs was paid by each party in full.

### **Reimbursement to Prevailing Party**

With reference to the Expert Determination, we note that the Applicant has prevailed and that accordingly the Expert Panel has determined that the Applicant's advance payment shall be refunded.

Accordingly, the Applicant will be reimbursed the full advance payment of the estimated Costs, *i.e.* € 53 600, pursuant to Article 14(e) of the Procedure.

### **Reimbursement of Overpaid Amount to Objector**

Further, we note that the Estimated Costs were higher than the Total Costs in this proceeding.

Accordingly, the overpaid amount of € 7 685 will be reimbursed to the Objector.

### **Payment of Expert Panel's Fees**

The Centre will now proceed with the payment of the Expert Panel's fees.

### **Banking Instructions**

For the purpose of the reimbursements and payments, the Centre invites the parties and the Expert to complete, if not already done so, the enclosed Banking Instruction Form and to return them to the Centre **on or before 17 December 2013**.

.../...

Subsequently, the Centre will invite ICC's accounting department to proceed with the reimbursements and payments.

**Evaluation of the Centre's Services**

As the Centre strives to improve its services, we invite you to evaluate the Centre's services rendered in this matter.

For this purpose, we invite the parties to complete the enclosed Evaluation Form for Parties. Further, we invite the Expert to complete the enclosed Evaluation Form for Experts.

Please return the completed Evaluation Forms to the Deputy Director of ICC Dispute Resolution Services by email to [expertise@iccwbo.org](mailto:expertise@iccwbo.org) **on or before 17 December 2013**.

Your responses will be kept confidential.

Yours faithfully,



Špela Košak  
Deputy Manager  
ICC International Centre for Expertise

Enclosures:

- Copy of the Expert Determination dated 9 December 2013
- Banking Instructions Form
- Evaluation Form for Parties
- Evaluation Form for Experts

# **Annex 10**

# NEWS

## DEAL

# REPORT

### **Hengeler Mueller successfully represents Afilius in dispute on top-level domain .lotto**

The International Centre for Expertise of the International Chamber of Commerce (ICC Expertise Centre) has decided that Afilius Ltd, an ICANN accredited registry operator for Internet domains, may register the new generic top-level domain (gTLD) .lotto.

The European State Lotteries and Toto Association (European Lotteries), to whom the German association of state lottery companies (Deutscher Lotto- and Totoblock) as well as the German Gemeinsame Klassenlotterie belong, had objected to the registration of these gTLD through Afilius in the context of the dispute resolution procedure as foreseen by ICANN for gTLD registrations.

With its decision, the ICC Expertise Centre rejected the arguments of European Lotteries that the availability of .lotto would lead to consumers being confused and exposed to unlicensed or even fraudulent providers of Internet gambling. The case has considerable impact on the economy of convergent gambling markets and addresses fundamental regulatory issues concerning global gambling services offered on the Internet. After the German Lotto- and Totoblock had already lost in German courts in 2006 in its attempt to prevent the cancellation of the trademark "Lotto" referring to the monopoly on lottery operations, it has now also been clarified for Internet domain law that gTLD .lotto is not reserved to state-owned lottery operators. European Lotteries fully lost the case.

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NEWS

DEAL

# REPORT

Afilias Ltd., an Irish Internet service provider headquartered in Dublin, is the registry operator of the gTLD .info and other top-level domains and provides DNS services.

Hengeler Mueller advised and represented Afilias. The Hengeler Mueller team was led by partner Dirk Uwer (Regulatory) and included associate Susanne Koch (both Düsseldorf).

## Partner and Press Contacts

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13 December 2013

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